

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

SWP No. 748/2010
IA No. 1073/2010
IA No. 228/2014
IA No. 01/2015

Pronounced on : 29.05.2020

Tariq Ali MirPetitioner(s)

Through:- Mr. R. K. S. Thakur, Advocate.

V/s

State of J&K & ors.Respondent(s)

Through:- Mr. Rajesh Thappa, Dy.A.G for
respondent No. 1
Mr. K. D. S. Kotwal, Dy.A.G vice
Mr. Amit Gupta, AAG for
respondent No. 2
Mr. M. Y. Akhoon, Advocate for
respondent No. 4

Coram : HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

- 01.** Petitioner applied for the post of Physical Education Teacher, District Cadre Ramban as an in-service candidate in terms of Advertisement Notice No. 06 of 2008 dated 28.05.2008. In terms of the Advertisement Notice, age prescribed for candidates in Government service/contractual employee was 40 years. As the petitioner was working as a Fireman in Fire & Emergency Services Department since 01.10.1998 on permanent basis, therefore, he applied for the post as in-service candidate through proper channel. His application form was duly certified by the Assistant Director, Fire & Emergency Services Command, Doda.

02. Respondent No.2/Service Selection Board vide its notification No. SSB/Div/J/2008/222521-27 dated 27.09.2008 published the list of shortlisted candidates for the said post in newspaper 'Kashmir Times'. Petitioner, too, was shortlisted and the interview dates were fixed by the same notification and he was directed to appear for interview on 07.10.2008. The select list of the candidates for the post of Physical Education Teacher for various Districts including District Ramban was published in Daily Excelsior on 31.03.2010, but the petitioner was not selected for the said post. He, thus, enquired about his merit, and merit of selected candidates from the office of respondent No. 2, and was informed that he had secured 35.79 points in merit whereas respondent No. 4, who had been selected for the post, had obtained only 30.38 points.
03. Petitioner, thus, approached the office of respondent No. 2 with a representation dated 13.03.2010 for his non-inclusion in the select list despite his better merit than respondent No. 4, but the respondents did not response to his representation.
04. Aggrieved of his non-inclusion in the select list, petitioner filed the present writ petition. Vide order dated 01.04.2010, this Court directed respondent No.2/Service Selection Board to consider the petitioner's representation and pass appropriate orders.
05. In their reply to the writ petition, respondents have annexed an order dated 24.05.2010 whereby the claim of the petitioner for appointment was rejected. Respondents also issued a select list of 21 candidates who stood appointed as Physical Education Teacher. Since the order of appointment of respondent No. 4 as well as the order of consideration

were not challenged, therefore, the petitioner sought amendment of the writ petition which was granted and the amended writ petition was taken on record on 29.09.2009.

06. Vide Order No.71 SSB of 2010 dated 24.05.2010, petitioner's case as an in-service candidate was rejected on the following grounds that; on the application form, the Endorsing Officer has failed to indicate the post which is being held by the petitioner in Fire & Emergency Services at Doda. Application form of the petitioner in terms of stipulation of the Board had to be signed by the Head of the Department and none-else which was not done. He had to submit an attested copy of the appointment order alongwith requisite certificates at the time of interview which he failed to do. Lastly, in their own convener of select committee did not mention about petitioner being in-service candidate, therefore, the petitioner despite obtained better merit of 35.79 points could not make the grade in the selection as in-service candidate and he was considered in the Open Merit category being overage.
07. Learned counsel for the petitioner submits that all the grounds of rejection in order dated 24.05.2010 are afterthought, manipulated and have been carved out for the first time only on 24.05.2010 to reject the petitioner's case, only to accommodate respondent No. 4 who could not have been selected as he had far lesser merit. Respondents after having accepted the form of the petitioner and shortlisting, interview have created these grounds only to reject his candidature as admittedly he is more meritorious than the last selected candidate.
08. Petitioner has assailed the selection of respondent No. 4 and order dated 24.05.2010 rejecting his candidature despite being meritorious and seeks

a direction for his selection and consequently appointment to the post of Physical Education Teacher. He has placed on record the application forms of some in-service candidates, who had applied for the same post obtained by him under RTI. Application forms of Kashmir Singh, Vindesh Singh, Keshav Dev Singh and Virender Singh have been placed on record. Application form of Kashmir Singh, who was working in Police Department, was certified by the Senior Superintendent of Police, and not Head of the Department yet he has been selected as in-service candidate.

