

Arvind Sharma Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : Feb-16-2004

Reported in : 2004(2)JKJ71

Judge : Permod Kohli, J.

Acts : Civil Service (Judicial) Recruitment Rules - Rule 9; ;[Constitution of India](#) - Articles 14 and 16

Appeal No. : SWP No. 1495/2002

Appellant : Arvind Sharma

Respondent : State of J and K and ors.

Advocate for Def. : Altaf Naik and;D.C. Raina

Advocate for Pet/Ap. : Sunil Sethi, Adv.

Disposition : Petition allowed

Judgement :

Permod Kohli, J.

1. Respondent-3 issued Notification No. PSC/Ex-2001 dated 4-12-2001 inviting applications from the eligible candidates for selection/recruitment to J&K; Civil Service (Judicial) for the post of Munsiff. The last date prescribed for receipt of

applications, was fixed as 1.2.2002 by hand and 8.2.2002 through postal service. Petitioner, who was Law Graduate and practicing advocate, claiming himself to be eligible, applied for the post of Munsiff in response to the aforesaid advertisement notice. He forwarded his application through registered post on 5.2.2002, which was received by the respondents before 8.2.2002. According to petitioner, he furnished all the requisite certificates as prescribed in the advertisement notice.. Application of the petitioner came to be rejected vide communication No. 225 dated 21.5.2002 with following comments : 'Bar practice is less than three years.' It was this order, which is the subject matter of challenge in the present petition. Petitioner has further sought direction to allow him to appear in KCS(Judicial) Examination commencing with effect from 3.6.2002 and for release of Roll No. slip etc.

2. On being put to notice, Public Service Commission i.e. respondents 2 to 4, filed its objections. When the matter was taken up for consideration, learned Advocate General appearing for State-respondent, who moved a separate application for vacation of interim direction, stated at the bar that State- respondent does not want to file separate reply in the matter, as it is Public Service Commission who has to deal with the issue. Accordingly, the reply filed by Public Service Commission, was adopted. Petition was heard with the consent of the learned counsel for parties after admission.

3. The Public Service Commission in its reply has stated that the petitioner was not having requisite three years experience as prescribed in the notification on the last date of application and hence his application was rejected on that count. According to respondents, petitioner was required to have three years experience at the bar as on 1.2.2002, when he was required to submit application. The certificate of three years experience was issued in favour of petitioner on 5.2.2002 wherefrom it is evident that he completed three years experience on 4.2.2002 with effect from 4.2.1999.

4. I have heard learned counsel for parties and perused the record. Petitioner after acquiring the degree in law, was registered as trainee advocate, in view of the circular of Bar Council of India on 4.2.1999. Subsequently, when rule for one year

training was dispensed with, a fresh circular dated 20.3.1999 issued and all those registered trainees were deemed to have been enrolled as advocates w.e.f. the date of commencement of their training on being enrolled by the concerned Bar Council. Based upon aforesaid circular, petitioner notified to be admitted as advocate w.e.f. 4.2.1999 i.e. from the date of registration as trainee advocate vide notification No. 354 dated 8.3.2002. He started practice at the bar. He approached Principal District and Sessions Judge, Jammu for issue of experience certificate in accordance with guidelines issued by the High Court for the purpose and experience certificate dated 5.2.2002 was issued in his favour, which reads as under:

'Experience Certificate Certified that Shri Arvind Sharma son of Shri Romesh Chander r/o H.No. 91 Sector 3 Channi Himat Jammu who was enrolled as an advocate on 4.2.1999 has been found to be possessing the experience of actual practice at the Bar for more than three years on the basis of the record and information furnished.'

5. The contention of the respondent is, that cut off date for possessing the experience under the notification, is 1.2.2002. Reliance is placed upon the notification itself. The relevant part of notification is quoted hereunder:

'The complete application form must reach the Secretary, J&K; Public Service Commission, Old Secretariat Secretariat, Darbargarh, Jammu or Public Service Commission Office, Pologround, Srinagar on or before 1.2.2002 and through postal service on or before 8.2.2002. In case the last date fall on holiday the next working day shall be treated as the last dates for the receipt of applications. Applications received after the above dates will not be entertained under any circumstances and all the applications will be summarily rejected. The candidates should ensure that their applications reach Commission's Office on or before the prescribed last date. Applications received through a courier or courier service of any type shall be treated as having been delivered by hand at the Commission's counter. Candidates should clearly note that Commission shall in no case be responsible for non receipt of applications or any delay in receipt thereof on any count whatsoever.'

6. Mr. D. C. Raina, learned Senior Advocate appearing for Public Service Commission has vehemently argued that last date for receipt of applications by Public Service Commission, was 1.2.2002 and the candidates were required to apply within the said date and should possess the requisite qualification and eligibility criterion as on cut off date referred to above. According to him, 8.2.2002, the date for receipt of applications through postal service, is only relaxation for such candidates who may choose to forward their applications through post. A perusal of the notification which prescribes last date for receipt of applications, clearly indicate that there are two dates for receipt of applications; one at the counter and the other through post. The notification further provides that if any application is sent through courier or courier service, the same shall be treated having been delivered by hand. But that is not the case, where the application is sent through postal service.

