

Item No. 9



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.8207/2020
M.A. No.530/2021
(SWP No.858/2008)

Wednesday, this the 24th day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd, Jamshed, Member (A)**

Vijay Kumar, Age 31 years,
S/o. Shri Sain Dass
R/o. Village Mallah Tehsil
Akhnoor District
Jammu

..Applicant

(Ms. Veenu Gupta, Advocate)

Versus

1. State of J&K through Commissioner Secretary to Govt. Higher Education Department, Civil Secretariat, Jammu/Srinagar.
2. Jammu and Kashmir Public Service Commission through its Secretary, Pragati Bhawan Rail Head Complex Jammu.
3. Surinder Singh
S/o. Sobh Singh
R/o. Village Nandwal Mataba
P.O.Khour Tehsil Akhnoor
District Jammu.
4. Mukesh Sharma,
S/o. Shri Bihari Lal
R/o. Village Degwar
BPO Degwar Tehsil Haveli
District Poonch.

5. Sarbjit Kour
D/o. Harbans Singh
R/o. House no. 101 Sector No. 6,
Lane No. 10, Nanak Nagar, Jammu.

..Respondents

(Mr. Sudesh Magotra, Deputy Advocate General for respondent No.1, Mr. F A Natnoo, Advocate for respondent No.2 and *nemo* for respondent Nos. 3 to 5)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The Jammu & Kashmir Public Service Commission, the 2nd respondent herein, issued notification dated 20.09.2005 inviting applications for the post of Lecturer 10+2 (Physics) as well as other posts. The applicants and various number of others responded. Three posts were reserved in favour of persons residing nearby Line of Actual Control (LAC). The selection process comprised of awarding of marks for various factors, such as Post Graduation, experience, sports category/NCC, P. hd., publication and viva voce. It is stated that in the shortlist of candidates published for the purpose of interview, the name of respondent No.5 did not figure at all and later on, it was included. It is also stated that though the respondent No.5 claimed the status of LAC, she is not at all a resident of that area, much less did she satisfy the conditions, to be recognized as LAC candidate.

2. Another grievance of the applicant is that the selection process was not conducted in accordance with law, particularly in the context of allocation of marks to various aspects.

3. On behalf of respondent No.2, a detailed counter affidavit is filed. It is stated that the name of respondent No.5 did not figure in the shortlist on account of the fact that the marks secured by her, namely, 62 marks, did not enable her to get included in the general category, but once her status as LAC was recognized, she was included since the marks for that category were 55. The plea of the applicant that the respondent No.5 does not belong to LAC category is refuted by stating that once the certificate issued by the competent reviewing authority, the selecting agency cannot be ignore it.

4. In reply to the plea raised by the applicant that the allocation of marks was not proper, the respondent No.2 stated that having participated in the selection process, the applicant challenge the criterion and that she is estopped from doing this.

5. The SWP has since been transferred to this Tribunal in view of re-organization of the State of Jammu and renumbered as T.A. No. 858/2008.

6. Today, we heard Ms. Veenu Gupta, learned counsel for applicant, Mr. Sudesh Magotra, learned Deputy Advocate



General for respondent No. 1 and Mr. F.A. Natnoo, learned counsel for the respondent No. 2. There is no representation for respondent Nos. 3 to 5.



7. The applicant was not successful in his attempt to get selected for the post of Lecturer (Physics) for 10+2. He filed a SWP No. 858/2008 by raising three principal grounds. The first is that the inclusion of the name of the respondent No. 5 in the select list was contrary to law. The second is that the respondent No. 5 does not answer the description of LAC candidate, on account of her residency to that place for a limited time. The third ground raised by the applicant is that the procedure adopted by the official respondents, particularly for allocation of marks to various factors is not in accordance with law.

8. Coming to the first aspect, the respondent No. 2 has clearly stated the circumstances under which the name of the respondent No. 5 was initially omitted and thereafter included. It is stated that the respondent No. 5 secured 62 marks and with that she was not entitled to be included in the general list of candidates. For LAC candidates, the stipulation was 55 marks. Once the status of respondent No. 5 was accepted, she came to be included. We are of the view that the explanation offered by respondent No. 2 is acceptable in this behalf.

9. So far as the plea of the applicant that respondent No. 5 does not belong to LAC category at all is concerned, it is fairly well settled that whenever the social status or other entitlement

of a candidate is certified by the concerned statutory authority, the selecting agency, or for that matter, the appointing authority, hardly have any say in the matter. If any candidate feels aggrieved by such certification, he has to pursue the remedy in the direction of challenging the very certificate, before the concerned forum. The applicant cannot simply doubt the correctness of LAC certificate issued to the respondent No. 5 and then draw conclusions. Learned counsel for the respondent No.2 submits that a Division Bench of Hon'ble High Court held that the certificates of that nature can be challenged only before the competent forum and the selecting agency has no role to play in the matter.



10. Now remains the third ground. The applicant contends that allocation of 55 marks for the interview cannot be sustained in law. It may be true that the law laid down by the Hon'ble Supreme Court would, in a way, supports the contention of the applicant. However, that plea ought to have been raised before the applicant took part in selection process. Once the selection had taken place and the rights have accrued to various selected candidates, it would not be proper or competent for us to reopen the issue. The principle of estoppel comes into play.

11. Learned counsel for the applicant strongly insisted on summoning of the records. We would have certainly acceded to

the request in case the applicant was nearer to the point of selection. The record discloses that he secured 40.67 marks in the ultimate selection, whereas the last selected candidate in the LAC category was the one, who secured 47.90 marks. The gap is so wide that even if the selection of the last is set aside, the applicant would not stand the chance of being appointed. At this length of time, we do not feel it proper or practical to summon the records.



12. We do not find any merit in the TA. It is accordingly dismissed. No costs.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 24, 2021
/sunil/vb/ankit/