09. Similarly, application form of Vindesh Singh, who was working as Teacher in the Education Department, was certified by the Zonal Education Officer and not by the Head of the Department i.e., Director, School Education. He too was selected and appointed. Another candidate namely Keshav Dev Singh was holding the post of Physical Education Teacher on contractual basis, his application form was certified by the District Youth Services and Sports Officer, Jammu and he has also been selected and appointed. Virender Singh S/o Kartar Singh was holding the post of Helper in Power Development Department, his application form was certified by the Executive Engineer Transmission Line and the same has been accepted. Thus, all these candidates, who have been selected to the post of Physical Education Teacher as in-service candidates on the basis of certification of their forms by the Senior Officers other than the Head of the Department. Therefore, the respondents have adopted different yardsticks for candidates who are similarly situated. The candidates whose forms were certified by the officers other than HOD and have

been selected and appointed despite securing lower merit yet the same consideration has been denied to the petitioner without any justification. The respondents cannot thus, apply different standards in the same selection process, as such, this ground for rejection cannot be sustained.

10. Admittedly, the petitioner was working in Fire & Emergency Services from 01.10.1998 to 14.06.2008. His application form is on record as an in-service candidate. His form has been certified by the Assistant director Fire & Emergency Services, a certificate dated 20.06.2008 issued by the Director Fire and Services certifying that the petitioner has applied through proper channel is also placed on record. As the petitioner was working on permanent basis in the Fire & Emergency Services from 01.10.1998 to 14.06.2008 which was certified, therefore, mere non-mentioning of the post, which in fact he was holding is too technical an objection and cannot be a ground to deny him the right to consideration when the said form has been certified by the Assistant Director Fire and Emergency Service as an in-service candidate.

11. This apart, the respondents did not have any reservation or objection when the form of the petitioner was scrutinized, shortlisted and interviewed as in-service candidate. No objection to the same was made at any stage nor any information was sought from him but his name was simply not included in the select list. It was only after he enquired about his merit and approached in writ petition, in which consideration was ordered, the respondents have come forth with these grounds of rejection. Therefore, his non-selection to the post of Physical Education Teacher in the aforementioned category is an afterthought without any justification and cannot be sustained since it is not their case that he does

not belong to the said category. This is also evident from the fact that all the applications were scrutinized by the respondents, there was no objection to his application form either at the time of shortlisting or interview. He was not even informed of any shortcoming or ineligibility by the respondents at any stage.

12. It was also submitted that since the petitioner did not provide an attested copy of his appointment order alongwith other documents at the time of interview, as such, he could not be selected. As per Notification dated 27.09.2008, interview was notified. As per Condition-7, all candidates were required to produce original certificates. For reference, the same is reproduced below:-

“the candidate shall have to produce all original certificates/testimonials as asked for vide above referred advertisement notification before the selection committee at the time of interview. The candidates who fail to produce such certificates/testimonials may forfeit their candidature.”

13. As per this, in case any candidate does not produce his original documents, his candidature was to be forfeited. The selection committee who are the employees of the Board after verification and checking of documents, allowed the candidates to appear in interview and petitioner too appeared in the interview after complying with this condition. Respondents have failed to show that his candidature was forfeited on his failure to provide requisite documents or any such intimation was notified or provided to him.
14. Respondents have also failed to justify the ineligibility of the petitioner when all the other similarly situated candidates i.e., Kashmir Singh, Vindesh Singh, Keshav Dev Singh were selected and appointed despite

their candidature not being certified by their Head of Departments. There is not even a whisper in this regard in the reply to the averments made in para Nos. 17, 18 & 19. Therefore, all the grounds of rejection i.e., failure to indicate the post on which he was working, form signed by the HOD, attested are indeed an afterthought.

15. Thus, the petitioner having secured 35.79 points admittedly is more meritorious than respondent No. 4, who has obtained 30.38 points and he has been wrongly denied the appointment for the post of Physical Education Teacher, to which he was entitled as per his merit.
16. In view of the aforesaid discussion, this petition is allowed. Selection of respondent No. 4 is quashed and respondent No. 2 is directed to recommend the name of the petitioner for appointment as Physical Education Teacher, District Ramban in terms of Advertisement Notice No. 06/2008 to respondent No. 1, who shall appoint the petitioner to the post of Physical Education Teacher, District Ramban from the date, the other candidates in the selection, have been appointed notionally.
17. Writ petition alongwith connected IAs stands **disposed of** in the aforesaid terms.

(Sindhu Sharma)
Judge

JAMMU
29.05.2020
Ram Murti

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