7. Admittedly, two dates have been notified for receipt of applications; one by hand (including through courier and courier service) and the other through postal service. How first date alone can be said to be last date for receipt of applications? No logic or reasoning can accept such a position. At the first place, there cannot be two cut off dates for the same selection and if two dates for receipt of applications have been prescribed, then it is only the later one, which can be considered as the cut off date. Therefore, the contention of Mr. D.C. Raina, learned counsel for PSC that 1.2.2002 was considered as cut off date by Public Service Commission, cannot be accepted. The necessary qualifications to be possessed by a candidate, have been indicated in the notification. The relevant extract from the notification, is reproduced as under:

'A candidate seeking admission to the examination must be:

(i) A Bachelor of Law of a University established by law in India, or

(ii) A Barister of England or Northern Ireland or a member of the faculty of Advocates in Scotland or holding any other equivalent law degree recognized by the Government of India.

(iii) Having at least three years actual practice at the bar on the date on which he submits his application form, as per the guidelines issued by the High Court.'

8. In addition to the qualifications prescribed in notification, Clause-III thereof specifically prescribes that a candidate should have three years actual practice at the bar on the date on which he submits his application. This condition itself belies the contention of Mr. D.C. Raina, in respect to 1.2.2002 being the cut off date. A careful reading of the above condition abundantly establishes that a candidate should possess necessary experience of three years on the date he makes his application. Of course, the same has to be within the last date as notified in advertisement notice. Admittedly, petitioner submitted his application through postal service. The last date for the same is 8.2.2002. His application was received prior to cut off date i.e. 8.2.2002. He completes three years at the bar on 4.2.2002, which is duly certified by the Principal District and Sessions Judge, Jammu vide his certificate dated 5.2.2002. The application was posted on 5.2.2002 and is received by respondents before the cut off date. Even if the date when the application was posted, is considered to be the date of submission of application, petitioner had requisite three years experience on the said date. A conjoint reading of different clauses of notification, does not justify rejection of petitioner's application on the ground indicated in the rejection letter, impugned in the petition.

9. Mr. Altaf Naik, learned Advocate General appearing for State has strenuously argued that even if rejection letter is quashed, still the petitioner is not entitled to be considered for the post of Munsiff, as no such relief is claimed in the writ petition. I am unable to accept this argument. In the writ petition, the petitioner has not only sought the quashment of the rejection letter, but has further sought a direction to allow him to sit in the examination and for the release of Roll Number.

10. A Division Bench of this court at the time of admission of this petition, passed interim order dated 29.5.2002, which reads as under:

'Admitted for 10th June,2002. For further proceeding, to be listed before a Single Bench.

This CMP is disposed of with the direction that petitioner be permitted to take part in the process of examination. This would, however, be subject to the final outcome of the writ petition.'

11. Pursuant to the aforesaid direction of the court, petitioner was permitted to appear in examination. His result is awaited. Once the rejection letter is quashed and petitioner is permitted to enter the selection process, declaration of result and selection are natural consequences of participation in selection. Petitioner cannot be denied relief on the basis of technicality as is sought to be suggested on behalf of the respondents. Rejection of the application of the petitioner, is contrary to the stipulation of the advertisement notice. Learned counsel appearing for respondents have placed reliance upon a judgment of the Apex Court titled *Jasbir Rani and Ors. v. State of Punjab and Anr.*, 2002 (1) SCC 124, wherein it has been held:

'No doubt, the rule does not provide a cut off date by which an applicant is to satisfy the prescribed eligibility qualification pertaining to age. In the absence of a statutory provision in that regard the date has to be fixed at the time of issuing the advertisement. This is necessary not merely to enable the appointing authority to sort out the applications of the eligible candidates from those candidates who do not fulfil the prescribed qualification, but also to avoid criticism of a favouritism and nepotism against the authority.'

12. The notification has not indicated any cut off date for possessing the experience. It is only Clause-III, which says that experience should be possessed as on date of application. Therefore, to say that 1.2.2002 is last date for possessing experience, cannot be justified under any circumstances.

13. The aforesaid judgment has no application to the facts of the present case, as the notification has specifically prescribed that the date of submission of application, shall be the date when a person should possess experience. The last date for receiving applications having been mentioned as 8.2.2002 and petitioner having acquired experience before that admittedly on the date of submission of

application, cannot be deprived of his right to be considered for selection.

14. This petition is accordingly allowed. Respondents are directed to consider the merit of the petitioner in the selection and if he has secured grading above the last selectee, he shall be deemed to be selected and recommended for appointment to the government. The respondent-State is also directed to appoint the petitioner against any available vacancy of Munsiff in accordance with the merit and allow him all consequential benefits of such appointment though notionally.

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