

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2215/2018

HIGH COURT OF JAMMU & KASHMIR APPELLANT(S)

VERSUS

MANOHAR LAL & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2628/2018
CIVIL APPEAL NO. 2629/2018

O R D E R

C.A. NO. 2215/2018

Notification No. 501 was issued by the Jammu & Kashmir High Court advertising 13 posts for appointment as District and Sessions Judge reserving one post for the SC category on 01.08.2011. The selection process was grounded on Rule 8 of the Jammu & Kashmir Higher Judicial Service Rules, 2009, which reads as under:

"8. Competitive examination for direct recruitment.

(i) The competitive examination for appointment of District Judges by direct recruitment shall consist of :-

(a) A written comprising two hours' duration each. Each paper shall carry 90 marks. The syllabus for these papers shall be prescribed and notified by the High Court.

(b) Vica-voce examination shall carry 20 marks.

(ii) Only the, candidates who obtain 60% or more marks in the written examination shall be called for viva-voce test in the ratio of three candidates for one available vacancy;

Provided that Schedule Caste/Schedule Tribe candidates who obtain 50% or more marks in the written examination shall be eligible for viva-voce examination.

(iii) Selection of the candidates shall be made on the basis of cumulative grade value obtained in the written and viva-voce examination."

The results of the selection were declared on 14.08.2012 and one Pawan Kumar Kundal-Respondent No. 3 herein was declared as the sole successful SC candidate. Mr. Manohar Lal, respondent No. 1 herein made a RTI application on 21.08.2012 seeking information regarding the marks awarded to himself and the other/selected SC candidate, i.e, Pawan Kumar Kundal, respondent No. 3. The scrutiny in pursuance to the RTI application produced a peculiar fact which worked for the benefit of respondent No. 3 as he had answered both parts of an alternative question and had been assigned marks for both the answers. Thus, a question to which 10 maximum marks were assigned, he had obtained 17 marks. This was found to be a case of double marking. Respondent No. 1 thus made a representation to the Governor of J & K and Chief

Justice J & K High Court on 23.09.2012 in this behalf. In pursuance of the representation a Committee constituted for the said purpose found merit in what was being urged and reduced the marks of Pawan Kundal by taking the higher of the 2 marks assigned to the alternative question. The result was that his marks were reduced from 91 to 84. A Committee consequently recommended the withdrawal of selection of respondent No. 3 against the SC category on 10.11.2012 and simultaneously recommended the selection of respondent No.1 against the SC category. However, this recommendation was withdrawn the very next day.

Respondent No. 1 aggrieved by the action taken on 11.11.2012 sought quashing of those minutes qua that aspect by filing SWP 1621/2013 before the J & K High Court on 26.07.2013. It is suffice to note that another candidate Rakesh Kumar Chargoitra filed SLP (Civil) No. 9883 of 2015 on 09.03.2015 (now C.A. No. 2628/2018), being an unsuccessful candidate, against an interim order passed by the High Court adjourning the writ petition(s) challenging the selection process. The petition was to be listed after 8 weeks to await the decision of this Court in writ petition (Civil) No. 373/2012 filed by Zubair Ahmed Mir & Ors. and writ petition (Civil) No. 255/2013 filed by Pawan

Kundal.

The writ petition filed by respondent No. 1 was allowed by the impugned judgment dated 14.03.2017 of the Division Bench of the J & K High Court quashing the resolution dated 11.11.2012 and consequently directing the High Court to recommend the case of respondent No. 1 for appointment to the post of District and Sessions Judge. This order has been assailed by the J & K High Court in the present appeal. The contempt proceedings filed before the High Court in the meantime were stayed and while the present appeal was earlier tagged with Writ Petition (Civil) No. 373/2012 filed by Zubair Ahmed and Ors. And connected matter, as referred to aforesaid, the same were de-tagged on 12.02.2018. This is how the matter has come up before this Court.

We must note at the inception that respondent No. 1 is stated to be now of 57 years of age which itself makes it extremely difficult for us in any case to issue any direction for his appointment taking into consideration the limited tenure left. However, learned counsel for respondent No. 1 endeavoured to persuade us that respondent No. 1 cannot be faulted on this account and in view of his ambitions, must be entitled to enjoy the fruits of success of what he has been pursuing for a

considerable period of time. We thus examined the case on merits.

The impugned judgment of the High Court is predicated on a reasoning that the 50% benchmark for SC candidates was only provided for the written examination and not for the viva-voce. The respondent No. 1 having crossed the threshold of the written examination by obtaining 50% marks, the assignment of only 4 out of 20 marks in the viva-voce would not come in his way. An illustration was given in another open merit category candidate who had secured 4 marks in interview but had been selected.

On the other hand learned counsel for the appellant/J & K High Court seeks to contend that the relevant portion of the decision of the Committee to justify the action taken by the High Court which reads as under:

"Perusal of Rule 8(iii) of the Jammu and Kashmir Higher Judicial Service Rule, 2009 indicates that selection of candidates is to be made on the basis of cumulative grade value obtained in the Written Examination and Viva-Voce.

