

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

WP(c) no. 2294/2023

Reserved on : 05.05.2025
Pronounced on : 23 .05.2025

Mashkoora Hameed, About 30 years
W/o Nissar Ahmad Khan
R/o KawoosaKhalisa, Narbal, Budgam

...Petitioner(s)

Through:-Mr. R. A. Jan, Sr. Adv. with
Ms. HumairaSajad, Advocate

V/s

1. State (now Union Territory) of Jammu and Kashmir
Through Commissioner/Secretary to Government
Civil Secretariat, Jammu/Srinagar.
2. Director, Handicrafts
Jammu/Srinagar
3. Joint Director, Handicrafts
Srinagar
4. Assistant Director,
Handicrafts, Budgam
5. J&K Services Selection Board,
Through its Secretary,
ShekhariBhawan, Jammu/
ZamZam Complex, Srinagar
6. Selection Committee
District Budgam
through its Convener

...Respondent(s)

Through:- Mr.Mohd. Younus Hafiz, Assisting
counsel vice Mr. A.R.Malik, Sr.AAG.
Mr. Bilal Ahmad Malla, Advocate.

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

JUDGMENT

Sanjeev Kumar,J

1. This petition filed by the petitioner under Article 226 of the constitution of India seeks to challenge an order and judgment dated

10th March, 2023 passed by the Central Administrative Tribunal, Srinagar Bench [‘the Tribunal’] in TA No. 4871/2021 titled Mashkoora Hameed vs. State of Jammu and Kashmir and ors. whereby the petition filed by the petitioner seeking *inter alia* the quashment of the constitution of committee for conducting the Practical Test by the respondent vide Order No. 145-SSB of 2018 dated 08.03.2018 has been dismissed.

2. For better appreciation of the grounds of challenge urged by Mr. R.A. Jan, learned Senior Council appearing for the petitioner, it would be desirable to give brief resume of the relevant facts.

3. Vide Advertisement notification no. 03 of 2016 dated 30.06.2016, the Jammu and Kashmir Service Selection Board [‘the SSB’] notified for selection various posts including the posts of Junior Craft Instructor in the trade of Leather, Silverware, wood Carving, Darning and PapierMachie. These posts were available to be filled up in District cadre Budgam of the department of Industries and Commerce. ‘*Matriculation with 10 years experience in the respective craft subject to practical test*’ was the qualification prescribed for the post of Junior craft instructor, Silverware, whereas the qualification prescribed for the post of Junior Craft Instructor, Darning and PapierMachie, as indicated in the Advertisement Notification, was ‘*matriculation and above with 10 years experience in the line and the candidate should be a National awardee subject to the practical test*’.

4. The petitioner applied in the prescribed form under open category against three of the advertised posts viz., Junior Instructor Darning, Junior Instructor PapierMachie and Junior Instructor Silverware. She participated in

the objective type written examination held by the SSB on 15.11.2017. On 08.03.2018, the SSB issued a public notice calling upon the candidates, who were provisionally short listed for the practical test, to appear in the said test to be conducted on 16.03.2018 and 17.3.2018 at the School of Designs at Srinagar. Simultaneously, with the issuance of public notice for conduct of the practical test, the SSB vide its Order No. 145-SSB dated 08.03.2018 constituted a Committee for conducting Practical Test of the short listed candidates for the posts in question. The Committee consisted of a member of the SSB, as convener with Chief Designer, School of Designs, Srinagar and Assistant Director, Handicrafts, Budgam as other two members of the Committee. The petitioner, being aware of the constitution of the Committee, which was put in public domain, participated in Practical Test for the post of Junior Craft Instructor Darning, Junior Instructor PapierMachie and Junior Instructor Silverware. Having found that she had miserably failed in the test conducted by the Committee and feeling dejected by her performance and seeing clear writing on the wall, she chose to challenge the constitution of the Committee by filing writ petition SWP No. 723/2018 before this Court. The writ petition was filed essentially to throw challenge to the office Order No. 145-SSB dated 08.03.2018 whereby the Board had constituted the Committee for holding the Practical Test. The writ petition, on the commencement of the Jammu and Kashmir Re-organisation Act 2019 and constitution of a Bench of Central Administrative Tribunal at Jammu/Srinagar was transferred to the Tribunal where it was registered as TA No. 4781/2021.

