

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

Reserved on: 31.08.2023  
Pronounced on: 08.09.2023

**SWP No.1329/2015**

**MAQSOOD AHMAD SHOOSHA ...PETITIONER(S)**

*Through: - Mr. Altaf Mehraj, Advocate.*

Vs.

**STATE OF J&K & OTHERS ...RESPONDENT(S)**

*Through: - Mr. Faheem Nisar Shah, GA-for R1 to R4.  
Mr. S. A. Makroo, Sr. Adv. with  
Mr. Basharat, Advocate-for R5 to R7.  
None for R8 to R11.*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1) The petitioner has challenged selection of private respondents No.5 to 8 as Data Entry Operators made in terms of the order issued by respondent No.3 vide endorsement No.LA/1569-71/2005 dated 11<sup>th</sup> July, 2005. A direction has also been sought by the petitioner upon the official respondents to consider him for the post of Data Entry Operator and to grant him all the promotional and monetary benefits.

2) Brief facts leading to the filing of this writ petition are that an advertisement notice dated 5<sup>th</sup> May, 2005, came to be issued by respondent No.3 whereby, inter alia, applications for filling up four posts of Data Entry Operators were invited. The minimum prescribed qualification for the said post was Graduation from any recognised

University with one year Diploma in Computer Application Software/office automation from any recognised institute. It seems that the petitioner as well as private respondents No.5 to 8 responded to the said advertisement notice. The petitioner came to know that respondents No.2 to 4 have issued the selection and appointment list but he has not been selected/appointed. He filed a writ petition bearing SWP No.878/2005 seeking a direction upon the official respondents to disclose the selection list. After getting copy of the selection list, it came to the notice of the petitioner that he has not been selected but instead respondents No.5 to 8 have been selected. The aforesaid writ petition was withdrawn by the petitioner whereafter he challenged the selection of respondents No.5 to 8 by way of another writ petition bearing SWP No.401/2006. The ground urged by the petitioner in the said writ petition was that the selected candidates i.e., private respondents No. 5 to 8 herein are ineligible and inferior in merit to him.

3) During pendency of the aforesaid writ petition, a statement was made by his counsel on 21.07.2012, thereby requesting the Court that the official respondents should be directed to consider the petitioner against one of the available posts. The Court directed the learned counsel for the official respondents to seek instructions within four weeks. It seems that the official respondents No.2 to 4 offered the post of Orderly to the petitioner and appointed him as such in terms of order dated 18.04.2012. An application was made by the petitioner for withdrawal of the aforesaid writ petition on the ground that the official respondents

have assured that his grievances will be redressed and on 20<sup>th</sup> April, 2012, the writ petition came to be dismissed as withdrawn with liberty to file fresh on cause available.

4) After having served as an Orderly for about three years, the petitioner has filed the instant writ petition challenging the selection of private respondents again on the ground that the said respondents are ineligible, inasmuch as the Diploma in Computer Applications undergone by private respondents is from unrecognized institutes and in some cases, the certificates indicate that the concerned candidates have not undergone the requisite one year Diploma course. It has been contended that the petitioner has undergone Diploma course in Computer Applications from Kawa Institute of Management which is affiliated to Makhanlal Chaturvedi Rashtriya Patrakarita Vishwavidyalaya Bhopal, a university established by Madhya Pradesh Vidhan Sabha Act No.15 of 1990. Therefore, the contention of the official respondents that the petitioner has not obtained Diploma in Computer Applications from a recognized institute is without any merit.

5) The official respondents as well as private respondents have taken a preliminary objection to the maintainability of the writ petition on the ground that once the petitioner had accepted the post of Orderly on the basis of the settlement arrived at between him and the official respondents during pendency of earlier round of litigation between the parties, it is not open to him to again agitate the same grievance by way of present writ petition. They have also contended that the instant writ

petition is barred by delay and laches, inasmuch as the petitioner has thrown challenge to the selection made in the year 2005 by way of instant writ petition which has been filed in the year 2015 i.e., after more than ten years.

6) The private respondents along with their reply have placed on record the documents in support of their contention that they have obtained Diploma in Computer Applications from recognized institutes and they have undergone the said course for the requisite period of one year. It has also been contended that the petitioner has undergone Diploma course in Computer Applications in an unrecognized institute, as such, he was ineligible for the post of Data Entry Operator. The private respondents have also contended that even the appointment of the petitioner as Orderly is *dehors* the rules and is liable to be quashed.

