

SUPREME COURT OF INDIA

Vinod Kumar Koul

Vs.

State of J.K

C.A.No.5217 of 2012

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya, JJ.)

16.07.2012

JUDGMENT

G.S.Singhvi, J.

1. Leave granted.

2. In response to an advertisement issued by the Jammu and Kashmir Services Selection Board, Jammu (for short, 'the Board') which was published in the newspaper dated 29.3.1996, the appellant applied for the post of Laboratory Assistant, which is a District cadre post. He appeared before the Selection Committee consisting of respondent Nos. 4 to 6 but was not interviewed on the ground that he was not a permanent resident of District Udhampur.

3. The appellant challenged the decision of the Selection Committee in SSWP No.1656 of 1996 not to consider his candidature on the ground of violation of Articles 14 and 16 of the Constitution. The appellant pleaded that he was qualified for the post and fulfilled other conditions. In support of his assertion that he was a permanent resident of District Udhampur, the appellant annexed certificate dated 15.2.1994 issued by Additional Deputy Commissioner, Udhampur.

4. By an interim order dated 31.12.1996, the learned Single Judge of the High Court directed the Selection Committee to interview the appellant but made it clear that his result shall not be declared without the Court's order.

5. The Board contested the writ petition primarily on the ground that the appellant is not a permanent resident of District Udhampur and that in view of Circular dated 20.5.1993, only an unambiguous permanent residence certificate issued by the competent revenue authorities of the district could be accepted. Similar written statements were filed by the other respondents.

6. After considering the arguments of the counsel for the parties, the learned Single Judge dismissed the writ petition on the premise that the selection was to be made only from the candidates belonging to District Udhampur and being a permanent resident of District Anantnag, the appellant was not entitled to be considered for appointment in District Udhampur. The Division Bench of the High Court agreed with the learned Single Judge and dismissed the appeal preferred by the appellant.

7. We have heard learned counsel for the parties and perused the record. In exercise of the powers conferred upon him under Section 124 of the Constitution of Jammu and Kashmir, the Governor of the State framed the Jammu and Kashmir Subordinate Services Recruitment Rules, 1992 (for short, 'the Rules'). Rules 3(ii), (v), (vi), (vii), (viii), 12, 13, 14 and 17, which are relevant for deciding the question raised in this appeal, read as under:

“3. Definitions:- In these rules unless the context otherwise requires:

i. xxx xxx

ii. “Board” means the Services Selection Board constituted under these rules;

iii. xxx xxx

iv. xxx xxx

v. “Subordinate Service” means and includes all non-gazetted posts under the Government whether grouped into organized service or not;

vi. “State Cadre” means the sanctioned strength of the non-gazetted posts borne on the establishment of the headquartered offices of the departments having jurisdiction over the whole state but does not include the posts borne on the Divisional and district cadres;

vii. “Divisional Cadre” means the cadre of the department in the Division comprising the following posts:-

a. All non-gazetted posts, the maximum of the pay scale or the pay as the case may be, of which exceeds Rs. 6000 per month, exclusive of all allowances and dearness pay;

b. All non-gazetted posts, the maximum of the pay scale or the pay as the case may be of which does not exceed Rs. 6000 per month, exclusive of all allowances and dearness pay but which are borne on the establishment of offices above the District level;

viii. "District cadre" means the cadre of a department in a District comprising all the posts whether executive, ministerial, technical or manipulative maximum of the pay scale or the basic pay of which does not exceed Rs.6000 per month exclusive of all allowances and dearness pay;

12. Procedure of referring vacancies to the Board

(1) The Administrative Department concerned shall refer all vacancies in the Subordinate Services to the Board by 15th January of every year strictly in accordance with SRO 166 of 2005 dated 14th January, 2005, as amended from time to time, for making selection of candidates for appointment to the posts.

Provided that the Government may for any recruitment to be made under rule 9-A, refer the vacancies in one go at any time.

(2) While referring the vacancies to the Board, the administrative department shall specify the number of posts for which selection to be made from the reserved categories;

Provided that the Appointing Authority may with the prior approval of the Government in the General Administration Department and for sufficient reasons to be recorded make appointment in individual cases or class of cases outside the purview of these rules.

13. Procedure of selection by the Recruitment Board: - The Board shall make selection to the various posts in the following manner:-

i) The Board on receipt of the reference of vacancies, advertise the posts, communicate copies of the advertisements to the respective employment exchange, Government Gazette, press and other publicity media so as to achieve wide publicity;

Provided that it shall be mandatory for the Board to:-

(a) Club the vacancies of District cadre of similar nature referred to it by any department in a calendar year;

(b) Club the vacancies of Divisional cadre of similar nature referred to it by any department in a calendar year; and advertise the same in one go as per laid down procedure and invite applications from the permanent residents of Jammu and Kashmir without prescribing the conditions of domiciliary requirements.

ii) A candidate can apply only in one district for District cadre posts and in one division in respect of Divisional cadre posts;

Provided that if any candidate applies for more than one district or one division, his candidature shall be considered only for the district or the division in which he is ordinarily residing.