5. The TA was contested by the respondents. In the counter affidavit filed by respondent Nos. 1 to 4, a simple stand was taken that the Directorate of Horticulture had referred the vacant posts to the SSB for making selections in accordance with rules, and, therefore, the constitution of the Committee for conducting the Practical Test was solely in the domain of the Board. The respondents Nos.1 to 4 virtually washed off their hands from the controversy raised in the TA. However, the constitution of the Committee was defended before the Tribunal by the SSB by filing a reply affidavit. It was submitted by the SSB that so far as the practical test for the post of Junior Craft Instructor, Silverware, is concerned the petitioner remained absent. She, however, participated in the Practical Test conducted for the posts of Junior Craft Instructor, Darning and Junior Instructor PapierMachie in which she was declared failed having not secured minimum 7 marks out of 20 marks. It was further stand of the SSB that the Committee constituted vide office Order dated 08.03.2018 was constituted in accordance with law and that the constitution thereof cannot be challenged by the petitioner after having participated in the practical test without any objection or demure.

6. Interestingly, when the writ petition was pending before the learned Single Judge, there was an interim order passed on 10.04.2018 staying the selection process against the posts of Junior Craft Instructor, Darning, Junior Instructor PapierMachie and Junior Instructor Silverware advertised vide notification No. 03/2016. During the pendency of the writ petition before the High Court, and, on an application filed by one Javed Ahmed Khan, who was shown in the list of shortlisted candidates for the post of Junior Craft

Instructor, Silverware and had claimed to have qualified the Practical Test, he was impleaded as party respondent No.7. Upon his impleadment as party respondent and having regard to the continuous absence of the petitioner and her counsel, the order dated 10.04.2018 was modified to the extent of allowing the SSB to finalise the selection process with the rider that the final result thereof shall not be declared till further Orders.

7. It also deserve to be noticed that during the pendency of the writ petition before this Court, another writ petition arising out of the same advertisement notification i.e. SWP 724/2018 titled Kulsooma Akhter vs. State of J&K and others came to be dismissed by a learned Single Bench of this Court vide Order dated 09.12.2019.

8. The Tribunal, having heard the rival contentions and perused the material on record, came to the conclusion that the petitioner, having participated in the selection process and having appeared before the Committee constituted vide Office order dated 08.03.2018, is estopped by her conduct to challenge the same only after finding that she had failed to qualify the Practical Test. Placing reliance upon the judgment of Hon'ble the Supreme Court in case of **Ashok Kumar vs. State of Bihar, 2017 (4) SCC 357**, the contention of the SSB was upheld and as the consequence thereof the TA filed by the petitioner was dismissed. The petitioner is before us invoking the jurisdiction vested in this court under Article 226 of the Constitution of India and seeks to challenge to the impugned judgment passed by the Tribunal on multiple grounds.

9. The judgment impugned is challenged by the petitioner primarily on the ground that the legal position with regard to estoppel by participation in the selection process has not been appreciated by the Tribunal in right perspective. The rule of estoppel in such matters is not an absolute rule but is subject to well known exceptions. Reliance is placed by Mr. Jan, learned senior counsel appearing for the petitioner, on the judgement of Hon'ble the Supreme Court in the case of **Dr. Meeta Sahai vs. State of Bihar and Ors., 2019 (20) SCC 17**. It is further argued that as per the mandate of Rule 6 of the J&K Civil Services (Decentralization and recruitment) rules 2010, [‘the rules of 2010’] the Chairman is permitted to co-opt an expert/specialist in the concerned discipline. However, in the instant case none of the members of the selection committee was expert in the relevant disciplines and, therefore, the constitution of the Committee was illegal and contrary to the provision of rule 6 of the rules of 2010.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the instant writ petition raises following two questions for determination:-

