

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

WP (C) No. 1530/2021

CM No. 5169/2021

Reserved On: 20th of July, 2022
Pronounced On: 26th of August, 2022

Muzamil Ahmad Dar

... **Petitioner(s)**

Through: -

Mr Z. A. Shah, Senior Advocate with
Mr Mian Tufail, Advocate.

V/s

High Court of Jammu and Kashmir & Ors.

... **Respondent(s)**

Through: -

Ms Zeenat Nazir, Advocate for R-1 & 2; and
Mr Moomin Khan, Advocate for R-3.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

Hon'ble Mr Justice Mohd. Akram Chowdhary, Judge.

(JUDGMENT)

Magrey-J:

01. This Petition, under Article 226 of the Constitution, has been filed for the following relief(s):

“In the premises, it is, therefore, humbly prayed that by way of Writ of Certiorari, the selection/ appointment of private respondent No.3 issued vide order bearing No. 150 of 2021/RG dated 24th of March, 2021 by the respondent No.2 be set aside; and

By way of Writ of Mandamus, the respondent Nos. 1 and 2 be directed to issue appointment order in favour of the petitioner who is figuring at Sr. No.1 of the waiting list and should have been appointed, if 20 points would not have been wrongly awarded to private respondent.”

02. The brief factual matrix of the case of the petitioner is that, vide notification No.1 of 2020 dated 18th of September, 2020, issued by the Respondent No.1, various posts, including a post of Electrician under Open Merit category, were advertised. The qualification prescribed for the post of Electrician was reflected as 10+2 with Diploma in Electrician Trade from a recognized institute. The petitioner offered his candidature for the said post

of Electrician under application No. 2000000005081700000270. Thereafter, in terms of notification dated 20th of February, 2021, Respondent No.1 notified the criteria for the said post and also fixed the schedule for the conduct of interview for the post. After culmination of the process of selection, a consolidated merit list is stated to have been issued by Respondent No.1 on 24th of March, 2021, whereafter, on the same date, Order No.150 of 2021/RG was issued appointing Respondent No.3 on the aforesaid post of Electrician. After the appointment of Respondent No.3, the Petitioner claims to have submitted two applications under the provisions of the Right to Information Act; one in the main wing of the High Court and the other to the Administrative Wing of High Court, Srinagar, seeking information with regard to the basic qualification, marks awarded to Respondent No.3 as also a copy of experience certificate of Respondent No.3. It is alleged that this information was not provided to the petitioner by the Respondents. He, therefore, is stated to have filed 1st and 2nd appeals under Section 9 (1) of the Right to Information Act, 2009. According to the petitioner, only then Respondent No. 2 informed him that 20 points (02 points for each year) have been awarded to Respondent No.3 for 10 years' experience as an Electrician. It is averred that Respondent No. 3 has produced a certificate from Royal Polytechnic College, Srinagar, showing that he has successfully completed 312 hours' training in Electrician trade in the year 2016. However, the petitioner contends that the said certificate cannot be treated as Diploma in Electrician trade. Therefore, according to the petitioner, Respondent No.3 is not qualified for appointment as Electrician. It is also stated that Respondent No.3 has been awarded 20 points for his 10 years' experience as Electrician, reckoned from the year 2004 till 2016, which is illegal, inasmuch as the date of completion of Electrician Diploma of Respondent No.3, as per his own admission, is 2016 and the date of issuance of the advertisement notice is 18th of September, 2020, as such, at best, only 06 points could have been granted to him for having 03 years' experience after the Diploma. In these circumstances, the Petitioner is aggrieved of and has challenged the selection/appointment of Respondent No.3 as Electrician on the grounds detailed out in the memo of Petition.

03. Mr Z. A. Shah, learned Senior Counsel, appearing on behalf of the Petitioner, while reiterating the grounds taken in the Writ Petition, submitted that Respondent No.3 has produced a certificate from a private institute, namely, Royal Polytechnic College, Srinagar, wherein he has been shown to have successfully completed 312 hours training in Electrician, while as the qualification prescribed for the post of Electrician was 10+2 with Diploma in Electrician Trade, as such, the certificate produced by Respondent No.3, forming the basis of his appointment as Electrician, cannot be treated as Diploma in Electrician; thereby rendering his appointment as Electrician illegal and bad in law, being not possessed of the requisite qualification. The learned Senior Counsel contended that, even if the certificate produced by Respondent No. 3 is treated as Diploma in Electrician Trade, Respondent No.3 cannot be given 20 points for having 10 years' experience as Electrician when, as a matter of fact, his date of completion of the said Diploma is 30th of November 2016 and the advertisement notice was issued on 18th of September, 2020, meaning thereby that the period to be counted in respect of such Diploma is not more than 03 years and 10 months for which only 06 points were to be granted to Respondent No.3 instead of 20 points. In this backdrop, it is urged that the Petitioner, who possessed the requisite qualification and was placed at S. No.1 in the waiting list as per the merit position obtained by him in the process of selection, was and is entitled to be appointed for the aforesaid post of Electrician.

