

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

LPASW No. 150/2016 (O&M)
in SWP No. 1925/2000

**Reserved on : 27.02.2020
Pronounced on : 09.06.2020**

Dr. Prithvi Paul Raina

....Appellant(s)

Through: Appellant in person

V/s

State of J&K and others

....Respondent(s)

Through: Mr. Sudesh Magotra, Dy.AG
for respondent No. 1
Ms. Chetna Manhas,
Assisting counsel vice Mr. F.
A. Natnoo, AAG for
respondent No. 2

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE
HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE**

JUDGMENT

SINDHU SHARMA-J

1. The present appeal has been preferred against judgment dated 28.09.2016 passed by the learned Single Judge whereby the writ petition of the petitioner seeking quashing of selection to the post of Lecturer in Mathematics, was dismissed.

2. The appellant, presently 58 years of age, having qualified Ph.D. in Mathematics, applied for the post of Lecturer in Mathematics in Higher Education Department. The post was advertised by the J&K Public Service Commission (hereinafter to be referred to as 'PSC') vide Notification No. 29-PSC of 1997 dated 31.12.1997. As per the notification, amongst others, 13 posts were advertised for the subject of

Mathematics, out of which, 09 posts were for General Category, 02 for RBA, 01 post for ST Category and 01 for ALC Category. The appellant applied for consideration under ALC Category.

3. The qualifications prescribed for the said post of Lecturer in Mathematics were as under:

“Master’s Degree in the concerned subject with at least 55% of marks or its equivalent grade and good academic merit.

Note:- To become eligible for the Lecturer post in the Higher Education Department possessing the NET/State Level Comprehensive test is essential but the Govt. vide letter No: Edu-Coll/PSC/95/Panel dated 17.07.1997 have given one time exemption of passing NET/State level comprehensive test to the candidates who are otherwise eligible for competing for election as Lecturers in Degree Colleges in terms of SRO 77 dated 3.4.95.”

4. Vide notification dated 18.09.2000, select list was notified by the respondents, however, the appellant was not selected for the said post. Therefore, aggrieved of the same, he challenged the selection of private respondents as Lecturer in Mathematics on the grounds that selection made by the Commission in terms of Rule 51 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980 is bad as the same has been declared ultra-virus by Full Bench of this Court in ‘**Dr. Inder Parkash Gupta v. State of J&K and others**’, (SWP No. 211/1994) decided on 30.07.1999. The respondents have not granted him statutory preference in terms of SRO 297 to which he was entitled and lastly, that the post of Lecturer in Mathematics was advertised again vide two more Notifications but respondents have held one single interview for all three selection processes which has resulted in erroneous

and faulty evaluation of merit, as a result of which, he could not be selected.

5. The respondents-Commission on the other hand submitted that the appellant was not selected for the post of Lecturer in Mathematics as he failed to secure the requisite merit. The last selected candidate for the said post in ALC category had secured 73.45 points whereas the appellant had obtained only 50.75 points, as such, was not selected. The learned writ court, thus, had rightly dismissed the writ petition holding that Rule-51 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980, is prospective, and due weightage had been given to the petitioner, who having participated in the selection process could not turn around and challenge the same, after he failed to make the grade.

6. Rule 51 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980 was considered by this Court in '**Dr. Irfan Rasool Gadda v. State of J&K and others**' 2005 (II) SLJ 423. While considering the applicability of Rule-51, it was held that recasting of Rule 51 is prospective and would not apply to the Selection where process was initiated prior to the decision of Full Bench.

Para 11 of the said judgment is reproduced as under:-

"11. The Division Bench of this Court in case of Dr. Irfan Rasool Gadda vs. State of J&K and others (supra) had occasion to consider the ratio laid down by Hon'ble the Supreme Court in case of Inder Parkash Gupta and the Division Bench inter alia held as follow:

We are of the considered view that the direction in Inder Parkash's case in respect of the re-cast of Rule 5 is in respect of future selection for which the process might have been or

may be initiated after the judgment of the Apex Court dated 20.04.2004 and these directions have no application as far as the selection in question is concerned for which the process was initiated on 23.06.2003. Therefore, the validity of the selection cannot be questioned on the touch stone of amended rule and the directions of the Apex Court in Inder Parksh's case even if the interpretation sought to be placed by the learned Single Judge is accepted. We are in disagreement with the findings of the writ court on this question and we hold that the selection in question is neither violative of Article 14 & 16 of the Constitution of India nor the directions of the Court in Inder Parkash's case relied upon by the learned Single Judge."

