

Sushil Kumar Vs. State of Jandk and Others

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Court : Jammu and Kashmir

Decided On : Feb-03-2014

Judge : The Honourable Chief Justice Mr. M. M. Kumar & Dhiraj Singh Thakur

Appeal No. : LPASW No. 91 of 2010

Appellant : Sushil Kumar

Respondent : State of Jandk and Others

Advocate for Def. : Shri. K.M.Bhatti

Advocate for Pet/Ap. : Mr. Amrish Kapoor

Judgement :

M.M. Kumar, CJ:

1. This appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 08.07.2010 rendered by the learned Single Judge of this Court rejecting the claim made by the appellant that the respondents did not fulfill the requisite qualification for appointment as Senior Horticulture Technician. It is pertinent to mention that an advertisement notice was issued on 21.11.2005 inviting applications, inter alia, for the post of Senior Horticulture Technician. The appellant applied under Scheduled Caste Category. In the selection process he was not short listed for interview because he had secured 32.1 points whereas the

last short listed candidate in Scheduled Caste Category secured 46.26 points which is a huge gap. The learned Writ Court has held that the appellant did not challenge the short listing criteria and process of selection but has challenged the selection of private respondents which is wholly impermissible. It has further been held that once the appellant has applied for the post under Scheduled Caste Category his writ petition could not be entertained to challenge the selection of candidates who have been selected in other categories.

2. In respect of other contentions raised by the appellant that the private respondents did not fulfill the requisite qualification of B.Sc. Horticulture or B.Sc. Agriculture with Horticulture as a major subject, the learned Writ Court held that once the appellant had participated in the selection process without questioning the advertisement then he cannot be permitted to challenge the selection. In that regard reliance has been placed on the judgment of Honble the Supreme Court rendered in the case of Dhananjay Malik and others v. State of Uttaranchal and others, (2008) 4 SCC 171.

3. Mr. Amrish Kapoor, learned counsel for the appellant has vehemently argued that the stand of the Services Selection Board-respondent No.2 in the counter affidavit is that the selection committee did not undertake any exercise to find out whether the candidate with qualification of B.Sc. Agriculture had studied Horticulture as a major subject during their graduation. Therefore, it must be concluded that the appellant, who was one of the candidates holding basic degree of B.Sc. Horticulture was entitled to be considered and appointed.

4. Sarv/Shri K.M.Bhatti and Rahul Pant, learned counsel for the respondents, have vehemently argued that there are five private respondents and each one of them fulfills requisite qualification as per the rules and advertisement. According to the learned counsel, all the private respondents are either B.Sc. Horticulture or B.Sc. Agriculture with Horticulture as major subject. It has also been pointed out by them that some of them are B.Sc. Agriculture with M.Sc. Horticulture. They have furnished the detailed list and have produced the official record as well.

5. Having heard the learned counsel for the parties, we are of the considered view that this appeal does not warrant acceptance and is devoid of merit. In terms of

advertisement notice dated 21.11.2005 the post of Senior Horticulture Technician figures at serial No.31. The educational qualification notified is as under:-

B.Sc. Horticulture or B.Sc. Agriculture with Horticulture as major subject. The qualification notified in the advertisement is consistent with the Jammu and Kashmir Horticulture (Subordinate) Services Recruitment Rules, 1998 issued vide SRO 235 of 27.06.2002.

6. In the light of statutory qualification we have perused and examine the record and find that each one of the selected candidates would fulfill the academic qualification, which would be patent from the following table:-

S.No.	Particulars	Educational qualification	Category
1.	Respondent No.3- Shakeeb Javed	B.Sc. Horticulture	RBA
2.	Respondent No.4- Varinder Kumar	B.Sc. Agriculture and M.Sc. Horticulture	RBA
3.	Respondent No.5- Sanjeev Kumar	B.Sc. Agriculture, M.Sc. Horticulture and undergoing Ph.D in Floriculture and landscaping at the relevant time.	Scheduled Caste
4.	Respondent No.6- Mohd. Shafiat Rehman	Deleted from the array of respondents vide order dated 27.12.2012.	-
5.	Respondent No.7- Dheeraj Sharma	B.Sc. Agriculture and M.Sc. Horticulture	Handicapped

A perusal of the aforesaid table prepared from the record would show that each one of the private respondents is either B.Sc. Horticulture or B.Sc. Agriculture with M.Sc. Horticulture. Therefore, no doubt is left that the selected candidates respondent Nos. 3 to 5 and 7 fulfill the statutory qualification as per advertisement notice dated 21.11.2005.

7. We also endorse the view taken by the learned Single Judge that once the appellant has competed under the Scheduled Caste Category and has not been able to make the grade inter se other candidates of that category then his locus standi to challenge the selection and appointment of candidates belonging to other categories cannot be entertained. It is appropriate to mention that the appellant could not be short listed because he had secured 32.1 points whereas the last short listed candidate under Scheduled Caste category had secured 46.26 points which is far ahead of the appellant.

8. As a sequel to the above discussion, we do not find any legal infirmity in the view taken by the learned Writ Court. The appeal does not merit admission, which is accordingly dismissed.

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