7) I have heard learned counsel for parties and perused the record of the case.

8) The first ground that has been urged by the respondents as regards the maintainability of the writ petition is that the petitioner, having settled his claim against the official respondents in previous round of litigation, cannot re-agitate the same grievance by way of instant writ petition. It has been contended that the instant writ petition is barred by principles of constructive *res judicata*.

9) Learned counsel for the petitioner, on the other hand, has contended that the official respondents had promised the petitioner to

adjust him against the post of Data Entry Operator and on this promise, he withdrew the earlier writ petition, but he was given appointment against the post of Orderly, which is not commensurate to his educational qualification. It has been submitted that once the official respondents went back on their promise, the petitioner was well within his rights to re-agitate the issue by filing the instant writ petition.

**10)** If we have a look at the record of the case, during pendency of the earlier writ petition bearing SWP No.401/2006 filed by the petitioner whereby he had thrown challenge to the selection of private respondents, on 21.07.2001 the arguments in the case were heard-in-part and at that stage counsel for the petitioner informed the Court that some posts are lying vacant and the respondents may be directed to consider the petitioner against one of the available posts. The counsel for the respondents sought time to have instructions in the matter. It also appears from the record that an application was made by the petitioner before the Court seeking withdrawal of the writ petition on the ground that the official respondents have assured him that his grievances would be redressed. The said application came up for consideration before the Court on 20<sup>th</sup> April, 2012 and the writ petition was dismissed as withdrawn with liberty to file fresh on cause available. Prior to this order, on 18.09.2012, the official respondents issued an order, whereby the petitioner was appointed as an Orderly.

**11)** The petitioner joined the aforesaid post without any protest or demur and continued to serve as an Orderly for more than three years

until one fine morning it dawned upon him that he should challenge the selection of private respondents all over again and he filed the instant writ petition before this Court. The conduct of the petitioner, therefore, clearly shows that he had accepted the offer of the official respondents without any demur and acted upon the same. He cannot now resile from the settlement which he made with the official respondents and turn around to challenge the selection of private respondents once again, that too after ten years of issuance of select list and after serving as an Orderly for more than three years. If at all the petitioner desired to turn down the offer of the official respondents and to challenge the selection of private respondents, he should have quit the post of Orderly within a reasonable period of joining and thereafter challenged the selection. The petitioner cannot be allowed to have the cake and eat it too.

**12)** The contention of the petitioner that he had withdrawn the writ petition on the assurance of the official respondents that he would be adjusted against the post of Data Entry Operator, which has turned out to be a deceit on the part of the official respondents, is without any merit for the reason that nowhere in the Court proceedings, it has been noted that the official respondents offered the post of Data Entry Operator to the petitioner. The counsel for the petitioner had only made a request that the petitioner may be adjusted on any available post, meaning thereby any post that was available at the relevant time with the official respondents. The contention of the petitioner in this regard is without any merit.

**13)** Even otherwise, it is not open to a litigant to challenge the selection after lapse of long period of time. The Supreme Court in the case of **State of Madhya Pradesh and another vs. Bhailal Bhai & Ors, AIR 1964 SC 1006**, has held that the maximum period fixed for filing a civil suit in a Civil Court must also be read as a reasonable period for filing the writ petition. Para (21) of the said judgment in this regard is relevant to the context and the same is reproduced as under:

*Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.*

**14)** The aforesaid view has been followed by the Supreme Court in the cases of **State of Jharkhand and ors. vs. K. N. Farms and Industries Pvt. Ltd., (2012) 5 SCC 297, R&M Trust vs. Koramangala Residents Vigilance Group and ors., (2005) 1 SCC 91, and Leelawanti and Ors. Vs. State of Haryana and Ors., 2012) 1 SCC 66**. Thus, even if it is assumed that the cause of action for filing the instant writ petition accrued to the petitioner when he was offered appointment against the post of Orderly instead of Data Entry Operator, still then he could not have filed the writ petition after the expiry of more than three years. The delay in filing the writ petition is unreasonable and unexplained.

**15)** Learned counsel for the petitioner has submitted that the petitioner had made a representation to the official respondents to consider his case

for appointment as a Data Entry Operator after joining the post of Orderly but the same was not considered by them, therefore, there is a reasonable explanation for the delay caused in filing the writ petition.

