

SUPREME COURT OF INDIA

University of Jammu

Vs.

T.S.Khan & Ors.

C.A.No.3137 of 2011

(Aftab Alam and R.M.Lodha,JJ.,)

08.04.2011

JUDGMENT

Aftab Alam,J.,

SLP (Civil)No.18128 of 2009

1. Leave granted.

2. This appeal is directed against the judgment passed by a Division Bench of the Jammu & Kashmir High Court by which it has allowed the intra-court appeal filed by respondent No.1, set aside the judgment and order passed by a single Judge of the High Court dismissing his Writ Petition and directed the appellant-University to give seniority to respondent No.1 on the post of Assistant Registrar and to pay him the salary for that post from the date respondents 4 and 5 were appointed to the post of Assistant Registrar.

3. The recruitment to the post of Deputy Registrar is to be made in the ratio of 75% by direct recruitment and 25% by promotion and for the post of Assistant Registrar in the ratio of 50% by direct recruitment and 50% by promotion on the basis of merit-cum-seniority from amongst eligible Section Officers and P.A.1-cum-Stenographers in the ratio of 2:1 respectively. The appellant- University on March 1, 1996 issued an advertisement for filling up the posts of Deputy Registrar and Assistant Registrar by direct recruitment. The minimum qualification prescribed for appointment as Assistant Registrar was as under:-

"Assistant Registrar A post-graduate Degree with at least 55% marks or its equivalent grade. Other things being equal, preference may be given to candidate having knowledge of computer applications.

Note:- In service employees of the University holding Bachelor's Degree in any discipline and fulfilling other prescribed conditions shall be eligible to compete for appointment to the post of Assistant Deputy Registrar."

4. Respondent No.1, who was an employee of the University, made applications both for the posts of Deputy Registrar and Assistant Registrar. The Selection Committee, constituted for the purpose, on a consideration of the merit, suitability, academic qualification, experience and performance of the candidates in the interview prepared a select list on May 26, 1996 in which respondent No.1 was placed at rank XIII. Respondents 4 and 5 were placed in the select list at ranks IV and V respectively. On the basis of the select list, prepared by the Selection Committee, respondent Nos. 4 and 5 were appointed as Assistant Registrars. About two years later, respondent No.1 filed a Writ Petition (Writ Petition No.1094 of 1998) seeking to challenge the appointments made in pursuance of the advertisement and claiming that persons inferior to him in qualification and merit were appointed on the two posts.

5. The Writ Petition was opposed by the University. The University took the stand that under the University statute the eligibility for appointment as Assistant Registrar for an in- service employee was that he should either be a Section Officer or P.A.-cum-Stenographer and hold a Bachelor's degree in any discipline. It was pointed out that respondent No.1 was neither a Section Officer nor a P.A.-cum-Steno. He was working only as Head Assistant which post was one step lower to the post of Section Officer in the University. It was, accordingly, submitted that respondent No.1 was ineligible for appointment to the post of Assistant Registrar. It was further pointed out that respondent No.1 had only 54.03% marks in the post-graduation degree and for that reason too he was not eligible.

6. On a consideration of all the material facts and circumstances, a single Judge of the High Court dismissed the Writ Petition by judgment and order dated May 31, 2001.

7. Against the judgment passed by the single Judge, respondent no.1 filed an intra-court appeal (LPASW No.202/2001) which was allowed by the judgment and order dated April 24, 2009 by the Division Bench. The Division Bench found and held that respondent No.1 was not eligible to be considered for the post of Deputy Registrar and, hence, rejected his case in so far that post is concerned. Coming, however, to the post of Assistant Registrar, the Division Bench took the view that Selection Committee had not assigned any reason for putting respondent nos. 4 and 5 above respondent No.1 in the select list. It seems to have called for the documents relating to the selection process and, making its own assessment on going through the records, made the impugned direction. In this regard, the Division Bench stated as follows:-

"In the background of what we have stated, i.e. the appellant was entitled, in terms of the notice, to be considered for appointment as Assistant Registrar since he was holder of Bachelors Degree and an in-service employee of the University, the appellant was entitled to compete for the post of Assistant Registrar. The only thing that was required to be seen was whether the selection committee assessed the merit of the appellant higher than respondent Nos.4 and 5. We, accordingly, called for the records and the same were produced, which only suggested preparation of a select list where the position of the appellant is below the respondents 4 and 5. No material has been produced before us to show that it is the selection committee which upon assessment of merit of the appellant and respondent Nos. 4 and 5, found appellant was

less meritorious than the respondent Nos. 4 and 5. We wanted to know whether, apart from the select list, is there any other record which would suggest assessment of such merit. There answer to our query was a clear no. In the circumstances, the logical conclusion would be that there is nothing to suggest that the merit of the appellant was assessed less better than the respondent Nos. 4 and 5."

8. It appears to us that the Division Bench followed a procedure for which there is no sanction in law. In the first place the Division Bench overlooked that according to the statutory eligibility criterion only a Section Officer or a P.A.-cum-Stenographer was eligible to be considered for appointment as Assistant Registrar and respondent No.1 was a Head Assistant. Moreover, the Division Bench was in error in sitting over the select list prepared by the Selection Committee as an Appellate Authority and re-arranging the select list prepared by a Committee of experts on the basis of its own valuation. The Division Bench seems to have overlooked that while respondent Nos. 4 and 5 were at ranks IV and V in the select list, respondent No.1 was at rank XIII and by brining him at par with respondent nos. 4 and 5, the Division Bench clearly ignored the claims of the seven candidates who figured in between from rank VI to XII and who were above respondent No.1.

9. On hearing counsel for the parties and on going through the materials on record, we are satisfied that the impugned order passed by the Division Bench is wholly unsustainable. It is, accordingly, set aside. The appeal is allowed but with no order as to costs.