

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT SRINAGAR**

SWP No. 1484/2016

IA No. 01/2016

Date of Order: 31<sup>st</sup> of July, 2018.

Ms Shaesta Qayoom

Vs.

J&K Public Service Commission & Ors.

**Coram:**

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge.**

**Appearance:**

For the Petitioner(s): Mr B. A. Bashir, Senior Advocate with  
Ms Farah Bashir, Advocate.

For the Respondent(s): Mr Azhar-ul-Amin, Advocate for R-1&2.  
Mr B. A. Dar, Sr. AAG for R-3.

**01.** In this petition, filed under Article 226 of the Constitution of India read with Section 103 of the State Constitution, the petitioner has craved the indulgence of this Court in granting her the following relief(s):

*“I. By issuance of Writ of Certiorari, the impugned short list dated 28.08.2016 (Annexure p/11) issued by respondents may be quashed and set aside*

*II. By issuance of Writ of Mandamus respondents be directed to conduct written test of all the eligible candidates and prepare merit list accordingly keeping the notifications of 2013 and 2014 in view and thereafter invite the candidates for oral tests,*

*III. Without any prejudice to the aforesaid reliefs, by issuance of Writ of Mandamus respondents be further directed to*

*disclose before this Court as to why petitioner was not given the benefit of weightage of marks for her experience as well as for her Ph.D. degree.”*

**02.** The brief facts, as these emerge from the study of the file under consideration, are that the petitioner claims to have qualified her Post Graduation (M.Sc.) in the subject of Chemistry from University of Kashmir in the year 2003 and, subsequently, qualified her Ph.D. in the said subject in the year 2009 from the same University as a regular scholar. The petitioner, to her credit, has the experience of seven years in addition to the academic qualification mentioned hereinabove, of having worked as a contractual lecturer in Women's College, Srinagar, S.P. College Srinagar and Degree College Bemina, Srinagar. The J&K PSC/ respondent No.1 herein, issued notification No. 09-PSC(DR-P) of 2013 dated 23<sup>rd</sup> of May, 2013, in pursuance whereof the posts of Assistant Professors were to be filled up in various disciplines in Govt. Degree Colleges of the State. The petitioner, being fully qualified and eligible for the said post, also applied in terms of the said notification. This process of selection could not be culminated by respondent No.1 till another notification was issued bearing No.12-PSC (DR-P) of 2014 dated 29<sup>th</sup> of May, 2014, whereby, again, applications were invited for selecting candidates against the posts of assistant Professors in various disciplines, wherein the discipline of Chemistry figured at S. No. 160 having 46 vacancies in open merit category. In terms of Note 2 added to the said notification, it was provided that those candidates who have already applied in response to earlier

notification dated 23<sup>rd</sup> of May, 2013 for the said posts, need not to apply again subject to condition that the candidate fulfils the eligibility requirement as laid down in SRO 124 of 2014 dated 21<sup>st</sup> of April, 2014. In terms of SRO 124 issued by the Higher Education Department/ respondent No.3 herein, the requisite eligibility qualification prescribed for the post of Assistant Professor in respect of the candidates who are or have been awarded a Ph.D. Degree in accordance with University Grants Commission (Minimum Standards and Procedures for Award of Ph.D. Degree Regulations 2009), shall be exempted from the requirement of minimum eligibility condition of NET/ SLET/ SET and, therefore, the petitioner, by all standards, being eligible came to be awarded Bar Code No.102406 (though, by way of precaution, she again applied in 2014 for which Bar Code was given to her as 106036). It is stated that in terms of Note No.3 of notification dated 29<sup>th</sup> of May, 2014, it was provided that selection process shall be conducted in accordance with SRO 124 (**supra**), read with Govt. Order No. 252-HE of 2012 dated 30<sup>th</sup> of May, 2012 and Business Rules of 1980. By the said Government Order No.252-HE of 2012 dated 30<sup>th</sup> of May, 2012, at clause (9), it has been provided that the J&K PSC shall adopt screening test to short list the candidates for written examination and, subsequently, make selection as per the procedure laid in the said Government order in which Ph.D. qualified candidates were exempted from appearing in the screening test /written test, when the qualification prescribed is NET/SLET or Ph.D. These recommendations, it is stated, were, therefore, required to be incorporated in the relevant rules

