

Prabha Gupta Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Oct-31-2008

Reported in : 2008(3)JKJ548

Judge : Y.P. Nargotra, J.

Appellant : Prabha Gupta

Respondent : State and ors.

Advocate for Pet/Ap. : Mrs. Kour

Disposition : Petition dismissed

Judgement :

Y.P. Nargotra, J.

1. The writ petitioners in this Batch of writ petitions seek to quash the selection of the private respondents made through the selection process initiated by the Jammu and Kashmir State Services Selection Board, Jammu vide its Advertisement Notice No. 06/2005 dated 21-11-2005 for the post of Junior Supervisor/Sub Auditor, on the ground of their ineligibility. The advertisement notice prescribed the following eligibility condition for the post:

10+2 or equivalent, Cooperative training is necessary for selected candidates

2. The case of the petitioners is that since the private respondents did not possess the Cooperative Training upto the last date fixed for making applications, therefore, were in-eligible to compete, whereas the petitioners who were also the candidates in the said selection process possessed the requisite Cooperative Training and therefore, being eligible ought to have been selected in place of the private respondents.

3. The contention of Mrs Kour, learned Counsel for the petitioners supported by the counsel for rest of the writ petitioners is that for being eligible to compete it was essential for the private respondents to possess Cooperative Training. She however, concedes that private respondents No. 8,9 & 12 in SWP NO. 1914/2007 (Prabha Gupta v. State and Ors.), who possessed the requisite cooperative training, were not in-eligible. She contends that selection of the rest of the private respondents in all the writ petitions cannot be sustained in law in view of the fact that none of them had undergone Cooperative Training at the time they offered their candidature.

4. The stand of the respondents is that the Cooperative training was not a condition precedent for being eligible to apply, therefore, they were fully eligible. Mr. Shukla, learned Counsel for Selection Board and Mr. Lehar, learned Senior Counsel for some of the respondents supported by the counsel for other respondents submit that Cooperative training is to be undergone by them after the selection, therefore, the selection of the private respondents cannot be legally faulted with.

5. Thus the question arising for consideration in these writ petitions is-Whether Cooperative Training is a condition precedent for a candidate to be eligible for selection

6. Recruitment to the post of Junior Supervisor/Sub Auditor is governed by the Jammu and Kashmir Cooperative (Non-Gazetted) Service Recruitment Rules. Rule 5 of the said rules provide as follows:

5. Qualification and Method of Recruitment-(1) No person shall be eligible for appointment or promotion to any post in any category, cadre in the service unless

he possesses the qualification as laid down in the schedule and fulfils other requirements of recruitment as provided in the rules and orders for the time being in force.

(2) Appointment to the service shall be made:

a) by direct recruitment;

b) by promotion; and

c) partly by direct recruitment and partly by promotion in the ratio and in the manner mentioned against each post in the schedule.

7. Schedule III appended to these Rules, in Item III-(b) provides for the post in question as follows:

Class Category Designation Grade Minimum Method of

qualification Recruitment

for direct

recruitment

III (b) Junior 410-700(old) 10+2 By direct

Supervisor/Sub 800-1500 examination recruitment

Auditor. (Revised) or its on the basis of

equivalent selection

from any made by the

recognized concerned

University or recruitment

Board of board in the

examination. manner as

provided from

time to

time

cooperative

training will

be necessary

for the

selected

Candidates.

8. From the bare reading of the above rule, it transpires that the post of Junior Supervisor/Sub Auditor can be filled up by direct recruitment and the minimum qualification required to be possessed by a candidate to be eligible for selection as a direct recruit is 10+2 Examination or its equivalent from any recognized University or Board of Examination. It is also manifest that the method of recruitment envisages that recruitment shall be on the basis of selection to be made by the concerned selection Board in the manner as provided from time to time. It also stipulates that Cooperative Training will be necessary for the selected candidates.

9. Whether such stipulation can be construed to be a condition precedent for a candidate to be eligible for being selected for appointment/recruitment. In my considered view it would not be so. The word 'recruitment' contemplates in itself two incidents, one, the selection and the other the appointment. The said stipulation for having been incorporated in the method of recruitment therefore, can apply to the selected candidates who are to be appointed and not to the candidates who may be selected, which is further clear from the expression

'selected candidates' used in the method of recruitment. The qualification prescribed in the rule under the Heading Minimum qualification for direct recruitment being 10+2 examination or its equivalent from any recognized University or Board of Examination is the eligibility qualification for selection of a candidate, for appointment. Thus a candidate who possesses 10+2 examination or its equivalent from any recognized University or Board of examination would be eligible for selection for the post, but after selection he can be appointed only when he has undergone cooperative training if not already so trained.

10. The contention of the writ petitioners that the possession of Cooperative training is a condition precedent for being eligible for selection for appointment to the post is therefore, devoid of any merit.

11. Mrs. Kour, however, in support of her contention that possession of Cooperative training is a condition precedent for being eligible to apply for the post seeks to rely upon the judgment of a learned Single Judge of this Court rendered in Sanjay Kumar v. State of Jammu and Kashmir and Ors. SWP No. 917/1998 decided on 6-7-2001, whereas the learned Counsel for the respondents in support of their contention that Cooperative training is not a condition precedent rely on another judgment of a coordinate Bench of this Court rendered in the case entitled Shadi Lal Sharma v. State and Ors. SWP No. 881/1998 decided on 1-12-2006.

