

SUPREME COURT OF INDIA

Parvaiz Ahmad Parry

Vs.

State of Jammu & Kashmir & Ors.

C.A.No.13368 of 2015

(J.Chelameswar and Abhay Manohar Sapre,JJ.,)

06.11.2015

JUDGMENT

Abhay Manohar Sapre.J.,

SLP (Civil)No.26131/2013

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 10.05.2013 passed by the High Court of Jammu & Kashmir at Jammu in L.P.A. No. 102 of 2012 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein while upholding the judgment dated 12.11.2012 passed by the learned Single Judge of the High Court in SWP No. 2699 of 2010.

3. In order to appreciate the issues involved in the appeal, which lie in a narrow compass, few relevant facts need mention infra.

4. The appellant completed B.Sc. with Forestry as one of the major subjects from Garhwal University, Uttarakhand in the year 2001. Thereafter he also completed his M.Sc.(Forestry) from the same University in the year 2003.

5. The appellant also passed the National Eligibility Test (NET) in Forestry from Indian Council of Agricultural Research (ICAR) in the year 2005-2006.

6. The J & K Forest Service (Gazetted) Recruitment Rules, 1970 (in short ‘the Rules’) lays down the eligibility qualifications for the post of Range Officer Grade-I (Forest) which is “ B.Sc. Forestry or its equivalent from any University recognized by the Indian Council of Agricultural Research” .

7. The Indian Council of Forest Research & Education (in short “ICFRE”) issued Notification dated 15.01.1999 clarifying that the syllabus of State Forest Service (in short ‘SFS’) Colleges was very much akin to that of Indira Gandhi National Forest Academy (in Short “IGNFA”), therefore, considering the high standard of training and education in the SFS Colleges, the ICFRE resolved that “SFS College Diploma to be treated as equivalent to M.Sc.(Forestry).”

8. By letter dated 15.02.2007, the Forest Research Institute (in short ‘FRI’) informed the Department of Forest, J & K Government, that the SFS Colleges Diploma be treated as equivalent to M.Sc. (Forestry). In turn, on 12.03.2007, the Forest Department informed the same to the J.K. Public Service Commission (JKPSC) endorsing the opinion of the FRI dated 15.02.2007.

9. By Notification dated 20.07.2007, the JKPSC advertised 23 posts of J & K Forest Service Range Officers Grade-I (Forest) and invited applications from the eligible candidates. The eligibility qualification mentioned in the Notification was “B.Sc.(Forestry) or equivalent from any University recognized by the ICAR. The appointment to the post was to be made on the basis of written test, viva-voce test, walking test and medical test. The appellant applied for the said post.

10. By Notification dated 08.09.2010, the JKPSC declared the appellant as an ineligible candidate for appointment to the post of Range Officer Grade- I(Forest) on the ground that he does not possess the prescribed qualification.

11. On 07.10.2010, the appellant sent a representation to the JKPSC to re-consider his case as according to him, he possessed the qualification prescribed for the post. On 11.10.2010, the appellant sent another representation to the JKPSC requesting it to allow him to participate in the selection. Since no action was taken on the representation, the appellant filed a petition being SWP No. 2699 of 2010 before the High Court for issuance of writ of certiorari for quashing the said notification dated 08.09.2010 and for further direction to the JKPSC to allow him to participate in the selection process.

12. The learned Single Judge, by interim order dated 24.11.2010, allowed the appellant to appear in the written examination subject to the outcome of The writ petition. Accordingly, the appellant appeared in the examination.

13. On 22.02.2011, the result of the written examination was produced in the Court by the JKPSC, which declared the appellant as successful. The learned Single Judge permitted the appellant to appear in the interview.

14. On 22.07.2011, the JKPSC published a list of selected candidates who were recommended for appointment on the basis of merit but the list did not reflect the name of the appellant.

15. By order dated 12.11.2012, the learned Single Judge dismissed the writ petition.

16. Against by the said order, the appellant preferred an appeal being L.P.A. No. 102 of 2012 before the High Court. Pending disposal of the appeal, the Division Bench, by interim order dated 22.11.2012, directed that one post of Range Officer Grade-I (Forest) be reserved for the appellant. However, by order dated 10.05.2013, the Division Bench dismissed the appeal.