by the administrative Department and the examination rules by J&K PSC /other recruiting agencies in this behalf. It is pleaded by the petitioner that the J&K PSC Business and Procedure Rules of 1980, Rule 40 of which has also been mentioned in the notification, provides the method of selection on the basis of which merit list is to be prepared in conformity with the criteria laid down under Rule 51 of the said Rules. In terms of Rule 40(2), a written test is to be conducted and marks obtained in the said test have to be apportioned proportionately against the marks earmarked for written test in the selection criteria and, thereafter, the oral test/ interview has to be conducted in accordance with the criteria mentioned in the said clause (2) of Rule 40. Rule 51 of the J&K PSC Business and Procedure Rules of 1980, as stated, came to be amended vide notification No. PSC/Exam/ 2016 dated 12<sup>th</sup> of May, 2016, in terms whereof 60 points were to be allotted for written examination, 25 points for interview and 8 points were reserved for higher qualification in the relevant subject pursuant to which Ph.D. would get 8 points. Thereafter, during the pendency of this process, the State of J&K issued SRO No. 438 of 2015 dated 11<sup>th</sup> of December, 2015, which provided that for all gazetted as well as non-gazetted posts written test has to be conducted by the J&K PSC and the SSRB and that the merit has to be assessed on the basis of said written test. However, to the dismay of the petitioner, the respondent Nos.1 and 2 have issued the impugned short list vide notice dated 28<sup>th</sup> of August, 2016, whereby and whereunder, while applying the criteria of 1:3, as against the 46 open merit posts, 138 candidates have been shortlisted for interview and the name of the

petitioner has been dropped, constraining the petitioner to seek the indulgence of this Court through the medium of the present writ petition.

**03.** Mr Bashir, the learned Senior Counsel, appearing on behalf of the petitioner, submits that the petitioner, being a Ph.D. degree holder, could not have been denied the benefit of the same in any circumstances by any condition which has been imposed after the first notification was issued in 2013, therefore, by way of said notification, petitioner was entitled for (08) points for her Ph.D. degree which, admittedly, has not been given to her, thereby resulting in non-selection in the short list of the candidates called for interview. The learned Senior Counsel further submits that in terms of clause (6) sub-clause (c) of notification dated 23<sup>rd</sup> of May, 2013, which has also been reproduced in 2014 notification, the petitioner was entitled for the benefit of experience having worked as a Contractual Lecturer for (07) years in Government Colleges mentioned hereinabove and the certificates thereof were appended with her application form as well. In terms of the said clause, it is stated that weightage had to be calculated at (0.25) points for every completed 3 months, which would entitle her for (07) points at least. The petitioner, as stated, has been given to understand, though verbally and without providing any authentic copy thereof, that her merit points have been calculated at (58.5), whileas the cut-off merit has gone to (60.22) points. It is stated that in case petitioner is given weightage of experience which will add (07) points to her merit, her merit position will go to more than (65) points and in case (08) points are given for her Ph.D. degree also, then, in such eventuality, the merit of the petitioner will go to

(73) points. In that view of the matter, the learned Senior Counsel has, therefore, pleaded that the petitioner has been deprived from the benefit of weightage of experience as well as Ph.D., only to deny her the right of consideration and appointment for the said post. The learned Senior Counsel has also proceeded to state that the respondent No.1 has deviated from the rule of conducting a written test, as was required under Government Order 252 of 2012 as well as SRO 438, therefore, the impugned short list, being not in consonance with the said SRO and the Government Order aforesaid, deserves to be quashed and set aside.