04. Objections stand filed on behalf of the Respondents.

05. In their Objections, Respondent Nos.1 and 2 have stated that since Respondent No.3 had secured highest points in the merit list, the proposed select list and the waiting list were placed before a three-Judge Committee of the High Court relating to Appointment and Promotion of Officers and Officials of the High Court Staff, which considered the matter. The said Committee of the Hon'ble Judges, vide resolution dated 22nd of March, 2021, recommended that the proposed select list be approved for selection and appointment of Respondent No.3 as Electrician, whereafter, the same was approved by Hon'ble the Chief Justice on 24th of March, 2021, resulting in issuance of Order No. 150 of 2021/RG dated 24th of March, 2021 appointing Respondent No.3 as Electrician. It is also averred that Respondent No.3 not

only fulfilled the eligibility of qualification prescribed in the Advertisement notice, but also has to his credit the Diploma in Electrician Trade from Royal Polytechnic College, a recognized institute, and experience of more than 10 years. It is further stated that the representation of Respondent No.3 for treating his certificate regarding 312 hours' training programme in Electrician Trade, being equivalent to one year Diploma in Electrician Trade, was placed before the aforesaid three-Judge Committee of the High Court for opinion, and that the Committee resolved that, having regard to the fact that the issue stands decided and settled long before by the Single Bench of the High Court in a batch of Writ Petitions with lead case being SWP No. 1635/2010 which decision was upheld not only by the Division Bench of this Court in LPA Nos. 243/2013, 213/2013, 98/2014, 100/2014 and 213/2014, but also by the Hon'ble Supreme Court, the certificate produced by Respondent No.3 be taken on record and entertained and accepted as a Diploma in Electrician Trade as had been prescribed in the Advertisement notice dated 18th of September, 2020. The aforesaid recommendation is stated to have been approved by Hon'ble the Chief Justice. In this context, it has been prayed that the Writ Petition filed by the Petitioner, being devoid of any merit, be dismissed.

06. Respondent No.3, in his Objections, claims to be possessed of the requisite qualification for the post of Electrician as has been notified by Respondent Nos. 1 and 2, besides having Diploma in Electrician Trade from a recognized institute, namely, Royal Polytechnic College, Srinagar. It is also stated that, as is evident from the advertisement notification dated 18th of September, 2020 itself, the Diploma was required in Electric Trade, which means that the said Diploma was required for a Trade/skill and that since the Trade/skill is not directly relatable to the basic qualification, as such, the experience could have been gained by the Respondent No.3 even before obtaining the Diploma in the relevant trade. It is also pleaded that it is not a case of any professional degree such as Engineering or Medicine in which experience can be gained only after completing the professional degree and, thus the contention of the Petitioner that Respondent No.3 could have gained the 10 years of experience of Electrician only after obtaining the Diploma is grossly misconceived and deserves to be rejected. It is submitted that once

Respondent No.3 is in possession of the requisite qualification as also the experience required for the post of Electrician and has been duly selected and appointed against the post of Electrician, the Petitioner has no right to challenge his selection and appointment, as such, the Writ Petition is liable to be dismissed.

07. We heard the learned appearing Counsel for the parties, perused the pleadings on record and considered the matter. We have also gone through the relevant record made available before us by the learned counsel for Respondent Nos. 1 and 2.

08. The first and foremost issue that requires to be considered pertains to the certificate of Respondent No.3, treated by the Respondent, High Court, as Diploma in the Electrician Trade as prescribed in the advertisement notice dated 18th of September, 2020. The contention of Mr Shah, the learned Senior counsel, in this behalf, is that the certificate so produced by Respondent No.3 clearly provides that the said Respondent has undergone the training course for only 312 hours which, in no circumstances, can be treated as a Diploma in Electrician Trade. From the perusal of the pleadings on record and during the course of arguments, we have noticed that this issue has been the subject matter for determination in several Writ Petitions before this Court with lead case being SWP No. 1635/2010 titled '**Mohammad Maqbool Wani & Ors. V. State of J&K & Ors.**', decided on 6th of December, 2012. This Judgment of the learned Single Judge, upon being challenged by the Government, has been upheld not only by the Division Bench of this Court vide Judgment dated 8th of October, 2015 rendered in LPA No.243/2013 along with other connected matters, but also by the Supreme Court in terms of Order dated 29th of June, 2016. In this context, it has become imperative to go through the relevant paragraphs of the Judgment passed by the learned Single Judge, which read thus:

