

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) No. 26/2023

Reserved on 23.02.2023
Pronounced on 24.02.2023

Union Territory of JK and another

.... Petitioner(s)

Through: Ms Monika Kohli, Sr. AAG

v.

Rohit Bhagat

... Respondent(s)

Through: Mr Ravi Abrol, Advocate

CORAM:

Hon'ble Mr Justice Tashi Rabstan, Judge
Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

JUDGMENT

(Per Moksha, J)

01/- The petitioners are aggrieved of and are challenging the judgment dated 10.02.2022, hereinafter for short to be referred as 'impugned order' passed by the Central Administrative Tribunal, Jammu Bench, Jammu, for short, Tribunal, in case titled *Rohit Bhagat v. State & others* in TA No. 61/55/2020, whereby the Tribunal has allowed the TA and directed the respondents/ petitioners herein to take into consideration the actual marks obtained before the interpolations and appoint the applicant Rohit Bhagat to the post of Prosecution Officer under Schedule Caste quota from the date the private respondents were appointed vide select list dated 30.11.2015 with notional consequential benefits.

BRIEF FACTS

02/- Pursuant to an advertisement dated 23.11.2012 issued by the petitioners for filling up the posts of Prosecuting Officers in the erstwhile prosecution wing of the J&K Police, the respondent, amongst others, is stated to have offered his candidature for the post under SC category. The respondent, thereafter, appeared in the physical and written examination conducted by the petitioners in this behalf.

The respondent was called for the viva-voce as he had secured 61 marks. In the viva-voce the respondent is stated to have secured 17.6 marks, therefore, the respondent obtained 78.6 marks in total while as, the cut-off merit, under said category, was 80.8 marks.

03/- Subsequent thereto, the respondent had filed a writ petition, SWP no. 545/2016, praying for a direction to appoint him as Prosecuting Officer on the ground that there are tampering in his answer scripts. The writ court, while taking note of the Notification No. G.S.R. 257(E) dated 29th April, 2020, read with Notification No. G.S.R. 317 (E) dated 28th May, 2020, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), conferring jurisdiction on the Central Administrative Tribunal, Jammu Bench, transferred the record of the case to the Tribunal.

04/- The Tribunal considered the matter and decided the TA in terms of the impugned order directing the petitioners herein to take into consideration the actual marks obtained before the interpolations and appoint the applicant Rohit Bhagat to the post of Prosecution Officer under Schedule Caste quota from the date the private respondents were appointed vide select list dated 30.11.2015 with notional consequential benefits.

05/- Aggrieved of the impugned order, the petitioners have challenged the same in the instant writ petition *inter alia* on the grounds that the order is contrary to law and facts; the Tribunal did not appreciate the objections, filed in opposition to the T.A. by the petitioners, in its right perspective; the controversy relating to one of the questions in the written text was about the 'Fundamental rights'. The Tribunal has stepped beyond its jurisdiction to make an assessment of the answer script of the respondent which has to be evaluated by the examiner only; the post in question is a gazetted post which is now being filled up by the Jammu and Kashmir Public Service Commission (JK PSC) and the police recruitment board which used

to make appointments against the post in question ceases to exist; all selections/ appointments have to conform to Articles 14 and 16 of the Constitution and any selection/ appointment *de-horse* the recruitment rules is void.

06/- We have heard learned counsel for the parties at length, went through the impugned judgment, examined the material on record and considered the submissions made and perused the record produced by Ms Monika Kohli, Sr. AAG.

07/- The only grievance projected by the respondent before the Tribunal was that he is securing 81.6 marks as per his own calculations but the evaluator has awarded him only 78.6 marks. The belief of the respondent of being entitled to more marks is solely linked with the two entries made by the evaluator on the answer script of the respondent, one is an erased entry that reflects the awarded marks as 07 and another is subsequently written as 04. The question that has been awarded such marks is divided in two parts each carrying 05 marks. The answer script placed before us confirms the stand of the petitioners that genuine marks were awarded to the respondent. The evaluator appears to have wrongly awarded the 07 marks initially and on assessment he awarded 04 marks, three for the one answered by the respondent and one mark for the other part that has only been attempted to be answered.

08/- Even otherwise, it is the sole concern of the evaluator, as an expert of the field, to assess the suitability of the marks so awarded by him in the process of evaluation of answer scripts. The allegation that the marks awarded by the evaluator came to be reduced for *mala-fide* considerations cannot be accepted as the answer scripts do not have the name written over it but is coded; therefore, it is manifestly clear that the assessment exercise has been done by the evaluator on his own only to ensure that the candidate is awarded the fair marks.

09/- The Tribunal, therefore, has erred in law in interfering with the job of the evaluator as it was not open to it to enter into such domain and act as an expert of the field. The law on the point is no more *res integra*. It has consistently been held by the Hon'ble Apex Court that the courts of law should not act as an expert in the matters relating to selection and the job must be left to be done by the experts of the field. The Hon'ble Apex Court in ***Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors.*** [(1984) 4 SCC 27], has held in paragraph 33, as under:-

33. *"Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case"*.

10/- It would also be profitable to refer to the Hon'ble Supreme Court judgment delivered in case titled ***Secy. A. I. Pre/Med/Pre/EE CBSE v. Khushboo Srivastava*** (2014) 14 SCC 523 wherein the practice of the courts to indulge in and substitute its opinion in the matters involving technical expertise has been deprecated.

Paragraph no. 08 of the said judgment, being relevant is taken note of herein:-

“In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the respondent no.1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters.”

11/- In view of above, the writ petition succeeds and is allowed as such. The impugned order dated 10.02.2022 passed by the CAT Bench Jammu in TA No. 61/55/2022 is set aside. The T.A. filed by the respondent is also dismissed being without any merit.

12/- Record produced in the sealed envelope shall be returned by the Bench Secretary of the court to Ms Monika Kohli, Sr. AAG, after resealing the same against a proper receipt.

(Moksha Khajuria Kazmi)
Judge

(Tashi Rabstan)
Judge

Jammu
24.02.2023
Amjad lone, Secretary

Whether approved for reporting: Yes/ No.