12. In Sanjay Kumars case it was observed as follows:

Respondent Board has filed its reply. Stand taken is that petitioner obtained 48.49 points whereas last selected candidate secured 55.45 points. It is submitted that merit position of the petitioner was lower. However, with regard to allegation that some of the candidates did not possess cooperative training, it is stated that this is not an essential condition. What is said in Para 6 of the reply is reproduced below:

6. Para 6 is replied that all candidates selected by the Board are fully eligible for the post. The interpretation of petitioner with regard to qualification mentioned in the advertisement is not correct. The board has given 15 additional points to the candidates who were possessing cooperative training. However, cooperative training was not essential for the selection as alleged by the petitioner. It is further

submitted that respondents No. 9 to 11 have been selected under RBA & ST reserved categories. The petitioner in belonging to general category and he has no right to challenge selection of respondents No. 9 to 11 who are belonging to reserved categories.

Stand taken by the respondent-Board that cooperative training was not necessary runs counter to advertisement notice issued on 29.4.1997. In this situation petitioner is right in his submission that these candidates who did not possess this qualification could not be selected.

13. It be seen that while returning the said finding the learned Judge has not referred to the relevant rules and accepted the contention of the petitioner because the plea of the respondent Board that Cooperative Training was not necessary was found running counter to the advertisement notice, though in that advertisement notice too the requisite qualification prescribed was 10+2 Higher Secondary Part II and Cooperative Training necessary for selected candidates.

14. Another Coordinate Bench of this Court in case Shadi Lal Sharma v. State and Ors. (Supra) observed as follows:

I have considered the arguments advanced and have carefully gone through the qualification prescribed by the rules as well as by the advertisement notice. On perusal of the qualification prescribed, I find that the requirement of Cooperative Training is a condition subsequent and not condition precedent for appointment. The rules provide that the cooperative training will be required for the selected candidates which means that the condition will arise only after a candidate is selected against the post.

The words used in the rules as well as in the notice do not suggest that only those candidates who possess the cooperative training will be considered for the posts. The words are will be necessary for selected candidates and not that is required for selection of candidates. Since the requirement is a subsequent requirement as the selected candidates have after their selection to undergo cooperative training, it cannot be taken as condition precedent. So merely that respondent Nos 4 to 6 did not possess the said training, they were debarred or were not ineligible for

applying against the posts.

15. The contention of Mrs. Kour is that as there are conflicting views expressed by two Coordinate Benches of this Court so the matter deserves to be referred to a larger Bench. Where there is conflict in the views expressed by the Coordinate Benches, the judicial propriety would demand reference to a larger Bench, but in my considered opinion such requirement would not be obtaining in the present case. What is to be followed as a judicial precedent is the ratio-decidendi of a case which is a reasoned decision on point of law and not the expression of opinion on a particular fact situation obtaining in the case. In Sanjay Kumar's case the learned Judge has not returned a reasoned finding on the point of law as to whether under the Rules governing the field possession of Cooperative training by a candidate was or was not a condition precedent for acquiring the eligibility for selection. The learned Judge only found the contention of the petitioner to be right in view of the stand taken by the respondents in their objections which was found to be running counter to the advertisement notice. The finding returned in that case, therefore, cannot be considered as ratio-decidendi whereas in Shadi Lals case the learned Judge has decided the issue in the light of the rules governing the field by holding that Cooperative Training is not a condition precedent for being eligible for selection and therefore, the ratio decidendi in that case can be legally followed as a precedent.

16. I am supported in my above view by the observations of the Apex Court made in the case N. Bhargavan Pillai v. State of Kerala AIR 2004 SC 2317. Their Lordships have observed:

14. Coming to the plea relating to benefits under the Probation Act, it is to be noted that Section 18 of the said Act clearly rules out application of the Probation Act to a case covered under Section 5(2) of the Act. Therefore, there is no substance in the accused/appellants plea relating to grant of benefit under the Probation Act. The decision in Bore Gowdas case (Supra) does not even indicate that Section 218 of the Probation Act was taken note of. In view of the specific statutory bar the view, If any expressed without analyzing the statutory provision cannot in our view be treated as a binding precedent and at the most is to be

considered as having been rendered per incuriam.

17. For the aforesaid reasons and relying upon the judgment rendered in Shadi Lal's case, I would hold that possession of Cooperative training is not a condition precedent for being eligible for selection, the eligibility qualification in terms of the Recruitment Rules being 10+2 examination or its equivalent from any recognized University or Board of Examinations. The advertisement notice at hand prescribed the eligibility qualification of 10+2 or equivalent which is in consonance with the rules. The stipulation that Cooperative Training is necessary for selected candidates in the advertisement notice in view of the rule position would require that the selected candidates shall have to undergo Cooperative Training after selection for being appointed if not already trained.

18. Therefore, there is no merit in these writ petitions, same are as such, dismissed alongwith the connected CMPs. Interim direction, if any, shall stand vacated.

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