“03. The matter was considered on 6th of June, 2012. It was noticed that vide communication No.16/98/10/2753 dated 10th January, 2011, Secretary to State Board of Technical Education had informed the respondent department that it is only the courses, such as, three years diploma in Computer Engineering, three years diploma in PHE (Civil) Engineering, two years diploma in Quantity Survey and three years diploma

in Medical Electronics, granted by Royal Polytechnic College, Gogji Bagh, Srinagar are recognized by the Board. Learned Counsel for the Petitioners had contended that as per condition No.6 of the advertisement notice, the candidate was required to possess degree/ diploma (minimum one year duration) from any University or College recognized by UGC/Govt. ITI or Govt. Institution. The Petitioner possesses the requisite diploma, therefore, were entitled to two points. In view of this position for resolving the controversy, in terms of said order dated 6th June, 2012, Director Technical Education-respondent No.4 was directed to file a supplementary affidavit so as to indicate in clear terms as to whether the diploma certificates possessed by the petitioners are valid and recognized. While doing so, the respondent No.4 was also to examine the communication as has been addressed by the Secretary to DIG, Kashmir.

04. Again vide order dated 04.07.2012, both Director Technical Education and Secretary, State Board of Technical Education, were directed to file affidavit so as to clarify the position as directed vide order dated 06.06.2012. in compliance thereof, supplementary affidavit has been filed by the Secretary, J&K State Board of Technical Education on 28.09.2012, wherein it has been stated that all the Government/Private Polytechnic Colleges are conducting short term course of various trades for different durations for providing skill-oriented programmes for unemployed youths for their livelihood under various schemes. The courses conducted by such colleges are also covered by the schemes. The College, namely, Royal Polytechnic College is recognized by the Government of J&K, affiliated to the State Board of Technical Education and approved by All India Council for Technical Education, Govt. of India, New Delhi. Under the directives from All India Council for Technical Education, New Delhi, all approved Government/Private Colleges have to conduct a 400 hours technical skill value added programme which is based on needs of local community. IN the supplementary affidavit directive of AICTE has been quoted and then finally it has been concluded that in light of the directive, the courses conducted and certificates issued by such college under reference are valid and recognized.

05. Confronted with the said position, learned counsel for the respondents stated that the additional qualification i.e., diploma of one year in various disciplines as possessed by the petitioners entitled them to the award of two marks.

06. Viewed thus, this writ petition is allowed, based on the criteria as incorporated in the advertisement notice, irrespective of

subsequent change in the criteria vis-à-vis additional qualification, the respondents shall consider the diploma certificates of the petitioners and award them two marks and thereafter to consider their cases for selection/appointment to the post of Constables and pass appropriate orders thereon within a period of six weeks from the date copy of the order is served upon them.

07. Disposed of as above along with connected CMP.”

09. It is pointed out by the learned Counsel for Respondent No.3 that some of the Petitioners in the aforesaid Writ Petitions had undergone the very same Electrician training course for 312 hours as respondent no.3 has undergone and possessed the very same type and nature of certificates awarded to them by the same College as possessed by Respondent No.3. To buttress this submission, learned counsel for Respondent No.3, during the course of arguments produced photocopies of 03 such certificates belonging to: (i) Bilal Ahmad Dar (Petitioner No.4 in SWP No. 416/2011); (ii) Parvaiz Ahmad Bhat (Petitioner No.2 in SWP No. 931/2011); & (iii) Gurdiyal Singh (Petitioner No.4 in SWP No. 931/2011). Upon perusal of the said certificates and comparing the same with the one produced and possessed by Respondent No.3, we find that the same are identical in the relevant contents. Furthermore, from perusal of the records placed before us, it clearly transpires that the above-named persons have, in fact, been the Petitioners in the given Writ Petitions, and that they had appended the photocopies of these certificates with their Writ Petitions. The aforesaid persons, in their Petitions, had contended before the Court that they possessed the requisite Diploma and, therefore, were entitled to two points in the selection process in *lieu* of additional qualification. This appears to have been denied by the Respondents therein. However, during the course of proceedings in the said Petitions, the Secretary, Jammu and Kashmir Board of Technical Education, on the direction of the Court, filed a Supplementary Affidavit; thereby declaring that the courses conducted and certificates issued by the College under reference are valid and recognized. Consequently, in view of the stand so taken, the Court allowed the Writ Petitions and directed the Respondents therein to consider the Diploma certificates of the Petitioners therein and award them 02 marks. It, thus stands conclusively held that the said Writ Petitioners possessed the Diploma certificates and were, therefore, held

