



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 9064/2020
(S.W.P. No.1467/2016)

Wednesday, this the 5th day of May, 2021

(Through Video Conferencing)

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

Dr. Saba Mughal, age 46 years
w/o Dr. M Haseeb ughal
r/o Burooj Enclave, Near SEM College
New Airport Road, Humhama, Budgam

..Applicant
(Mr. Syed Faisal Qadri, Senior Advocate)

VERSUS

1. State of Jammu & Kashmir through
Commissioner/Secretary to Government,
Higher Education Department,
Civil Secretariat Srinagar/Jammu
2. Commissioner/Secretary to Government
General Administration Department
Civil Secretariat, Srinagar/Jammu
3. Secretary,
J & K Public Service Commission
Solina Srinagar Kashmir

..Respondents
(Mr. Azhar-ul-Amin, Advocate for respondent No.3 &
Mr. Amit Gupta, Additional Advocate General and Mr. Sudesh
Magotra, Deputy Advocate General for respondent Nos. 1 & 2)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:



The Jammu & Kashmir Public Service Commission, the 3rd respondent herein issued a notification dated 23.05.2013 for selection against 1289 posts of Assistant Professors in different subjects in the Government Degree Colleges of the State of Jammu & Kashmir. The applicant and quite large number of candidates applied. Thereafter, another notification was issued on 29.05.2014, stating to be in supersession of the earlier notification, but for the posts, which are already notified and some additional posts, aggravating to 1651 posts. A clause was incorporated to the effect that for the candidates, who responded to the notification dated 23.05.2013, need not apply once again. The applicant is in-service candidate. While under the earlier notification, the age limit for the in-service candidates was 45 years, in the subsequent notification it was reduced to 40 years. Since the applicant crossed the age of 40 years, her candidature was rejected, through notice dated 05.07.2016. Feeling aggrieved by that, she filed SWP No.1467/2016 before the Hon'ble High Court of Jammu & Kashmir with a prayer to quash the notice dated 05.07.2016 to the extent it rejected the candidature of the applicant for the post of Assistant Professor (Botany) and direct the respondents to process her application and allow her to take part in the selection process for the post. She has also prayed for



declaration to the effect that the conditions stipulated in the advertisement dated 21.04.2014 shall be prospective in nature; and to keep the applicant out of the purview of the conditions stipulated therein.

2. The applicant contends that when she responded to the notification of the year 2013, she was very much eligible and the mere fact that the subsequent notification was issued in the year 2014 for the very post, should not lead to a disqualification. She further stated that a valuable right has accrued to her on making application in response to the notification issued in 2013 and the clauses contained in the notification of 2014 are required to be prospective in nature. Reliance is placed upon the certain precedents also.

3. On behalf of the respondent No.3, a detailed counter affidavit is filed. It is stated that soon after the notification was issued in the year 2014, SWP No.1288/2013 was filed before the Hon'ble High Court, raising certain objections to the conditions as to eligibility stipulated therein and the Hon'ble High Court has disposed of the same on 03.10.2013 with certain directions. It is further stated that the Recruitment Rules are to be amended, keeping in view the directions issued by the Hon'ble High Court and accordingly, a fresh notification was issued in the year 2014 for 1651 posts.



4. The respondent No.3 contended that the mere fact that the applicant has responded to the notification of the year 2013, does not close her right to be considered with reference to un-amended Recruitment Rules, once the earlier notification was superseded and the Rules have been amended subsequently. It is also stated that as a sequel to the adjudication undertaken by the Hon'ble High Court, the Government itself has withdrawn its notification of the year 2013 and thereafter, the Recruitment Rules were amended and a fresh notification was issued for 1651 posts in the year 2014. They further contend that the facility created in favour of the persons, who applied in response to 2013 notification, was only to avoid duplicity and unnecessary expenditure to them; and by itself, it does not confer any right upon the applicant. Various contentions raised by the applicant are opposed point by point.

5. The respondent Nos. 1 & 2 adopted the counter affidavit filed by respondent No.3.

6. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.9064/2020.

7. Today, we heard Mr. Syed Faisal Qadri, learned senior counsel for applicant, Mr. Azhar-ul-Amin, learned standing



counsel for Public Service Commission (respondent No.3) and Mr. Amit Gupta, learned Additional Advocate General & Mr. Sudesh Magotra, learned Deputy Advocate General for the State of Jammu & Kashmir (respondent Nos. 1 & 2), in detail.