(i) *Whether the constitution of the Committee by the SSB vide Office Order No. 145-SSB of 2018 dated 08.03.2018 is in consonance and conformity with the applicable rules. This would call for determination as to whether the constitution of the Committee is governed by the rules of 2010 or the Jammu and Kashmir special recruitment rules 2015 [‘the rules of 2015’];*

(ii) Whether the petitioner, having participated in the selection process, including the Practical Test conducted by the Committee, can be permitted to turn around and challenge the constitution of the Committee on the ground that in the Committee aforesaid no expert in the relevant field/ discipline was associated.

11. Before we proceed to determine the questions (*supra*), we need to take notice of the fact that so far as the post of Junior Craft Instructor, Darning and the post of Junior Craft Instructor PapierMachie are concerned, the qualification prescribed clearly lays down that apart from other eligibility qualifications which a candidate must possess, he/she should be a National Awardee. The petitioner has neither claimed nor placed on record any document to show that she is recipient of any National award either in the Art of Darning or in the Art of PapierMachie. We, therefore, seriously doubt as to whether the petitioner was eligible to participate in the selection process for the post of Junior Instructor Darning and Junior craft Instructor PapierMachie. Be that is as it is, the matter is better left to be examined and considered by the SSB.

12. The rules of 2010 are made by the Governor in the exercise of powers conferred by Section 124 of the Constitution of Jammu and Kashmir read with Section 15 of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Rules 2010. These rules *inter alia* provide for Constitution of the Selection Board and the Selection Committees to conduct the selection for recruitment to the Subordinate Services/ Non-Gazetted Posts.

Section 6 of the rules of 2010 provides for establishing a three tier set up i.e. State Level Committee for making selection to the State cadre posts, Divisional level Selection Committee for making selection to the Divisional cadre posts and the District Level Selection Committee for making selection to the District Cadre posts. So far as the District Level Selection Committee is concerned, it is provided to be constituted of the following:-

- (i) Chairman or Member of the SSB, to be nominated by the Chairman of the Board(Convener of the Selection Committee);
- (ii) District Level Officer of the indenting Department to be nominated by the Chairman of the Board.....(Member)
- (iii) One Officer of the concerned Department, to be nominated by the Chairman of the Board.....(Member).

13. The proviso second to rule 6 also give discretion to the Chairman to co-opt an expert/specialist in the concerned discipline with any of the above Committees. For facility of reference proviso second is reproduced here under:-

“Provided further that the Chairman, if it is felt necessary, may co-opt an expert/specialist in the concerned discipline with any of the above committees.”

14. From reading of the proviso it is amply clear that co-opting of an expert/specialist is in the discretion of the Chairman and is not mandatory.

15. In the instant case, as is evident from reading of office Order No. 145 dated 8.3.2018, the Chairman has not exercised its jurisdiction to co-opt any expert/specialist in the selection of Junior Craft Instructor of various disciplines. The Committee constituted by office Order of 2018 has already been reproduced hereinabove. It comprises of a Member of SSB nominated

by the Chairman to act as Convenor, Chief Designer, School of Designs, Srinagar as an officer of the Department of Industries and Commerce and the Assistant Director handicrafts, Budgam, who serves as a Member of the Committee as District Level Officer of the indenting Department. The Committee is thus validly constituted under rule 6 of the rules of 2010.

