

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**LPA No. 159/2019 c/w
LPASW No. 201/2018**

*Reserved On: 11th of November, 2021
Pronounced On: 15th of November, 2021*

Firdous Ahmad Ganai

... Appellant(s)

Through:

Mr Z. A. Shah, Senior Advocate with
Mr A. Hanan Kalwal, Advocate.

Versus

State of JK & Ors.

... Respondent(s)

Through: -

Mr S. A. Makroo, Senior Advocate with
Mr Mohammad Amin Bhat, Advocate; and
Mr Bikramdeep Singh, Government Advocate.

CORAM:

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge
Hon'ble Mr Justice Sanjay Dhar, Judge**

(JUDGMENT)

Per Magrey: J (Oral):

01. Since, both these appeals are directed against common Judgment dated 3rd of October, 2018 passed by the learned Single Judge in SWP Nos. 1603/2018; and 276/2018, therefore, same were heard together and are being decided by this common Judgment hereunder.

02. The case of the appellant before the Writ Court was that consequent to his selection as an Attendant (Class- IV) in terms of the Advertisement Notice dated 11th of May, 2013, he was not appointed as such

under “Physically Handicapped Category”. The non-issuance of the appointment order led the appellant to file SWP No. 1603/2018 seeking a direction in the name of the official Respondents to issue formal order of his appointment. That apart, one Ahtisham-ul-Haq/ Respondent No.4 in both the appeals had also filed a Writ Petition on the subject, being SWP No. 276/2018, wherein he had questioned the selection of the appellant on the ground that: (i) that the Advertisement Notice specifically prescribed maximum and minimum educational qualification and that no additional weightage was to be given for higher qualification; (ii) that in terms of the Act of 1988, 3% reservation is provided for Physically Handicapped persons and this reservation operates horizontally; and (iii) that the appellant has sworn a false affidavit saying that his educational qualification is not more than 10+2 when he actually held the qualification of B.A, M.A. (Political Science) and B.Ed. The learned Single Judge, after clubbing the aforesaid two Petitions, heard the Counsel for the parties and passed a common Judgment on 3rd of October, 2018, wherein, while holding that the candidates with higher qualification are not eligible to apply when the advertisement notice prescribes minimum and maximum qualification, the Writ Court declared that the appellant was overqualified and, therefore, could not apply for the post in question. Accordingly, the Writ Court has dismissed the petition filed by the appellant. As regards Writ Petition bearing SWP No. 276/2018, the same was allowed by the Writ Court by quashing the selection list of Class-IV posts advertised vide Advertisement Notification No.01-CAHO-K of 2013 dated 11th of May,

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2013 insofar as it related to the selection of the private Respondent/ appellant herein figuring in the category of Physically Handicapped/Open Category, besides directing the official Respondents to accord consideration to the selection and the appointment of the Petitioner therein as against the Class-IV post (Attendant) advertised vide Advertisement Notification No.01-CAHO-K of 2013 dated 11th of May, 2013 on the basis of the merit secured by him in the selection process. Being aggrieved thereby, the appellant has filed these two appeals against the common Judgment passed by the learned Single Judge in the aforesaid two Writ Petitions.

03. We heard learned Counsel for the parties, perused the pleadings on record and have considered the matter.

04. The law is that appointments on public posts have to be made strictly in accordance with the Rules of service or the terms and conditions of the advertisement. In case titled *Yogesh Kumar v. Government of NCT of Delhi: (2013) 3 SCC 548*, it has been clearly held by the Supreme Court that recruitment to public service should be held strictly in accordance with the terms and conditions of the advertisement and the recruitment Rules, if any, and that any deviation therefrom amounts to allowing ineligible persons and depriving right of consideration of many deserving eligible candidates.

05. The appointment to Class-IV posts in Jammu and Kashmir Public Service, as is the subject matter of these appeals, has to be in

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accordance with the Jammu and Kashmir Appointment to Class-IV (Special Recruitment) Rules, 2020 as promulgated vide S.O. 184 dated 4th of June, 2020 issued in exercise of powers under Article 309 of the Constitution of India. These Rules specifically provide that the Jammu and Kashmir Services Selection Board shall invite applications from the persons who are domiciled in the Union Territory of Jammu and Kashmir and who possess minimum and maximum educational qualification as prescribed in notification SRO 99 of 2008 dated 7th of April, 2008. SRO 99 of 2008 categorically lays down that, for the purposes of recruitment of Class-IV posts, the minimum and maximum qualification shall be *matric* and *10+2*, respectively. The advertisement notification in question also specifically provides that the maximum and minimum qualification for appointment to Class-IV posts shall be “*minimum matric and maximum 10+2*”.