8. The basic facts are not in dispute. The Government notified 1289 posts of Assistant Lecturer in various disciplines in Government Degree Colleges of the State of Jammu & Kashmir in the year 2013. A notification was issued on 23.05.2013. The eligibility criteria were stipulated both in terms of the educational qualifications and age limits. There is no controversy about the educational qualifications. Here, we are concerned with the age limits under the notification of 2013, which was stipulated under clause (3) of the notification. It reads:

“3. Age as on 1st January 2013:

Minimum	=	18 years
Maximum	=	37 years
Physically handicapped candidates	=	39 years
Candidates belonging to RBA/SC/ST/ ALC/SLC categories	=	40 years
Candidates in Govt. Service	=	40 years
Candidates working as 10+2 Lecturer	=	45 years
Ex-serviceman	=	48 years”

9. The applicant is in-service candidate. The age limit stipulated for such persons is 45 years. The notification of the year 2013 was superseded and another notification was issued on 29.05.2014. The age limits, stipulated under this, are almost similar, except that the one for in-service candidates is reduced



to 40 years. It is only in this process, that the applicant stood eliminated.

10. Had it been the case where the one notification was followed by another notification and the combined selection process was undertaken, the candidates, who responded to the respective notifications, were required to be governed by the conditions stipulated in those two notifications. In the instant case, the circumstances, that led to the issuance of the subsequent notification in the year 2014, are substantially different.

11. When the notification of 2013 was issued, several contentions were advanced by aggrieved persons. The complaint was both as regards the nature of educational qualifications as well as the age limits. For example, one of the objections was the stipulation as to M. Phil. Citing that the University Grants Commission (UGC) itself has done away with such qualification, the SWPs were filed and objections were raised. Another objection was that the age limits for in-service candidates were 40 years, whereas for Education Department it was mentioned as 45 years on the strength of the circular.

12. When these were pointed out by the Hon'ble High Court and in compliance of the directions issued therein, the Government thought it fit to withdraw the selection process in its



entirety. 1289 posts were withdrawn from the Public Service Commission and thereafter, the Recruitment Rules were amended. The changes were mostly in the context of educational qualifications and age limits of in-service candidates. It is already mentioned that the age limits for in-service candidates were reduced to 40 years, to be in conformity with the general rules of service. The few more posts were added and a fresh notification was issued in the year 2014 for 1651 posts. The two clauses contained in the notification in the year 2014 are important. The very first sentence is to the extent that in suppression (*sic* supersession) was used obviously by a printing mistake. The second is that the candidates, who have already applied in response to the said notification, need not to apply once again.

The clause reads:

“Note 2: The candidates who have already applied in response to Notification No.09-PSC (DR-P) of 2013 dt. 23.05.2013 for the above mentioned post(s) need not to apply again subject to the condition that he/she fulfills eligibility requirement laid down in SRO-124 of 2014 dt: 21.04.2014.”

13. A combined reading of both the clauses discloses that the notification issued in the year 2014 was not the one in continuation of the earlier notification of 2013. On the other hand, it is in supersession thereof.



14. It is true that the selecting authority or the appointing authority cannot change the procedure or qualifications once the selection process has commenced.

15. Reference in this context is made to the law laid down by the Hon'ble Supreme Court in **Y V Rangaiah & others, J Sreenivasa Rao & others**, AIR 1983 SC 852, **A P Public Service Commission, Hyderabad & another v. B. Sarat Chandra & others**, (1990) 2 SCC 669, **P Mahendran & others v. State of Karnataka & others**, AIR 1990 SC 405. Their Lordships held that once the selection process commenced, the authorities cannot change the parameters or conditions halfway through. It was also mentioned that the selection process could take place with certain conditions, such as receiving the applications, processing of the same, issuance of hall tickets, holding of examination, communication of the results, conducting of interview and then publication of the list of selected candidates. In the instant case, it cannot be said that there was any change of the conditions of selection halfway through. The reason is that even before any tangible steps can be taken in pursuance of 2013 notification, the Hon'ble High Court intervened and directed that certain changes need to be made to the conditions as to qualifications and age limits. That, in turn, resulted in amendment of the Recruitment Rules and publication of the notification of 2014. The fact that the process referable to 2013 notification was windup in its entirety, is evident from the



fact that the Government has withdrawn 1289 posts from the purview of Public Service Commission. It is thereafter that the second notification was issued in the year 2014. In other words, even the initial step of receiving the applications did not take place in the first notification. Therefore, it cannot be stated that the process of selection has commenced in pursuance of the notification in the year 2013.

16. The Recruitment Rules, which are amended by the Government in the year 2014, are not under challenge before us. On the other hand, they are said to have been amended only to remove the defects pointed out by the Hon'ble High Court in SWP No. 1288/2013.

17. It is brought to our notice by Mr. Azhar-ul-Amin, learned standing counsel for respondent No.3 that the selections, that took place in pursuance of 2014 notification, became the subject matter of proceedings before the Hon'ble High Court and vide its judgments in **Kamal Kishore v. State of Jammu & Kashmir** (LPA No.40.2016) and **Suresh Kumar v. U.T. of Jammu & Kashmir & others** (LPA No.218/2019), and the Hon'ble High Court has upheld the selections, that were made on the basis of the amended Recruitment Rules. Under these circumstances, we cannot take any different view since the selection process is already concluded.

18. We do not find any merit in the T.A. It is accordingly dismissed. There shall be no order as to costs.



(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 5, 2021
/sunil/jyoti/sd/