

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

WP(C) No. 2567/2021
CM No. 2943/2022

Reserved on 07.07.2022.
Pronounced on 14.07.2022.

Suhail Ahmad Wani

..... petitioner (s)

Through :- Mr. Nisar Ahmed Advocate

V/s

SKIMS Medical College Hospital and ors

.....Respondent(s)

Through :- Mr. M.A.Chashoo AAG
Mr. Jehangir Iqbal Ganai
Sr. Advocate with
Mr. Muzaffar Nabi Lone Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1 Impugned in this petition is a revised/updated seniority list of non-Gazetted staff of SKIMS Medical College-Hospital, Bemina, Srinagar issued vide order No. 80 SKIMS MC of 2021 dated 02.03.2021 to the extent it shows respondent No.4 senior to the petitioner in the cadre of Jr. Stenographers. The impugned seniority list is assailed by the petitioner primarily on the ground that as per the information disclosed by respondent Nos. 1 to 3 ['the official respondents'], the petitioner and respondent No.4 were having same merit in the selection of Jr. Stenographers conducted by respondent No.1 pursuant to an Advertisement Notice No. 04.2014 dated 29.12.2014 and in the absence of any statutory rules or executive instructions governing the breaking of tie, the official respondents should have shown the petitioner senior to respondent No.4 being older in age. It is submitted by Nisar Ahmed, learned counsel appearing for the petitioner, that, in the instant case, the aforesaid criterion was not followed and the petitioner was arbitrarily

shown at S.No.2 in the select list of Jr. Stenographers, whereas, respondent No.4 was placed at S.No.1. This is how respondent No.4 came to be indicated at S.No.1 and the petitioner at S.No.2 in the impugned seniority list of Jr. Stenographers.

2 *Per contra*, the stand of the official respondents is that, it is true that, in the selection process, amongst others, in the cadre of Jr. Stenographers, the petitioner and respondent No.4 were tied at the merit points '58' Respondent No.4 got 26.8 points in the type test and 31.2 points in the shorthand test. Similarly, the petitioner got 24.4 points in the type test and 33.6 points in the shorthand test. In this way, both the petitioner and respondent No.4 were awarded 58 points each. There was, thus, tie between the two. It is, however, the submission of the official respondents that in the absence of any statutory prescription or executive instructions governing the matter, the tie was resolved on the basis of a past practice which was applied even in the instant selection in the case of Jr. Assistants. Accordingly, having regard to the merit of the petitioner and respondent No.4 in the Graduation, the tie was broken. The respondent No.4 having higher percentage in the Graduation was placed at S.No.1 of the seniority list, whereas, the petitioner with lesser percentage was placed at S.No.2. The seniority list too was prepared accordingly. It is, thus, urged that the petition filed by the petitioner, which is devoid of any merit, may be dismissed as such.

3 Having heard learned counsel for the parties and perused the material on record, I am of the view that the criteria adopted by the official respondents to break the tie i.e the percentage of marks in the Graduation cannot be said to be irrational or arbitrary.

4 It is true that in the selection process that was embarked upon by the official respondents, in terms of Advertisement notice dated 29.12.2014

(supra) did not provide for resolving such situation where two selected candidates would obtain same merit in the selection. It is also not disputed that the official respondents have not issued any statutory rules or executive instructions to take care of this contingency that may happen in the selection to various posts. As a matter of fact, in response to the applications moved by the petitioner under RTI Act, the official respondents have not been able to provide any cogent explanation as to how the tie between the petitioner and respondent No.4 was broken and as to how respondent No.4, who had obtained equal points with the petitioner in the selection process was shown at S.No.1.

5 Mr. Jehangir Iqbal Ganai, learned Senior Counsel, appearing for respondent No.4 drew attention of this Court to Annexure R-1 appended with the objections filed on behalf of respondent No.4 and submits that in the matter of selection, for the posts of Jr. Assistant, made pursuant to the same advertisement notice i.e Notice 04/2014 dated 29.12.2014, there was tie between the candidates figuring at S.No.5 and 6, namely Firdous Ahmed Shah and Suhail Ahmed Wani. Both the candidates had obtained 86.67 points. The Selection Committee resolved the tie by having reference to the percentage of marks obtained in the Graduation. Firdous Ahmed Shah with percentage of 52.5 in the Graduation as against 49.55% obtained by Suhail Ahmed Wani was shown at S.No.5 ahead of Suhail Ahmad Wani, who was shown at S.No.6 in the select list. Learned Senior Counsel, therefore, argues that, this practice which is prevalent in the SKIMS, was also followed in the case of Jr. Stenographers. He, however, fairly admits that nothing of this sort is indicated in the minutes of Selection Committee.

