

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

SWP No. 2226/2014  
IA No. 2983/2014

Pronounced on:- 4<sup>th</sup>.06.2020

Jahangir Ahmed

....Petitioner(s)

Through: Mr. M. I. Sher Khan, Advocate

**vs.**

State of J&K and others

....Respondent(s)

Through: Mr. C. M. Koul, Sr. AAG

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

1. Petitioner seek his selection and appointment to the post of Teacher in District Cadre Poonch pursuant to Advertisement Notice No. 5 dated 02.03.2013 and Advertisement Notice No. 6 dated 10.05.2013. He also seeks quashing of selection of respondent No. 6 as Teacher in District Cadre, Poonch, pursuant to the aforesaid notifications.
2. The material facts which arise for consideration are, that vide Advertisement Notification No. 05 of 2013 dated 02.03.2013, 156 vacancies under Item No. 491 were advertised for the posts of Teacher in District Cadre, Poonch. The petitioner being eligible also applied for the said posts under ex-servicemen category.
3. Petitioner submitted his application for discharge from the Armed Forces, which was accepted and he was issued 'No Objection Certificate' on 26.03.2013. He, thus, being eligible and qualified, submitted his application

form for the post of Teacher before the last date of submission and the same was accepted. Respondents issued another Advertisement Notice No. 06 of 2013 dated 10.05.2013 and advertised 231 posts of Teacher in District Cadre Poonch. Petitioner being eligible applied for the same and also submitted his form. He was issued admit card for written examination and qualified the written examination and thus appeared in interview/viva voce. Respondents issued the select list in July, 2015 and private respondent No. 6 was selected in the category of ex-servicemen and petitioners' name did not figure in the select list.

4. The grievance of the petitioner is that he was not selected and appointed to the post of Teacher under the ex-servicemen category, as only one person has been selected for the post. Though 6% reservation was provided to the ex-servicemen category, therefore, nine posts were to be allocated in this category and since he is the only other eligible candidate, he should have been appointed for the said post. He, thus, represented before the official respondents on 15.07.2014, who informed him that he was not selected under the ex-servicemen category, as he was still in active service and was discharged from service after the last cut off date for submission of the application form, therefore, he was not considered under the ex-servicemen category.
5. Learned counsel for the petitioner submits that he applied to Army authorities for his discharge on pension well in time and the Army authorities issued 'No Objection Certificate' to the petitioner on 26.03.2013. Thereafter, he applied for the post in the said category and his form was also accepted by the

respondents. The Army authorities took some time to complete formalities, therefore, the petitioner was finally discharged on 30.11.2003.

6. Respondents have rejected the candidature of the petitioner only on the ground that he was discharged from service on 30.11.2003 after the cut-off date, therefore, he was ineligible to be considered in the ex-servicemen category as he still in the service of the Union of India.
7. Reliance has been placed on the provisions of Ex-servicemen (Re-employment in the Civil Service and Posts) Rules, 1979. Particularly, Rule 2 which has been amended by Notification dated 27.10.1986 issued by Government of India, Ministry of Personnel, P. G. & Pensions, which for the sake of reference is reproduced below:

**“NOTIFICATION”**

GSR—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Ex-Servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979 Namely:-

1. (a) These rules may be called the Ex-servicemen (Re-employment in Central Civil Service, and Posts) Amendment Rules, 1986.

(B) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 2 of the Ex-servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979 for clause (c) the following clause shall be substituted, namely:-

(c) ‘ex-serviceman’ means a person, who has served in any rank (whether as a combatant or as a non-combatant in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces: and

(i) who has retired from such service after earning his/her pension; or

(ii) who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension;

(iii) who has been released, otherwise than on his own request from such service as a result of reduction in establishment; or

(iv) who has been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiently and has been given a gratuity; and includes personnel of the Territorial Army of the following categories; namely

- (i) Pension holders for continuous (embodied) service;
- (ii) Persons with disability attributable to military service; and
- (iii) Gallantry award winners.

Explanation: The persons serving in the Armed Forces of the Union, who on retirement from service would come under the category of ex-servicemen, may be permitted to apply for reemployment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.”

It clearly provides that “the persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of ‘ex-servicemen’, may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified terms of engagement in the Armed Forces of the Union”. Thus, petitioner was clearly eligible to be considered for selection to the post of Teacher in the category of ex-servicemen in terms of these amended rules.

8. Similar issue was considered by this Court in ‘State of J&K and others V. Taramani and others, in LPA No. 153/2018 and IA No. 01/2018, the Division Bench vide order dated 19.11.2018 held as under:

“20. So far as the definition of ‘ex-servicemen’ as it appears in Rule 2(x) of the J&K Reservation Rules of 2005 is concerned, there can be no cavil that it makes a provision for those persons whose terms of engagement with the armed forces have come to an end. The explanation to the Rules however enables serving personnel of the Armed Forces, who on retirement from service would be covered under the category of ex-servicemen, only to apply for re-employment one year before the completion of the specified terms of engagement.

22. So far as the present consideration is concerned, the question which was pressed before the learned Single Judge was not a claim by the person who was a serving personnel of the Armed Forces but a person who admittedly came to be retired from the Forces on 31st May, 2006, which was much before the process of selection, which commenced upon issuance of the notification dated 29th December, 2005, stood concluded.

23. We may note that neither the explanation to the Rule nor notification dated 27th October, 1986 declare a person who is an employee of the forces as an ex-serviceman. These are only enabling provisions which permit and enable employees who are at the verge of retirement or completion of their engagement with the armed forces to make applications in anticipation of their retirement/release for appointment to positions intended for the ex-servicemen of the force. Judicial notice LPA No. 153/2018 Page 10 of 11 can be taken of the several schemes which have been propounded by the Government and the authorities for rehabilitation of the ex-servicemen with the Forces who come to be discharged or where engagement comes to an end on completing specific period of engagement at young ages. These provisions and schemes have been implemented by the authorities for the purposes of providing measures of re-settlement to these personnel who are still young and still in a position to discharge effective service in order to ensure them livelihood options to settle their own families and also provide them engagement.

24. The record placed before us nowhere states that an employee who was at threshold of the retirement or discharge was precluded from submitting an application pursuant to the advertisement dated 29th December, 2005. In view of the above, the contention on behalf of the appellant that the respondent No. 1 was not eligible to submit the application is completely misdirected.”

9. The judgment of the Hon’ble Division Bench of this court (supra) squarely applies to the facts of this case and since ‘No Objection Certificate’ has also been issued by the concerned authorities to enable him to make an application for positions intended for ex-servicemen. The form of the petitioner was also accepted and he retired from the service much before the process of selection was concluded. Therefore, petitioner is held entitled to be appointed as Teacher in ex-serviceman category.

10. In view of the aforesaid discussions, this petition is allowed and respondent Nos. 1 and 2 are directed to select the petitioner and recommend his candidature for appointment to the post of Teacher in District Cadre, Poonch in ex-servicemen category from the date respondent No. 6 came to be appointed notionally. He will be entitled to all consequential benefits of seniority and promotion.

**(Sindhu Sharma)**  
**Judge**

**Jammu**  
4<sup>th</sup>.06.2020  
SUNIL-II

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes/No