17. Aggrieved by the said judgment, the appellant preferred this appeal by way of special leave before this Court.

18. Heard learned counsel for the parties.

19. Learned Counsel for the appellant while assailing the legality and correctness of the impugned judgment made two submissions. In the first place, he contended that the writ court and the appellate court erred in dismissing the appellant's writ petition and the appeal. It was his submission that the reasoning of the writ court, which was simply upheld by the appellate Court without examining the real issue, is wholly perverse and being unsustainable in law deserves to be set aside. In the second place, learned counsel contended that when admittedly the appellant was having B.Sc. degree in Forestry as one of the major subjects and further he had also obtained Masters degree in Forestry, M.Sc.(Forestry), and later acquired higher qualification of Masters degree, i.e., M.Sc. in Natural Resources and Environment from the University of Michigan, USA, he should have been held as an eligible candidate for the post of J & K Forest Service Range Officers Grade-I for which he had applied pursuant to the advertisement.

20. In reply, learned counsel for the respondents supported the impugned judgment and contended that no case is made out to interfere in the impugned order and hence the appeal should be dismissed.

21. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned counsel for the appellant.

22. As would be clear from the undisputed facts mentioned above, the minimum qualification prescribed for applying to the post of J & K Forest Service Range Officers Grade-I was "B.Sc. (Forestry) or equivalent from any University recognized by ICAR". It is not disputed that the appellant was to his credit a qualification of B.Sc. with Forestry as one of the major subjects and Masters in Forestry, i.e. M.Sc.(Forestry), on the date when he applied for the post in question, which satisfied the eligibility criteria so far as the qualification was concerned.

23. We do not agree with the reasoning of the High Court that in order to be an eligible candidate, the appellant should have done B.Sc. in Forestry and since he had not done so, he was not considered as an eligible candidate. This reasoning, in our view, does not stand to any logic and is, therefore, not acceptable insofar as the facts of this case are concerned.

1

24. In our considered view, firstly, if there was any ambiguity or vagueness noticed in prescribing the qualification in the advertisement, then it should have been clarified by the authority concerned in the advertisement itself. Secondly, if it was not clarified, then benefit should have been given to the candidate rather than to the respondents. Thirdly, even assuming that there was no ambiguity or/and any vagueness yet we find that the appellant was admittedly having B.Sc. degree with Forestry as one of the major subjects in his graduation and further he was also having Masters degree in Forestry, i.e., M.Sc.(Forestry). In the light of these facts, we are of the view that the appellant was possessed of the prescribed qualification to apply for the post in question and his application could not have been rejected treating him to be an ineligible candidate for not possessing prescribed qualification.

25. In our view, if a candidate has done B.Sc. in Forestry as one of the major subjects and has also done Masters in the Forestry, i.e., M.Sc.(Forestry) then in the absence of any clarification on such issue, the candidate possessing such higher qualification has to be held to possess the required qualification to apply for the post. In fact, acquiring higher qualification in the prescribed subject i.e. Forestry was sufficient to hold that the appellant had possessed the prescribed qualification. It was coupled with the fact that Forestry was one of the appellant's major subjects in graduation, due to which he was able to do his Masters in Forestry.

26. Learned counsel for the respondents contended that if the appellant is held eligible on the basis of his qualification, the candidates alike him would be deprived of applying for the said post. The argument, in our view, has no merit.

27. In the first place, no such candidate or/and applied for the post and secondly, the argument being wholly hypothetical in nature cannot be accepted.

28. In the light of foregoing discussion, we are not in agreement with the view taken by the High Court when it was held that the appellant did not possess the prescribed qualification. This finding, as held above, is unsustainable and thus cannot be upheld. The appeal thus succeeds and is accordingly allowed. Impugned order is set aside. As a consequence, the writ petition filed by the appellant succeeds and is accordingly allowed. Since the appellant has already cleared the written examination and had appeared in the interview and further one post was directed to be kept reserved for him by the orders of the High Court in the event, the appellant succeeds in this litigation, we consider it appropriate to direct the respondents to issue necessary appointment order in favour of the appellant for the said post after ensuring compliance of the procedural formalities within one month from the date of receipt of this judgment.