04. At the very outset, Mr Azhar-ul-Amin, the learned counsel for the respondent Nos. 1 and 2, submits that this issue has already been decided and determined by a Coordinate Bench of this Court in its decision dated 27<sup>th</sup> of July, 2017, rendered in case titled ‘Dr. Bilal Ahmad Khan v. State of JK & Ors.’, being SWP No. 1939/2016 and, therefore, needs no further reiteration. A copy of judgment dated 27<sup>th</sup> of July, 2017, passed in SWP No. 1939/2016, as produced by the learned counsel, is taken on record.

05. At the first instance, it shall be advantageous to reproduce the relevant Paragraphs, being Paragraph Nos. 6 to 18, of the judgment rendered by the Coordinate Bench of this Court in the case of Dr. Bilal Ahmad Khan (**supra**), as produced by the learned counsel for respondent Nos. 1 and 2, which read as under:

*“6) The precise controversy is as to whether petitioner for possessing higher qualification of Ph.D., is entitled to 6 points.*

7) As per notification No. 12-PSC(DR-P) of 2014 dated 29.05.2014, the qualification prescribed is as under:

<i>Item No.</i>	<i>Designation</i>	<i>Qualification</i>
156 to 198	Assistant Professor	<p>a) Good academic record as defined by the concerned university with at least 55% marks (50% excluding any grace marks, in case of scheduled caste/ Scheduled tribe/ Differently-abled (Physically and Visually differently abled) Categories/ Ph. D degree holders, who have obtained their Master's Degree prior to 19<sup>th</sup> September 1991) or an equivalent grade in a point scale wherever grading system is followed at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from an accredited foreign University.</p> <p>b) The candidate must have clear NET/SLET/SET</p>

		<p>conducted by the UGC, CSIR/AIU.</p> <p>c) The candidate who are, or have been awarded a Ph. D degree in accordance with the University Grants Commission (Minimum Standards and procedure for award of Ph. D degree regulations), 2009 shall be exempted from the requirement of minimum eligibility condition of NET/SLET/SET.</p> <p>d) NET/SLET/SET shall also not be required for such master's Programme in disciplines for which NET/SLET/SET is not conducted.</p>
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8) The procedure adopted by the respondent Commission in terms of Rule 40 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980 (for short 1980 Rules) for purposes of shortlisting of the candidates giving weightage to the academic qualifications thereof, as stated in the reply of the respondent Commission, is as under:

- |  |             |
|--|-------------|
| i) Weightage given to the basic qualification out of | – 90 points |
| ii) Weightage given to first higher qualification    | – 04 points |
| iii) Weightage given to second higher qualification  | – 06 points |

**Total**

**100 points**



9) The method as was applied for giving weightage to the candidates for shortlisting, as also referred to in the reply, for facility of reference, is reproduced here-under:

<i>Qualification</i>	<i>Total Weightage out of 100 points</i>
<i>Candidate possessing Master's Degree with Ph. D</i>	<i>Weightage given only to Master's degree out of 90 as there is no marks available in Ph. D Degree.</i>
<i>Candidates possessing Master's Degree with NET/SLET</i>	<i>Weightage given only to Master's Degree.</i>
<i>Candidates possessing Master's Degree with M.Phil and Ph.D</i>	<i>Weightage given to Master's Degree out of 90 and no four additional marks awarded for M. Phil Degree as highest qualification subsumed on the basis of qualification/eligibility.</i>
<i>Candidate possessing Master's Degree with NET and M. Phil.</i>	<i>Weightage given to Master's Degree out of 90 and four additional marks for M. Phil Degree.</i>
<i>Candidates possessing Master's Degree with NET/SLET/M. Phil and Ph. D.</i>	<i>Weightage given to Master's Degree out of 90 and four additional marks for M. Phil Degree and six additional marks awarded for Ph. D Degree.</i>

10) Clause (viii) of Rule 51 of 1980 Rules is advantageous to be quoted here-under:

*"The weightage on account of higher qualification shall be admissible for the highest degree possessed by the candidate and not for other higher*