16. We now shift our attention to the rules of 2015 which are made by the Governor under proviso to Section 124 of the Constitution of Jammu and Kashmir, which was then applicable in the erstwhile State of Jammu and Kashmir. Rule 5 of these rules is relevant for our purpose and is, therefore, set out below:-

“ 5. Appointment under these rules:

- (1) Notwithstanding anything to the contrary contained in any rule or order for the time being in force relating to the method of recruitment and conditions of service for recruitment in any service, or to any post, under the Government,
- (i) The appointment to all non-gazetted posts borne on the establishment of any Department or Service of the Government shall be made by the Government on temporary basis on the basis of the selection made by the Selection Committee, consisting of:-
- (a) Chairman or a member of the Services Selection Board to be nominated by the Chairman....Convenor;
 - (b) District Head of the indenting office Department...Member;
 - (c) One officer of, or above, the rank of Deputy Secretary to the Government from the concerned Department.....Member;

16. Rule 5, as is apparent from its plain reading, begins with a *non-abstanti* clause and excludes the applicability of any contrary rule or order for the time being in force relating to the method of recruitment and conditions of service for recruitment in any service, or to any post under the Government. It prescribes the constitution of a Committee for selection to

the non-gazetted posts of any Department or service of the Government, consisting of the following:-

- (a) Chairman or the Member of the SSB to be nominated by the Chairman.....convenor
- (b) District head of the indenting office/Department.....Member
- (c) One officer of, or above the rank of deputy secretary to the Government from the concerned Department.....Member

As is evident, the rules of 2015, in particular, rule 5, does not make any provision for association of an expert/specialist.

17. Without going into the question of operation of two statutes in respect of one subject, we would like to conclude that the Committee constituted by the Board vide office Order No. 145-SSB dated 08.03.2018 was in consonance with both the Statutes. Needless to say that the rules of 2010 are issued not only under the proviso to Section 124 of the Constitution of Jammu and Kashmir but also by the Government in exercise of its rule making power conferred by Section 15 of the Jammu and Kashmir Civil Services (decentralisation and recruitment) Act 2010. If that be the position, the rules of 2015 having been issued under the proviso to Section 124 of the Constitution of Jammu and Kashmir will give way to the rules of 2010 insofar as these are inconsistent with the rules of 2010. We are just making an observation and not holding as such for the reason that answering such a question is not required to dispose of the present writ petition and would, therefore be rendered only an academic exercise.

18. In view of the clear stand taken by the SSB that the Committee was constituted as per rules and that it was not mandatory for the Board to necessarily co-opt an expert/specialist in the concerned discipline, we find no merit in the submission of Mr. Jan that absent the expert/specialist in the

Committee, the constitution of the committee was *dehors* the rules of 2010/rules of 2015.

19. On facts, it is seen that the Board had constituted a three Member Committee and had chosen not to co-opt any expert. Otherwise also, the Chief Designer, School of Designs, Srinagar, who was serving as Member of the Committee, was good enough to judge the performance of the candidates in the Practical Test held for various disciplines. The Assistant Director, Handicraft, Budgam, who was another member, also cannot be a stranger to the nature of the test which was conducted by the Board.

20. Aside, we are also in sync with the view taken by the Tribunal that the petitioner having participated in the selection process with her eyes wide open, is estopped from challenging the constitution of the Committee only because the result of the Practical Test is not palatable to her.

21. It is not in dispute that the constitution of the Committee was notified beforehand and was well within the knowledge of the petitioner. She took a calculated chance of appearing before the Committee without raising any protest or objection. It is only after she failed to obtain the minimum marks in the Practical Test and was declared unsuccessful, she turned around and found fault with the constitution of the Committee, that too on a ground which is not tenable in law. The reliance placed by the Tribunal on the judgment of **Ashok Kumar**(*Supra*) is apt. The judgment relied upon by Mr. Jan rendered by Hon'ble the Supreme Court in **Meeta Sahai**(*supra*) does not advance the case of the petitioner in any manner.

22. It is not the case of petitioner that the selection process has been conducted in violation of the rules or that the violation took place after she had participated. It is also not the case of the petitioner that she has been prejudiced on account of some misconstruction of statutory rules bringing discriminatory consequences arising therefrom to the petitioner.

23. The off shoot of the discussion made above is that there is no merit in the writ petition and as a consequence thereof, it is dismissed with all connected CM(s).

Judge

(Sanjay Parihar) (Sanjeev Kumar)

Judge

Srinagar.

23.05.2025

Anil Raina, Addl. Registrar/Secy

