

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

WP(C) 1422/2023

Union Territory of J&K and Anr.

...Appellant/Petitioner(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG with
Mr. Mohd Younis Hafiz, Advocate

Vs.

Salma Hassan

...Respondent(s)

Through: Mr. Bhat Fayaz, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER(ORAL)

31.10.2024

1. The petitioners, led by Union Territory of Jammu and Kashmir, invoke the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to quash an order and judgment dated 24th June, 2022, passed by Central Administrative Tribunal, Srinagar, ("the Tribunal") in TA No. 4760/2020 (SWP No. 2250/2014), titled "*Salma Hassan v/s Union Territory Jammu and Kashmir and others*", whereby the Tribunal while allowing the writ petition, has directed the petitioners herein to consider the respondent No. 1 in the Physically Handicapped Category (PHC) and place her name at appropriate position in the select list as per her merit.

2. Briefly stated the facts leading to the filing of this writ petition, as are gatherable from the judgment impugned, are that Jammu and Kashmir Service Selection Board issued three advertisement notifications, including notification No. 05 of 2013, for filling up the posts of teacher in various districts of Kashmir valley. The posts of teacher borne on District Cadre Shopian figured as item No. 470 in the notification. The Respondent No. 1 herein appears to

have applied in all the three notifications, including Notification No. 05 of 2013, but in the latter notification, as is revealed by the official records, the respondent No. 1 had sought consideration under the Open Merit Category.

3. Be that as it may, the Jammu and Kashmir Service Selection Board, concluded the selection process and published the select list for the posts of teacher for District Cadre Shopian. In reference to advertisement notification No. 05 of 2013, Respondents No. 2 and 3 figured at serial Nos. 12 and 36 in the select list, selected under the RBA/HCH and OM/HCV categories, respectively. The Respondent No. 2 was shown to have obtained 49.0150 merit points, whereas Respondent No. 3 was shown to have obtained 55.9607 merit points. The selection of Respondents 2 and 3 was with a rider that recommendation of appointment shall be subject to production and verification of genuineness of Physically Handicapped Certificates.

4. The Respondent No. 1 who had applied under the Open Merit Category, did not make it to the selection list due to her inferior merit viz-a-viz the candidate last selected in the Open Merit Category. The claim of the respondent No. 1 was that she was also entitled to be considered under the HCV(Handicapped) category as well. The Respondent No. 1 filed SWP No. 2250/2014 before this Court, which on coming into force of the Jammu and Kashmir Reorganization Act, 2019, came to be transferred to the Tribunal and registered there as TA No. 4760/2020.

5. In the writ petition, which was transferred to the Tribunal, the Respondent No. 1 claimed that Respondent No. 2 who figured at serial No. 12 on the select list, was having inferior merit compared to her, as she had been awarded 55.59 points by the Board. With regard to the respondent No. 3, it was contended by the respondent No. 1 that though respondent No. 3 had been

selected under HCV category with merit higher than respondent No. 1, yet she failed to produce the requisite category certificate and, therefore, the respondent No. 1 who was candidate next in the order of merit should have been considered against the said vacancy.

6. The writ petition was opposed by the Jammu and Kashmir Service Selection Board, who in their reply affidavit took a categorical stand that Respondent No. 1 had not sought consideration under the Physically Handicapped Category in reference to the advertisement notification in question and that there is a decision taken by the Board in its 73rd meeting held on 27th January, 2011, chaired by the then chairman, that the candidates who do not mark the relevant field of OMR application form, their application form shall be liable to be rejected. The Tribunal after hearing the parties and perusal of the material on record, found merit in the submissions made on behalf of the Respondent No. 1 and allowed the TA with the directions as we have referred to hereinabove.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered view that the Respondent No. 1 (the petitioner before the Tribunal), who has admittedly not applied under the Physically Handicapped Category is not entitled to be considered against the post, if any, left vacant in the said category. We have gone through the original record produced by Mr. Abdul Rashid Malik, learned Senior AAG, a perusal whereof shows that so far as the application form of Respondent No. 1 in reference to advertisement notification No. 05 of 2013 is concerned, she has sought consideration under the Open Merit Category. In reference to Clause 12 Column No. 1, she has categorically said “NO” to the question posed whether you have got 40% and above disability. It is because of this reason the Respondent No. 1 was accorded consideration by the Board under the Open

Merit Category. There is no dispute on facts that the Respondent No. 1 has not made the grade under Open Merit Category, because of her inferior merit viz-a-viz the candidates last selected in the Open Merit Category. Since the Respondent No. 1 has not sought consideration under the category of Physically Handicapped (visual), as such, there is no question of issuing a mandamus to the Service Selection Board to accord her consideration under the said category. The legal position in this regard is well settled.

8. The Tribunal has not adverted to this aspect of the matter and has fallen in an error in holding that the category certificate subsequently produced can also be taken into consideration and the Respondent No. 1 can be offered the appointment against the vacancy which is left free due to non-completion of requisite formalities/production of category certificate by the Respondent No. 3. The reliance placed by the Tribunal on the Division Bench judgment of this Court in *LPA No. 62/2019 titled "Jammu and Kashmir Service Selection Board and Another Vs. Naseer Ahmad Tantrary and Ors."* is totally misplaced, as the controversy in the aforesaid case was entirely different. It also needs to be clarified that the instant case is not a case of omission by the candidate to fill up the particular field, but is a case where the candidate has made an informed choice and sought consideration under the Open Merit Category by declaring that she does not have the requisite disability of 40%.

9. Viewed from any angle, we do not find the judgment passed by the Tribunal in conformity with the Law. The Tribunal has not understood the controversy in right perspective and has fallen in error in holding the Respondent No. 1 entitled to selection. The impugned judgment passed by the Tribunal is set aside.

10. As is the case projected before us, one of the candidates i.e., Respondent No. 3 has failed to produce the category certificate and has not been appointed. The learned Senior Additional Advocate General appearing for the petitioners submits that in the absence of a waiting list prepared for the horizontal categories, the said vacancy has not been supplied. Mr. Mohd Younis, Law Officer in the office of Jammu and Kashmir Service Selection Board Srinagar, submits that may be the vacancy which remained unfilled due to non-appointment of Respondent No. 3 has been filled up in the subsequent selections. He submits that he cannot not make any statement in this regard.

11. Having regard to the facts and circumstances and taking it as a peculiar case where the Respondent No. 3 has for some reasons which are not forthcoming from the record has omitted to seek the benefit of a reserved category of Handicapped despite the fact that she was possessing such certificate and had sought such considerations with reference to other two notifications, we deem it appropriate to direct the petitioners to sympathetically consider the Respondent No. 1 against the post that has fallen vacant due to non-appointment of Respondent No. 3 provided the said vacancy is still available and there is no other legal impediment. We make it clear, that this direction shall not be taken as a mandamus and has been issued with the hope and trust that petitioners will show human face and address the plight of a physically handicapped girl who has missed the bus under unfortunate circumstances.

12. **Disposed of.**

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

31.10.2024

"Mir Arif"

Whether the order is reportable? Yes/No