entitled to 02 marks / points prescribed in the relevant advertisement notice. In nutshell, on the strength of such certificates, the aforesaid persons in their Writ Petitions had raised the contention that they possessed the requisite Diploma certificates and were entitled to the relief prayed for by them in the Writ Petitions, which contention was accepted by the Court and they were granted the relief prayed for by them. This decision, as stated hereinabove, stands upheld in appeal by the Division Bench of this Court as well as by the Supreme Court.

10. It may not be out of place to mention here that the learned Counsel for the Respondent, High Court, when asked, while making reference to the relevant records, submitted that, after the selection of Respondent No.3 against the post of Electrician, the High Court, in terms of communication No. 9154 dated 28th of May, 2021, directed Respondent No.3 to submit the original Diploma certificate issued by recognized Institute and, pursuant thereto, Respondent No.3 submitted a detailed representation along with the requisite certificate pointing out that the certificate to his credit has been already directed to be treated as Diploma in Electrician trade by the Court in batch of Writ Petitions, including SWP No. 416/2011 and SWP No. 931/2011, which decision, thereafter, is stated to have been upheld not only by the Division Bench of this Court in LPA Nos. 243/2013, 213/2013, 98/2014, 100/2014 and 213/2014, but also by the Hon'ble Supreme Court as well. The learned Counsel appearing for the Respondent-High Court further invited the attention of the Court to the Reply furnished by Respondent No.3 and submitted that the certificate so produced by him *qua* equivalence to one year Diploma in Electrician trade was placed before Hon'ble the Chief Justice and the Hon'ble Chief Justice referred the matter to the three-Judge Committee of the High Court relating to Appointment and Promotion of Officials/ Officers of the High Court Staff, which Committee, in terms of resolution dated 29th of June, 2021, on examination of the certificate produced by Respondent No.3 as also the Judgments referred by him, declared the certificate identical in relevant content with further recommendation that the certificate produced by the appointee/ Respondent No.3 herein be taken on record and entertained and accepted as Diploma in Electrician trade, as has been prescribed in the advertisement notice. In these

circumstances, we are of the considered view that this issue of the certificate of the Respondent No.3 stands settled long time before by the Court with the declaration that the said certificates produced by the Petitioners therein, as is possessed by Respondent No.3 herein, too, amounts to Diploma in Electrician Trade, which declaration we reiterate here in this Judgment and, therefore, nothing more remains to be decided by the Court in this regard.

11. The next point raised by the learned Senior Counsel appearing for the Petitioner is that the 20 points awarded by the Respondent-High Court to Respondent No.3 for having 10 years' experience as Electrician is unjustified, inasmuch as Respondent No.3 has completed the Diploma on 30th of November, 2016 and the advertisement notice was issued on 18th of September, 2020, therefore, Respondent No.3, in view of the criteria fixed for making selection, was entitled to only 06 points for having only three years' experience to his credit after the Diploma. We are unable to accept this submission of the learned Senior Counsel in view of the fact that, as per the mandate of the advertisement notice dated 18th of September, 2020 and the criteria fixed for making selection, notified in terms of notification dated 20th of February, 2021, there appears to be no connection between the date of qualification of the Diploma Course in the relevant trade and the experience gained by the concerned candidate. The experience could have been gained by the concerned candidate (Respondent No.3 herein) even before obtaining the Diploma course in the relevant skill when there is no mention of the fact, either in the advertisement notice or in the criteria notified for making selection, that the said experience necessarily ought to have been gained by the concerned candidate only after completion of the Diploma course. It is pertinent to note here that the Electrician is a trade / skill in which experience can easily be gained with or without having obtained a Diploma in the said trade. Not only this, the Respondent-High Court has taken a specific stand that Respondent No.3, at the time of submission of his testimonials for verification before the concerned authorities, had produced the experience certificate which revealed that he had worked as an Electrician from 12th of January, 2004 to 20th of December, 2016 and, therefore, as per the fixed criteria, this experience of more than 10 years made Respondent No.3 entitled to 20 points. The criteria fixed by the Respondent-High Court for making

selection to the post in question, unequivocally, earmarked **‘20 points for experience upto a maximum of 10 years with allocation of 02 points for each year of experience’** and does not, in any manner, connect it with either the basic qualification or the Diploma course. We are of the considered opinion that the conscious omission of the words in the criterion whether the experience should be before or after the Diploma course should support the view that the experience gained before obtaining the Diploma should count and should be sufficient and need not be after completion of the Diploma course. It is pertinent to note here that during the course of arguments, the learned Counsel for Respondent No.3 specifically pleaded before us that Respondent No.3 has not only been working as an Electrician in various Government Institutions, but also in the High Court of Jammu and Kashmir, Srinagar wing as gets reflected in communication dated 24th of September, 2021 issued by the learned Registrar Judicial.