**16)** The question whether representations would extend the period of limitation has been considered by a Seven Judge Bench of the Supreme Court in the case of **S.S. Rathore vs State Of Madhya Pradesh**, AIR 1990 SC 10, wherein it has been clarified that filing of memorial or representation are not to be taken into consideration in the matter of reckoning the period of limitation. Thus, non-statutory representations would not extend the period of limitation. Therefore, merely because the petitioner had made a representation, a copy whereof has been placed on record and which bears no endorsement/receipt or the official respondents, cannot offer a ground to the petitioner to explain the delay in filing the writ petition. On this ground also, the writ petition is liable to be dismissed.

**17)** Coming to the merits of the case, if we have a look at the certificate regarding Diploma in Computer Applications pertaining to the petitioner, it shows that he has studied at Study Centre Kawa Institute, Budgam and the said institute is affiliated to Makhanlal Chaturvedi Rashtriya Patrakarita Vishwavidyalaya Bhopal. The question which is required to be determined is as to whether qualification of Diploma in Computer Applications acquired by the petitioner from Makhanlal Chaturvedi Rashtriya Patrakarita Vishwavidyalaya Bhopal through



Study Centre Kawa Institute, Budgam, is a valid qualification for the purpose of employment in the State.

**18)** The Supreme Court has, in the case of **Prof. Yashpal & another vs State of Chhattisgarh & others**, (2005) 5 SCC 420, observed that mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It has been held that the right to confer degree has been given under Section 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees

**19)** Relying upon the aforesaid judgment of the Supreme Court, this Court has, in the case of **Sonia Langeh vs. State of J&K & others**, 2018 Legal Eagle (J&K) 580, while answering a similar question as has arisen in the instant case, observed as under:

*6. Having regard to the stand taken by the UGC on the basis of the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 and the law laid down by the Supreme Court in the case of Prof. Yash Pal (supra), there is no manner of doubt that any degree issued by a private University through its study centre or off campus centres established without prior approval of the UGC is not a valid degree and cannot be used for any purpose including for the purpose of securing employment in government service. The plea of the learned counsel for the petitioner that Kawa Institute of Management and Technology, Jammu was only a facilitator and not a study*

*centre cannot be accepted for the simple reason that the marks certificate issued by the Makhan Lal Chaturvedi Rashtriya Patrakarita Vishwavidyala, Bhopal itself specifically mentioned that the degree has been given to the petitioner as a regular student of study centre (9083) i.e., Kawa Institute of Management & Technology, Jammu.*

*7. In view of the law declared by the Supreme Court in the case of Prof. Yash Pal (supra) and the express provisions of the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 qualification of BCA possessed by the petitioner cannot be held to be a valid qualification. The aforesaid conclusion is further fortified by the provisions of Government Order No.252-HE of 2012 dated 30.05.2012 issued by the Government of J&K in the Higher Education Department. Recognizing the position of law, as enunciated by the Supreme Court in the case of Prof. Yash Pal (supra), in paragraph No.a(iii) of the aforesaid government order, it has been provided as under:-*

*"the degree obtained through distance mode from off-campus which have been established by the State Universities beyond their territorial jurisdiction shall not be recognized;"*

**20)** From the above analysis of the law on the subject, it is clear that any degree issued by a private university through study centre or off-campus centre established without prior approval of the UGC is not a valid degree and the same cannot be used for the purpose of acquiring employment in Government service. Since the petitioner, admittedly, has undergone Diploma course in Computer Application from Kawa Study Centre, Budgam, and not from a recognized institute, as such, the official

respondents have rightly rejected his candidature on the basis of the opinion expressed by Jammu University.

**21)** The petitioner himself being not eligible for selection to the post of Data Entry Operator cannot call into question the selection of private respondents. Even otherwise the certificates placed on record by the private respondents along with their reply clearly indicates that they have undergone Diploma courses for the requisite period from the recognized institutes. Therefore, the contention of the petitioner that the private respondents did not possess the requisite qualification from a recognized institute is without any merit.

**22)** For the foregoing reasons, I do not find any merit in this writ petition. The same is dismissed accordingly. Interim direction, if any, shall stand vacated.

**(Sanjay Dhar)**  
**Judge**

**SRINAGAR**  
**08.09.2023**  
***"Bhat Altaf, PS"***

*Whether the order is speaking:* **Yes**  
*Whether the order is reportable:* **Yes**