iii) The Board shall, ordinarily, restrict the number of applicants for oral and/or written test, as the case may be, to at least five times the number of vacancies on the basis of academic merit in the qualifying examination converted into points on prorata basis out of the total points allocated for the basic eligibility qualification and grant of weightage for the higher qualification in the discipline concerned to be allowed in the manner and to the extent as the Board may deem appropriate for according due consideration to the merit and proficiency in higher qualification:

Provided that the Board may, for reasons to be recorded in writing, conduct a written test for short listing the candidates for admission to the oral test and for purpose of selection of candidates.

iv) The Board shall allot the requisite number of candidates in order of merit and reservation as referred by the appointing authority. The Board shall not maintain any select list for any casual or future vacancies;

v) The General Administration Department may prescribe such proformae as are required for reference of vacancies to the Board and for communicating the select list from time to time.

14. Power to make regulation: -

The Services Selection Board may if it considers necessary formulate regulations to provide for the procedure and method for carrying out its functions under these rules: Provided that prior approval of the Government shall be necessary for issuance of such regulations by the Board.

17. Power to issue instructions:-

a) The Government in the General Administration Department may from time to time, issue such directives or instructions as may be necessary for the purpose of carrying out the provisions of these rules.

b) The Government in the General Administration Department, where it is satisfied that the operation of any provisions of these rules causes undue hardship in any

particular case or class of cases, by order, dispense with or relax the requirement of that rule as it may consider necessary.”

8. Circular dated 20.5.1993 issued by the Board on which reliance has been placed by the respondents and which constitutes the foundation of the impugned judgment and the order of the learned Single Judge reads as under: “Jk Services Selection Board Srinagar The Board in its 11th meeting on 20.4.93 took the following decision with regard to the Permanent Residence Certificates. Only un-ambiguous Permanent Residence Certificate issued by the competent Revenue authorities of the District to which the posts belong should be accepted in respect of District cadre posts. The PRC’s having statements like presently living at should not be taken any cognizance of same will hold good for Divisional Cadre posts as well.Sd/-(Gouhar Ahmad)Secretary No:SSB/787-806/93 dated 20.5.1993.”

9. It is not in dispute that the post of Laboratory Assistant is a Subordinate Service post and is included in the District cadre for which recruitment is required to be made by the Board on the recommendations of the Selection Committee. In terms of Rule 13(i), the Board is required to club the vacancies of District cadre referred to it in a calendar year, advertise the same in one go and invite applications from the residents of Jammu and Kashmir without prescribing the conditions of domicile. In terms of clause (ii) of Rule 13, a candidate can apply only in one district for the District cadre posts and in one division for the Divisional cadre posts. If a candidate applies for more than one District or Division, then his candidature is required to be considered only for the district or the division in which he is ordinarily residing. In terms of Rule 14, the Board can, with the prior approval of the Government, frame regulations and lay down the procedure and method for carrying out its functions under the Rules.

10. There is nothing in the language of Rule 13(i) or any other Rule from which it can be inferred that for the District cadre post only a permanent resident of the particular district can apply. Rather, Rule 13(i) postulates inviting of applications from the permanent residents of Jammu and Kashmir and not any particular district. Only in terms of clause (ii) of Rule 13 the candidature of a person who applies for more than one district can be considered for the district in which he is ordinarily residing. In our view, in the absence of any statutory stipulation in that regard, it cannot be said that a candidate who is a permanent resident of the State of Jammu and Kashmir is not eligible to be considered for a District cadre post merely because he is not a permanent resident of the particular District for which the post has been advertised.

11. It is neither the pleaded case of the respondents nor it has been brought to our notice that the decision contained in Circular dated 20.5.1993 is a part of the scheme of the Rules or the

same embodies some directive or instructions issued by the State Government in the General Administration Department under Rule 17 of the Rules. As a matter of fact, a plain reading of the circular shows that it contains an administrative decision taken by the Board in its meeting held on 20.4.1993.

12. In our view, the administrative decision of the Board, which is ex- facie inconsistent with the plain language of Rule 13(i), could not have been relied upon for determining eligibility of the appellant for appointment as Laboratory Assistant in District Udhampur and the learned Single Judge and the Division Bench of the High Court committed serious error by negating the appellant's challenge to the decision of the Selection Committee not to consider his candidature and that too by overlooking the fact that at the time of submission of application, the appellant was residing in District Udhampur, which is an integral part of the State of Jammu and Kashmir.

13. In the result, the appeal is allowed. The impugned judgment and the order of the learned Single Judge are set aside. It is declared that the appellant was eligible to be considered for the post of Laboratory Assistant for District Udhampur. The Board is directed to declare the result of the appellant's interview within a period of 4 weeks from today. If it is found that the appellant's name would have figured among the selected candidates, then the Board shall forward its recommendation to the appointing authority. This shall be done within 2 weeks of the declaration of result. Within next 4 weeks, the competent authority shall issue order appointing the appellant on the post of Laboratory Assistant. The appellant shall be entitled to have his seniority fixed in accordance with the Rules. The parties are left to bear their own costs.