

Khalid Tanveer and ors. Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Oct-15-2004

Judge : Y.P. Nargotra, J.

Acts : Arms Act; ;Public Service Commission Business Rules - Rule 37

Appeal No. : OWP No. 1099/2004

Appellant : Khalid Tanveer and ors.

Respondent : State and ors.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : D.S. Chohan, Adv.

Disposition : Petition dismissed

Judgement :

Y.P. Nargotra, J.

1. J&K; Service Selection Board Jammu by its Notification No. 03 of 2004 dated 14.9.2004 has invited applications in the prescribed format from the candidates who are permanent residents of the J&K; State for filling up the vacancies indicated from S.No. 1 to 76 of the notice in the State/Division/District cadre. One of the categories of posts is Junior Engineer in the State Public Works

Department. The qualification prescribed for the said post is Degree in Civil Engineering or AIME Section (A&B;) India or Three years Diploma in civil engineering from a Government recognized institute. The applications as per the notice can be personally delivered in the office of the Selection Board up to 14.10.2004 and by post up to 21.10.2004 in the offices indicated in the notice. The petitioners are desirous of offering their candidature and in this behalf intend to apply in response to the advertisement notice. Their grievance is that their applications are not being entertained by the respondent-Board.

2. The case of the petitioners is that they have appeared in the final examination of their engineering courses but their result has not yet been declared by the University. Same according to them is likely to be declared in the month of November 2004. They submit that they be permitted to apply subject to their clearance of the examination successfully.

3. In order to determine the controversy the vital question arising for consideration is that which is the crucial date on which an applicant has to establish his eligibility for offering his candidature. Learned Counsel for the petitioners, Mr. Chohan, submits that if an applicant possesses and establishes his eligibility on the date of interview, his application has to be entertained. In support of his submission he relies upon, *Ashok Kumar Sharma v. Chander Shekhar* 1993(2) Service Cases Today 208. In this case the question which had arisen for consideration before the Supreme court was whether or not the candidates who were fully qualified to be appointed as Junior Engineers on the dates of interview, but whose results had not been declared on the dates of submission of their applications, were entitled to be considered for appointment to the post of Junior Engineer. The facts of the case were that advertisement inviting applications for appointment to the post of Junior Engineer was published on 9.6.1982. The last date for submitting applications was specifically stated to be 15.7.1982. By that date the appellants and the respondents had submitted their applications, the appellants had appeared in BE (Civil) examination and had been awaiting their results until the results were published on 21.8.1982. Interviews were held on various dates commencing on 24.8.1982. The appellants were declared selected on 21.4.1983 and appointed as Junior Engineers. By reason of their merits, they were placed senior to the

respondents. The respondents contended in the High Court that since the appellants were not qualified to apply for the post on the date of submission of applications as their results had not been declared until after that date, they were not qualified to appear for interview and the marks obtained by them were invalid and their applications ought to have been rejected, the announcement of the results prior to the interview and their obtaining higher marks, notwithstanding. On behalf of the appellants it was submitted that Rule 37 of the Public Service Commission Business Rules provide that applications of candidates who have appeared in the examination, passing of which may make them eligible for appearing in the interview for recruitment to a post to be made otherwise than by a competitive examination, but result whereof have not been declared up to the date of making of the applications, may be entertained provisionally but no such candidate shall be permitted to take the interview if he is declared having failed in the examination or if the results are not available on the date of viva voce test is held. So on the analogy of Rule 37 applications of the appellants could be entertained subject to passing of the examination by them before the date of interview. The majority view expressed by their lordships of the Supreme Court was as follows:

The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect and the view expressed by the learned Single Judge was, on the facts of this case, the correct view.

4. The ratio of the aforesaid judgment thus appears to be that a candidate who has appeared in the examination but his result has not been declared is eligible to submit his application but he can be considered for appearing in the interview only if he has obtained the requisite qualification on the date of interview. The contention of learned Counsel for the petitioners is fully supported by the view of their lordships taken in Ashok Kumar's judgment (supra) but the same, however, cannot be accepted for the reason that the aforesaid view of the Supreme court stands already ruled out while reviewing the same judgment which is being relied upon by the learned Counsel for the petitioners. Learned Counsel for the petitioners does not seem to be aware of this fact. Their lordships of the Supreme Court in Ashok Kumar v. Chander Shekhar : (1997)ILLJ 1160 SC held as follows:

Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, an impermissible justification. The minority opinion in the 1993 decision Ashok Kumar Sharma case 1993 Supp (2) SCC 611 that 33 respondents, who were not qualified on the date of submission of the application but had acquired the requisite qualification before the date of interview, could not have been allowed to appear for interview, was right.

5. The question then arises as to the relief to be granted in the instant review applications. In view of the fact that the relief to the said 33 respondents has been granted by the Supreme Court within its discretion, it would not be appropriate for the Supreme Court to interfere in its review jurisdiction with the unanimous opinion of the court on that aspect. Therefore, the instant review petitions are dismissed subject to the clarification on the legal issue.'

6. The law on the point is no longer res-integra in view of the law laid down by the Hon'ble Supreme Court, as quoted above. The petitioners, therefore, shall not be eligible to apply for the post of Junior Engineer (Civil) in terms of the above mentioned advertisement notice of the Service Selection Board as they do not possess the requisite qualifications until their results are declared and they come to possess the requisite qualification before the last date fixed for submitting the application forms. There is thus no merit in writ petition which is accordingly dismissed, alongwith connected CMPs.

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