Sh. Manohar Lal, who, after recounting of the marks obtained by him in Paper-I and Paper-II was found to have obtained 51.5 marks in Paper-1 and 40 marks in Paper-II, i.e., 91 1/2 in both the papers. Four marks were allowed to him by the Selection Committee in Viva-Voce. The total marks secured by him in Written Examination and Viva-Voce would, therefore, come to 95.5. Therefore,

although he retains his eligibility for participation in the interview yet he may not be entitled for selection and appointment as District Judge because of his having failed to secure the cumulative grade value in Written and Viva-Voce examination in terms of Rule 8(III) of the Rules.

The Committee, therefore, modify its earlier recommendations by deleting therefrom the recommendations made for selection and appointment of Sh. Manohar Lal against the vacancy reserved for Schedule Caste candidates."

It is thus his submission that the decision was not taken on the basis that the respondent No. 1 did not obtain 50% of the marks in the viva-voce (that being not the Rule) but arose from the consequences of his written examination marks being more than 50%. The same being added to his viva-voce marks which resulted in a factual scenario that his total marks out of 200 were less than 50%. In this behalf he submits that the justification to the same is clause (iii) of Rule 8 which provides that a selection of a candidate is to be made on the basis of cumulative grade value obtained in the written and viva-voce examination and the Committee in its wisdom felt that even though the qualified marks described in the sub-Rule (ii) of Rule 8 provided a benchmark of 50% for SC category in the written examination, a holistic reading of sub- Rule (ii) and (iii) of Rule 8 will

result in a dual requirement that there must be 50% marks in the written examination and 50% marks in the aggregate though not requiring 50% marks each in the written examination and the viva-voce. This is the rationale which is stated to have prevailed while selecting the open category candidate who had secured only 4 marks in the interview but had sufficient marks in the written examination so that the cumulative marks crossed the benchmark of 60% for an open candidate and that is why he was so appointed.

We find force in the contention of the learned counsel for the appellant/J& K High Court, though learned counsel for respondent No. 1 submits that this arises out of the innovativeness of the submission of the learned counsel for the appellant rather than the stand in the grounds in the present appeal. We cannot fully agree with the submission of learned counsel for respondent No. 1. It was the decision of the Committee which also seems to be predicated on the reasoning of 50% marks in the cumulative to be taken and not because respondent No. 1 did not have 50% marks in the viva-voce.

Thus even on merits we are not able to persuade ourselves, apart from the reservation we have expressed in the beginning of respondent No.

1 having almost attained 57 years of age.

The result of the aforesaid is that the impugned judgment is set aside and the decision of the Committee taken on 11.11.2012 is sustained.

The appeal is, accordingly, allowed, leaving the parties to bear their own costs.

CIVIL APPEAL NO. 2628/2018

The grievance of the appellant is that when he approached this Court by filing a writ petition, by order dated 15.10.2012, that writ petition was permitted to be withdrawn with liberty to approach the High Court under Article 226 of the Constitution of India. The order also states that if such a petition is filed, it will be examined on its own merits and orders passed in accordance with law.

The grievance of the appellant is that when his writ petition and other connected petitions came up before the High Court on 23.02.2015, the same were adjourned awaiting decision of this Court in another Writ Petition (Civil) Nos. 373/2012 and 255/2013. It is thus his submission that the High Court should proceed with the hearing of his matter and that is what was directed on 15.10.2012.

Learned counsel for the respondent High Court points out that those petitions are now listed on

23.03.2022 before another Bench.

We are not inclined to interfere with the impugned order simply adjourning the matter to await the decision in those matters, more so, as the order dated 15.10.2012 is only for withdrawal of the petition of the present appellant. It is for the High Court to take a call on the merits and nothing inhibits the High Court from adjourning the matter to await the decision of this Court in some other petitions pending before this Court.

The appeal is, accordingly, dismissed.

CIVIL APPEAL No. 2629/2018

The appeal filed by the appellant does not survive as the impugned judgment has been set aside in the Civil Appeal No.2215/2018.

The appeal accordingly stands allowed to that extent.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M.M. SUNDRESH]

NEW DELHI,
FEBRUARY 17, 2022.

ITEM NO.103

COURT NO.6

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2628/2018

RAKESH KUMAR CHARGOTRA

Appellant(s)

VERSUS

THE STATE OF JAMMU AND KASHMIR & ORS.

Respondent(s)

WITH

C.A. No. 2629/2018 (XVI-A)

(FOR PERMISSION TO FILE SYNOPSIS AND LIST OF DATES ON IA 1/2017)

C.A. No. 2215/2018 (XVI-A)

(IA No. 54877/2018 - EX-PARTE STAY)

Date : 17-02-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)/ Mr. Gaurav Pachnanda, Sr. Adv.
Respondent(s) Mr. Sahil Tagotra, AOR
 Ms. Avni Sharma, Adv.

For Appellant(s) Ms. Shashi Kiran, AOR

 Mr. Anil Kumar, Adv.
 Mr. Umang Tripathi, Adv.
 Mr. Kamal Mohan Gupta, AOR

For Respondent(s) Mr. Sunil Fernandes, AOR
 Ms. Nupur Kumar, Adv.
 Mr. Prastut Dalvi, Adv.

 Ms. Taruna Ardhendumauli Prasad, AOR

 Mr. P.D. Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal Nos. 2215/2018 and 2629/2018

are allowed and Civil Appeal No. 2628/2018 is dismissed in terms of the signed order.

Pending applications stand disposed of.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

[Signed order is placed on the file]