*qualification down the line. Where one of the higher qualifications possessed by the candidate gets consumed towards the requirement of eligibility (like M. Phil/Ph.D for NET/SLET) the candidate shall be entitled to weightage equivalent to the difference between the two viz. highest degree possessed and the degree considered against eligibility. If the highest degree possessed is itself consumed against the eligibility, no weightage shall flow to the candidate in that eventuality."*

*11) Counsel for the petitioner would submit that there is no question of consuming the higher degree i.e. Ph.D. against eligibility i.e. clearance of NET/SLET/SET. Page 6 of 11 Clearing NET/SLET/SET is not a qualification. A postgraduate who has cleared NET/SLET/SET becomes eligible, in absence whereof postgraduate is not eligible. A candidate who possesses Ph. D degree is exempted from the requirement of clearing NET/SLET/SET, therefore, degree of Ph.D. cannot be consumed against the requirement of NET/SLET/SET. The exemption is exemption entitling a Ph. D. degree holder to be eligible to compete for the post of Assistant Professor without having cleared NET/SLET/SET. According to learned counsel, basic qualification is post-graduation, the higher qualification entitles the petitioner to the award of additional 6 points.*

*12) The argument of learned counsel for the petitioner, at the first blush, appeared to be very attractive but, on scrutiny, was found to be without any merit. Petitioner from the very beginning has been conscious of the fact that he will not get 06 additional points for possessing Ph.D. degree. He, in fact, had also appeared in the Eligibility Test (SET) in the year 2013 but had not cleared the same, therefore, filed writ petition(SWP) No.1541/2016 praying therein that he shall be given the benefit of 6 points for SET 2013 which he has qualified Page 7 of 11 but the result has not been finalized due to change of official answer keys from time to time. Said petition was held to be premature and dismissed in limini.*

*13) In the reply filed by respondent Commission, it has been made clear as to under what circumstances, 6 additional points for higher qualification could be awarded. Very simple, in case petitioner would have cleared the SET, in that eventuality he was entitled to additional 6 points for possessing Ph. D degree. Once he has not cleared SET, his higher degree of Ph. D, in effect, has been*

*consumed for eligibility. A post-graduate in absence of NET/SLET/SET is ineligible. For a postgraduate, clearing of said test has no substitute whereas for the candidate possessing Ph.D qualification, exemption as against NET/SLET/SET makes him eligible. If the submission of learned counsel for the petitioner is accepted that even though on the basis of Ph.D degree there is exemption, still for higher qualification 6 points are awardable, then it is equally true, why a post-graduate having also cleared NET/SLET/SET shall not be entitled to additional points.*

*14) The aforesaid position more or less has been settled by the Division Bench of the High Court of Madras in a case captioned “K. Sathyamurthi Vs. The State of Tamil Nadu and others” decided on 24.03.2007, (2007) 4 MLJ 171. Learned counsel for respondent No.3 while relying in the said judgment has rightly taken a plea that the petition is without merit.*

*15) In the reported judgment, various judgments of Hon’ble Supreme Court have been referred. Paras 27, 28 and 29 of the said judgment are relevant to be quoted:*

*“27. One other relevant factor to be considered is that even as per the amended regulations of U.G.C dated 14.6.2006, a P. G. qualified person with NET or SLET is entitled to compete along with a Ph.D. degree holder or a M.Phil degree holder with SLET or net. In other words, all the above three categories with the above qualifications are treated on par while going in for the selection for the post of Lecturers. If that be so, if a Ph.D. or for that matter a Ph.D. with NET along with M.Phil with NET or SLET can be awarded some weightage marks for possessing such qualifications, there is no reason why a P.G. qualified person possessing NET or SLET shall be excluded without any special reason.*

*28. In order words, when as per the U.G.C. Regulations all the above three categories are basically eligible for being considered for the post of Lecturers, a different treatment cannot be meted out to a P.G. qualified person alone even when possesses NET or SLET in the matter of award of weightage marks.*