7. Since the selection in present case was initiated and completed prior to the judgment of the Apex Court in (2004) 6 SCC 786, Dr. Inder Parkash Gupta Vs. State of J&K and others, decided on 20.04.2004, this judgment squarely applies to the facts of the case.

8. The other contention raised by the appellant is that in terms of SRO 297 dated 20.08.1997, statutory preference was to be given to him but the same was not granted to him, while considering him for selection. For facility of reference, SRO 297 dated 20.08.1997 is reproduced as under:-

"SRO 297. In exercise of the powers conferred by the proviso to Section 124 of the Constitution of Jammu & Kashmir, the Governor is pleased to direct that in Schedule-II appended to other Jammu & Kashmir Education (Gazetted) Colleges Service Recruitment Rules, 1995, for the entry appearing at Note 4 below Category (c) of Class-FV, the following entry shall be substituted, namely:

Note 4

“Only those candidates, by direct recruitment or 'by selection from amongst Departmental hands, who besides fulfilling the minimum academic qualifications prescribed for the post of Lecturer have qualified the eligibility test for Lecturers conducted by the UGC/CSIR or similar test accredited by the U. G. C. shall be eligible for appointment as Lecturer.

Provided that the candidates, who have submitted PhD. thesis or passed M. Phil examination by 31st Dec. 1993 are exempt from the eligibility test for lecturers conducted by the UGC/CSIR of similar test accredited by UGC.

Exception:

As a onetime measure, for selection to the existing vacancies of lecturers in the Degree Colleges, as they stood on 1.6.1997, the requirement provided for at Note 4 above would not be necessary. However, the candidates fulfilling the requirements laid down in Note 4 will be given preference and the upper age limit for selection in their case will be 45-years as on 1.1.1997.”

9. Therefore, in terms of the said SRO, preference was to be given to the candidates who fulfilled requirement given in Note-4, i.e., the petitioner was given additional weightage, preference could only be given to him if all other conditions were equal. The Supreme Court while interpreting preference, in ‘**Secy. A. P. Public Service Commn. V. Y.V.V.R Srinivasulu** (2003) 5 SCC 341, has held as under:

“----- Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all

such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred---
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The petitioner despite weightage given to his additional qualification has secured lesser merit than the last selected candidate, therefore, he could not be given any preference.

10. Lastly, it was submitted that the respondents vide notification Nos. 20-PSC of 1996 dated 22.04.1996 and 30-PSC of 1997 dated 31.12.1997 again advertised posts of Lecturers in Mathematics with the same qualification. The appellant being eligible applied for the same, also but according to him, the respondents/Commission held one single interview for all the posts, which resulted in erroneous and faulty evaluation of merit, due to which the petitioner was not selected. The respondents, however, submitted that the interview committee was consisted of experts who were from outside the State and candidates in both the notifications were common and to be interviewed in same subject, therefore, they were interviewed for both the notifications.

11. Be that as it may, petitioner has been unable to persuade us how the interview by experts in the field has resulted in an erroneous evaluation of his merit.

12. It is settled preposition of law that the petitioner having participated in the selection process cannot turn around and challenge the same. This has been settled by the Supreme Court in **Madan Lal Vs. State of J&K, (1995) 3 SCC 486, Dhananjay Malik & ors. Vs State of Uttaranchal & ors., (2008) 14 SCC 454** and **Madras Institute of**

Development Studies vs. K. Sivasubramanian, 2016 (1) SCC 454.

13. In view of our aforesaid discussions, we find no reason to interfere with the judgment of the learned Single Judge, as such, there is no merit in this appeal which is, accordingly, dismissed.

**(Sindhu Sharma)
Judge**

**(Rajesh Bindal)
Judge**

Jammu
09.06.2020
SUNIL-II

Whether the order is speaking	:	Yes
Whether the order is reportable	:	Yes