12. Now, let us also test the aforesaid issue on the touchstone of the law governing the subject. In this behalf, it will be profitable to reproduce Paragraph Nos. 19, 20 and 24 of the law laid down by the Supreme Court in case titled **Anil Kumar Gupta v. Municipal Corporation of Delhi, AIR 2000 SC 659**, hereinbelow, *verbatim*:

“19. We may point out that in the present case, the relevant provisions applicable and the notification dated 30-6-1989 inviting applications refer to essential qualification as (i) Degree and (ii) 2 years professional experience. As stated earlier, experience up to 2 years is the minimum and those above 2 years, get ½ marks each year’s experience ranging between 3 to 12 years, the maximum marks being 5 for experience.

20. We may at the outset state that the provision regarding experience speaks only of ‘professional experience’ for two years and does not, in any manner, connect it with the degree qualification. In our view, the case on hand is similar to *Subhash v. State of Maharashtra, 1995 (3) SCC 332*, where, while considering Rule 3(e) of the relevant Recruitment Rules, namely, the Maharashtra Motor Vehicles Department (Recruitment) Rules, 1991, this Court pointed out that the Rule 3(e) which required one year experience in registered Automobile Workshop did not make any difference between acquisition of such experience prior or after the acquisition of the basic qualification.

21. ...

22. ...

23. ...

24. Therefore, on the language of the notification dated 30-6-1989, we are of the view that the 2 years professional experience need not entirely be experience gained after obtaining the degree.”

13. This Court, too, in a recent Judgment rendered in **LPA No. 91/2019** titled **Insha Sami Baba v. State of Jammu and Kashmir & Ors.**, decided on 9th of May, 2022, of which one of us (Magrey-J) is the author, had the occasion to deal with a similar issue wherein the Writ Petition filed by the Petitioner therein, being SWP No. 711/2017, was dismissed by the learned Single Judge on the ground that the experience, as required by the relevant advertisement notice, ought to have been acquired by the Petitioner therein after the acquisition of the basic qualification. However, this Court, while applying the mandate of the aforesaid Judgment rendered by the Supreme Court, did not find favour with the view taken by the learned Single Judge and set aside the Judgment impugned therein on the following terms:

“.....

08. Viewed in the context of what has been said and done above, we are of the considered opinion that the view of the learned Single Judge in upholding the rejection of the candidature of the Appellant by the selection authority on the ground of experience acquired prior to the acquisition of the basic qualification cannot be sustained. That being so, we allow this appeal and set aside the impugned Judgment passed by the learned Single Judge. Consequently, the Writ Petition filed by the Appellant is allowed and, by a ‘Writ of Certiorari’, the impugned notification No. SIMS:302-1318/Dia.Edu/2015-1036-37 dated 14th of April, 2017 to the extent of the Appellant/ Writ Petitioner is quashed. The Appellant is declared as eligible for the post of Diabetic Educator advertised vide Notice No. 01 of 2015 dated 8th of January, 2015. The official Respondents are directed to consider the case of the Appellant for the said post in tune with the merit position obtained by her in the selection process.”

14. Applying the ratio of the law laid down above to the instant case, the irrefutable conclusion that we arrive at is that, unless and until the advertisement notice or the selection criteria specifically mentions that the

experience gained should be after Diploma course, it cannot be presumed that the same is intended to be acquired only after completion of the Diploma course. In that view of the matter, the contention of the learned Senior Counsel for the Petitioner that the experience ought to have been gained only after acquisition of the Diploma course, in absence of any such specific provision in the advertisement notice or in the selection criteria, cannot be sustained.

15. Viewed in the context of what has been said and discussed hereinabove, we do not find any merit in this Petition which is, accordingly, **dismissed** along with the connected CMs. Interim direction(s), if any subsisting as on date, shall stand vacated.

16. No order as to costs.

(Mohd. Akram Chowdhary)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR

August 26th, 2022

"TAHIR"

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