*29. At this juncture it will be appropriate to refer to the decision of the Hon’ble Supreme Court rendered in State of UP. And Anr. V. Om Prakash and Ors. MANU/SC/3132/2006: AIR2006SC3080. The Hon’ble Supreme Court has referred to an earlier decision of the Supreme Court reported in*

*MANU/SC/1248/1996: (1996) ILLJ110SC (Secy. (Health) Deptt. Of Health and F.W. and Anr. V. Dr. Anita Puri where in it has been held as under in para 17.*

*“17. In Secy.(Health), Deptt. of Health & F. W. v. Dr. Anita Puri, this Court held that preferential qualification does not as of Page 9 of 11 right entitle to selection. In that case the advertisement inviting applications for the posts of Dental Officer prescribed BDS as the minimum qualification but stipulated preference for higher dental qualification. This Court held at SCC pp. 285-86 para 7 as under:*

*7. Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is BDS. It was also stipulated that preference should be given for higher qualification. there is also no dispute that MDS is a higher qualification than the minimum qualification required for the post and respondent 1 was having that degree. The question then arises is whether a person holding MDS qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extra-curricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post of which the selection is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a MDS qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.”*

*Ultimately in para 19, the Hon’ble Supreme Court laid down the ratio in the following terms:*

*“19. In the instant case, the requisite academic qualification for the post of Medical Officer of Homeopathy as*

*prescribed in the advertisement was a recognized degree in homeopathy or a recognized diploma in homeopathy. A proviso has been added that preference will be given to degree-holders. This would mean that a recognized diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a titling factor, in favour of candidates vis-à-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability."*

*A reading of the above decisions of the Hon'ble Supreme Court thus disclose that award of weightage marks for better qualification is not a new phenomena. Similarly, in the case on hand, when the State has decided to award weightage marks for holders of Ph.D qualification and M. Phil candidates with SLET or NET in order to go in for selection of better qualified persons and when holders of P.G. Degree with SLET or NET are treated on par with the holders of Ph.D or P. Phil with SLET or NET, in the same line of reasoning there should be grant of weightage marks for P. G. holders with SLET or NET."*

*16) The Hon'ble Apex Court, as referred and quoted above, has held that the expert body like Public Service Commission in absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. That is what has been done by the respondent Commission in terms of Rule 40 of 1980 Rules. Same cannot be found fault with.*

*17) In Rule 51 of 1980 Rules, it has been clear envisaged that if the highest degree possessed is itself consumed against the eligibility, no weightage shall flow to the candidate in that eventuality. Therefore, in the light of the law laid down by the Hon'ble Apex Court, as referred to above, no exception can be taken to the mode and method as adopted by the respondent Commission in terms of Rule 40 and 51 of 1980 Rules. The petitioner, with all calculations, has participated in the selection process, accepted terms and conditions of the advertisement notice, therefore, cannot be allowed to turn around to claim a benefit which is not available.*

*18) For the stated reasons and circumstances, petition being devoid of merit is dismissed along with connected MPs.”*

After going through the judgment aforesaid rendered by the Coordinate Bench of this Court, what comes to the fore is that the said judgment fits to the facts and circumstances of the case on hand in all the fours. The Coordinate Bench has, in the judgment aforesaid, while delving on all the aspects of the matter and applying the law governing the subject, considered the issue in its entirety and, therefore, there is, in my opinion, no need of returning any further finding on the matter. The case of the petitioner, herein this case, is squarely covered under the judgment (**supra**).

**06.** In the above background, this writ petition, alongwith connected MP(s), shall stand **dismissed** in terms of the judgment rendered by the Coordinate Bench of this Court in Dr. Bilal Ahmad Khan’s case (**supra**). Interim directions, if any, in force as on date, shall stand vacated.

(Ali Mohammad Magrey)  
Judge

**SRINAGAR**  
July 31<sup>st</sup>, 2018  
“TAHIR”