

**SUPREME COURT OF INDIA**

J & K Institute of Management Public Administration and Rural Development

Vs.

Renu Bala

C.A.No.6141 of 2013

(Anil R.Dave and Dipak Misra JJ.)

07.08.2013

**JUDGMENT**

**ANIL R. DAVE, J.**

1. Being aggrieved by the Judgment dated 10.3.2010 delivered in LPASW No.146/08 by the Jammu and Kashmir High Court at Jammu, the J&K Institute of Management Public Administration & Rural Development has approached this Court by way of this appeal.

2. The facts giving rise to the present litigation, in a nutshell, are as under:

There were vacancies in the cadre of Computer Operator/Lab Assistant/System Administrator and therefore, advertisement Notice No.1 of 2005 was published on 15.1.2005 by the appellant. Applications were invited from suitable candidates and qualifications required for the posts had been incorporated in the aforestated advertisement notice.

3. In pursuance of the said advertisement, several candidates, including respondent No.1, had submitted their applications and after completing the selection process, the appellant had prepared a select list for selection of suitable candidates for the posts in question.

4. As per the select list prepared by the appellant alongwith other candidates, respondent Nos. 7 and 8 were selected to be appointed.

5. A candidate named Renu Bala, respondent No. 1 herein, was not selected and therefore, she had filed Writ Petition No.93 of 2005 in the High Court of Jammu and Kashmir at Jammu challenging the selection procedure as well as the appointments to be made. In the said petition it was alleged that the selection procedure was relaxed in favour of Shri Ashok Kumar Koul, respondent No. 8 herein. Some allegations had also been leveled against a candidate named Gharu Ram, respondent No. 7 herein but subsequently allegations leveled against him had not been pressed. Allegations were leveled only against Shri Ashok Kumar Koul to the effect that undue favour was done to him in the matter of his selection as he was an in-service candidate. It was alleged that he would not have been included in the select list if genuineness of the certificates produced by him had been fully examined. Moreover it was alleged that undue favour was done to him by the selection committee.

6. After hearing the concerned parties and looking to the facts of the case, the learned single Judge of the High Court came to the conclusion that the allegations made in the petition filed by Renu Bala, who is respondent No.1 in this appeal were genuine. Certain provisions had been relaxed in favour of Shri Ashok Kumar Koul and the said relaxation made in favour of Shri Ashok Kumar Koul had violated rights of all other candidates, who had applied for the posts. The learned single Judge, therefore, allowed the petition with costs and directed the appellant to appoint present respondent No.1 to the said post.

7. Being aggrieved by the Judgment delivered in Writ Petition No.937 of 2005, the present appellant had filed an appeal before the Division Bench of the High Court being LPASW No.146/08. The said appeal was heard by the High Court at length and ultimately the Division Bench had come to the conclusion that the view expressed by the learned single Judge was correct. The Division Bench came to the conclusion that the Recruitment Rules framed for the posts in question and the selection procedure carried out by the appellant was not proper because more weight was given to the oral interview and even the scheme of allotting marks under different heads was not proper. The Division Bench, therefore, gave a direction whereby the appellant has been directed to read its Recruitment Rules in an altogether different manner and declare the result afresh. In pursuance of the said direction given by the Division Bench in the impugned order, the court has virtually amended the Recruitment Rules and has given direction in such a way that the entire selection procedure suggested by the court would virtually change

the result. The Division Bench, however, set aside the direction with regard to the costs, which had been quantified at Rs.10,000/- by the learned single Judge.

8. The learned counsel appearing for the appellant has mainly submitted that it was not open to the Division Bench of the High Court to modify the Recruitment Rules and direct the appellant to declare the result in pursuance of the modifications suggested by it. According to him, the High Court has virtually re-written the Recruitment Rules. He, therefore, has submitted that the impugned judgment is improper for the reason that the High Court has exceeded its jurisdiction by re-writing the Recruitment Rules.

9. On the other hand, the learned counsel appearing for the private respondents has submitted that the directions given by the High Court are just and proper.

10. It has also been submitted by the learned counsel appearing for the candidates, who are likely to be selected in pursuance of the fresh direction given by the High Court, that the directions given by the High Court are just and therefore, they need not be interfered with.

11. We have heard the learned counsel at length and have also gone through the facts pertaining to the case as reflected from the pleadings.

12. Upon perusal of the impugned judgment, it is very clear that the High Court has given several directions whereby the appellant has been directed to change its selection procedure and provisions of the Recruitment Rules. Directions have also been given to increase or decrease marks given by the selection committee, which were in accordance with the Recruitment Rules. Quantum of marks to be awarded under different heads are ordered to be modified by the High Court and the High Court has directed to re-consider the result in the light of the directions given by it.

13. In our opinion, it was not the function of the High Court to give any direction so as to virtually amend the Recruitment Rules. In our opinion, the learned single Judge was right when he came to the conclusion that undue favour was done to respondent No.8 (Shri Ashok Kumar Koul) and therefore, he had quashed and set aside his selection by allowing the petition.

14. In our opinion, while deciding the appeal, the Division Bench of the High Court has exceeded its jurisdiction by directing the appellant to amend the

Recruitment Rules and therefore, we quash and set aside the impugned judgment dated 10th March, 2010. We also clarify that the directions given by the learned single Judge about imposition of costs and giving appointment to Ms. Renu Bala are also quashed.

15. Upon setting aside the impugned judgment of the Division Bench, the Judgment delivered by the learned single Judge would operate and therefore, name of Shri Ashok Kumar Koul shall stand removed from the select list. Subject to other formalities being done by the appellant, the persons next to Shri Ashok Kumar Koul shall be selected for the posts in question in accordance with the existing Recruitment Rules. Mr. Sinha, learned senior counsel, appearing for the original petitioner has submitted that Ms. Renu Bala will get selected as per her position in the select list. Be that as it may, if Ms. Renu gets her name included in the select list, she or any other person who gets into the select list shall be appointed in accordance with law after doing necessary formalities by the appellant.

16. As a result, the appeal is allowed with no order as to costs.