6 In the aforesaid admitted facts and circumstances of the case, the issue that begs determination in this case is two fold: (i) whether, in the absence of statutory rules or the executive instructions issued by the competent

authority to break the tie between the two or more selected candidates for a particular post, the selection committee is competent to adopt its own yardstick or criterion in consonance with Article 14 and Article 16 of the Constitution of India, and (ii) whether, in the absence of any indication in the selection process as to the criteria adopted by the selection committee for breaking the tie between two or more candidates, who have obtained equal marks in the selection, the placement of such candidates in the select list can be justified on the basis of past practice and on the analogy of the criterion adopted for other posts in the same selection process. The answer to these questions is not far to seek. Ordinarily, the competent authority must indicate the criterion to be followed in such contingency where two or more candidates are tied on particular merit points in the selection. Such prescription could be either statutory or made by way of executive instructions. In the absence of such prescription, the selection committee is well within its powers to formulate a fair and rational criteria in consonance with Article 14 of the constitution and apply the same to break the tie wherever required. However, in the cases like the one on hand, where there is neither any statutory prescription, nor any executive instructions laying down any criteria or guidelines to be followed to break the tie, and the record of the selection committee also does not indicate applicability of any such criteria, the only course that is left with a Court adjudicating such matter is to look to the fairness and rationality of the selection process as also the criteria that ought to have been possibly applied to break the tie.

7 In the instant case, undoubtedly, in the matter of selection to the posts of Jr. Assistant made pursuant to the same Advertisement notice, the selection committee has broken the tie by having regard to the merit of the candidates in the Graduation. If that criteria is applied to the instant case, there

is no doubt that respondent No.4 with higher percentage in the Graduation would steal march over the petitioner. This exactly has been done by the official respondents, though the selection committee has omitted to make a specific mention in this regard. The same selection committee, while breaking the tie in the case of Jr. Assistants, has indicated the criteria applied by them in so many words. Having noticed that, the next question that comes up for determination is whether the criteria claimed to have been applied by the official respondents to break the tie in the instant case is fair and rational and free from vice of arbitrariness. In this regard, a reference is invited to the advertisement notice wherein the qualification prescribed for the post of Jr. Stenographer is “**Graduation** *having minimum speed of 65 and 35 words in short hand and typewriting respectively and six months certificate course in computer application from a recognized institution*”. In the type and shorthand test, the petitioner and respondent No.4 have faired equally well and the total points obtained by them are 58 each. In such situation, relying upon the other essential qualification i.e Graduation for the purpose of breaking the tie is the most rational thing to do. Respondent No.4 with higher percentage in Graduation has been preferred over the petitioner in the matter of selection and, therefore, placed ahead of him in the select list. The qualification of Graduation is amongst the prescribed qualifications for the post in question and, therefore, relevant for determining the *inter se* merit of the two candidates who are tied in the selection process. This Court is not sure as to whether the official respondents have been following the same practice in the past as nothing of the sort is brought to the notice of this Court to demonstrate such past practice.

8 The plea of the petitioners that tie should have been broken on the basis of age is premised on the similar practice being followed by the J&K Service Selection Board for breaking the tie in the selections conducted by it. I

am not disputing even for a while that, had the official respondents broken the tie with reference to the age, nothing wrong or foul could have been found with their action. Under some circumstances, where everything is equal, a person older in age can be preferred for breaking the tie in the selection to a post in civil service. However, having regard to the nature of job a Jr. stenographer is required to perform, this Court is of the considered view that excellence in academics, apart from having proficiency in type and short hand is of paramount importance. Viewed thus, preferring a candidate having better merit in the academics, cannot, by any stretch of reasoning, be said to be unfair irrational or arbitrary.

9 Mr. Ganai, learned Senior Counsel has raised objection to the maintainability of the writ petition on the ground of delay and laches. However, without going into the said issue, this Court is inclined to dismiss this petition and the same is, accordingly, **dismissed** on the ground that this Court does not find any unfairness or arbitrariness in the matter of placing respondent No.4 at No.1 and the petitioner at S.No.2 in the select list. Consequently, the select list drawn by the official respondents also does not suffer from any vice of arbitrariness. Respondent No.4 has been working as senior to the petitioner since the year 2015 and, therefore, the petitioner should feel contented and not unnecessarily raise issue which otherwise is not tenable in law.

Interim directions, if any, shall stand vacated.

(SANJEEV KUMAR)
JUDGE

Srinagar
14.07.2022
Sanjeev

Whether order is speaking: Yes

Whether order is reportable: Yes