06. Pertinent to mention here that the appointment to the aforesaid Class-IV posts has to be made on the basis of the suitability *vis-à-vis* the qualification held by the person and the nature of the job, for which purpose the decision of the employer is final, provided it is not arbitrary in nature. To put it in other words, the suitability and the qualifications for any post have to be laid down by the employer and the same are not liable to be interfered with judicially, until and unless the policy decision in that regard is found to be irrational or arbitrary. In the case of appointments to Class-IV posts, higher qualification than the prescribed 10+2 may not be suitable for many reasons; the first being that a highly qualified person may not be in a position to

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discharge the menial work which is required to be done by a Class-IV employee; secondly, if such highly qualified candidates are allowed to compete with candidates with lower qualification, as prescribed, it is but obvious that they will score above them and would get selected to the detriment of the candidates possessing the requisite eligibility; and thirdly, such candidates of higher qualification, if selected, would always be looking for a better job and, as soon as they are selected in some other better discipline, they would leave the Class-IV post rendering the entire selection as useless, besides forcing the employer to get those posts re-advertised and re-filled. In that view of the matter, the laying down of the criteria of the minimum and the maximum qualification for the Class-IV post as matric and 10+2, respectively, is neither irrational, unreasonable nor arbitrary. Viewed in this context, the Judgment of the learned Single Judge appears to be in accordance with legal position governing the subject.

07. A three-Judges Bench of the Supreme Court in the case of '**Chief Manager, Punjab National Bank & Another v. Anit Kumar Das, Civil Appeal No.3602 of 2020**', decided on 3rd of November, 2020, held that the recruitment on public post has to be in accordance with the eligibility criteria laid down in the Rules or the advertisement; it is for the employer to determine the relevancy and suitability of the qualification for the post keeping in view the interest of the institution; and that the courts are not fit to assess the expediency or advisability or utility of such prescriptions of qualifications. It was also observed by the Supreme Court that the qualification of 12th pass for

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the post of Peons in the Bank is justified as it is a conscious decision taken by the Bank and no candidate with superior qualification can be recognized as eligible for the post.

The legal position is, thus clear that any higher qualification than the one prescribed for a particular post may not be a suitable qualification and that the employer, in its wisdom, is justified in excluding candidates with higher qualification from the ambit of selection.

08. To buttress the aforesaid legal position, a cue may also be had from the law laid down by the Supreme Court in another case titled '***P M Latha v. State of Kerala: (2003) 3 SCC 541***', wherein the issue that cropped up was whether the B.Ed. qualification, which is a higher qualification than the Trained Teachers Certificate (TTC), should be recognized as an eligible qualification for the post of Primary School Teacher. The Supreme Court has held as under:

"We find absolutely no force in the argument advanced by the respondents that B.Ed qualification is a higher qualification than TTC and therefore, the B.Ed candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in Primary classes whereas for B.Ed degree, the training imparted is to teach students of classes above primary, B.Ed degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in Primary Schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of Primary Teachers as only TTC and not B.Ed. Whether B.Ed

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qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed candidates, for the present vacancies advertised, as eligible.”

In nutshell, what we mean to express is that higher qualification may not be suitable qualification for every post and, if candidates with higher qualifications are excluded, the view of the learned Single Judge in this regard cannot be faulted with and said to be illegal or perverse.

09. For the foregoing reasons, we do not find any merit in both these appeals, which are, accordingly, *dismissed*. Interim direction(s), if any subsisting as on date, shall stand vacated.

10. This shall also dispose of any pending miscellaneous application accordingly.

11. Registry to place a copy of this Judgement on each file.

(Sanjay Dhar)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR

November 15th, 2021

“TAHIR”

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| i. | Whether the Judgment is reportable? | Yes/ No. |
| ii. | Whether the Judgment is speaking? | Yes/ No. |