

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

LPASW No. 69 of 2018

Reserved on : 25.09.2025
Pronounced on : 06.06.2026
Uploaded on : 06.06.2026
Whether operative part of judgment is
pronounced :

1.State of Jammu & Kashmir through Commissioner/Secretary to Government,
Education Department, Civil Secretariat,
Srinagar/Jammu.

2.Director, School Education Kashmir.

3. Chief Education Officer, Baramulla.

.... Petitioner/Appellant(s)

Through:- Mr. Faheem Nisar Shah, GA

V/s

Rifat Ara and Ors.

.....Respondent(s)

Through:- Mr. Z. A. Shah, Sr. Advocate with
Mr. A. Hanan, Advocate

CORAM:

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AJEEM, JUDGE
JUDGMENT

Per : Sindhu Sharma-J

01. This Letters Patent Appeal is directed against the judgment dated 06.04.2016 passed by the learned Single Judge in SWP No. 1165/2002, titled *Rifat Ara v. State of J&K and others*, whereby appellants No. 1 and 3 herein were directed to consider and appoint the respondents as General Line Teachers in District Cadre, Baramulla against the available posts.

02. Briefly stated, the facts relevant to the present appeal are that the Jammu & Kashmir Services Selection Board (JKSSB) invited applications for the post of Teacher (General Line) pursuant to Advertisement Notification No. 01 of 1999 dated 09.03.1999. Respondents No. 1 to 10 applied for the post in District Cadre Baramulla. The interview was held on July 2001 and the respondents being eligible also participated in the same. The selection process was completed by the Services Selection Board and the select list was published in the newspaper “*Kashmir Images*” dated 19.07.2002. The respondents did not obtain the requisite merit and as such, their names did not figure in the select list.

03. Aggrieved of their non-selection, respondent Nos. 1 to 10 approached this Court by filing writ petition i.e., SWP No. 1165/2002. The challenge to their non-selection, as well as to the selection process, was on the ground that the Selection Board was bound to select candidates possessing the qualification of Teacher as against those who had merely qualified 10+2. It was further contended that the selection had not been made in accordance with the revised criteria, as directed by the Court. Though the primary contention raised against the selection was that the interview was conducted by the Principal, Higher Secondary School, who had acted on behalf of the Chief Education Officer, Baramulla, without any lawful authority. It was averred that the Chief Education Officer, being a member of the Selection Committee, could not have nominated the Principal to act on his behalf, particularly in the

absence of any formal order to that effect. They, thus, sought quashing of the selection of candidates selected for District Baramulla holding of fresh interviews and consequently, preparation of fresh select list.

04. The appellants have challenged the impugned judgment on the ground that the respondents, having participated in the selection process and failed to make the grade, could not subsequently challenge the same. This aspect has not been considered by the learned Writ Court while passing the impugned judgment. The respondents do not have any enforceable right to challenge the selection process after participating in the same. Even assuming, for the sake of argument, that a member was replaced by someone else (which has been denied by the respondents), the Service Selection Board did not recommend the candidature of the respondents solely on the ground that they failed to make the grade.

05. We have heard learned counsel for the parties and perused the material on record.

06. The Jammu and Kashmir Service Selection Board vide Advertisement Notification No. 01 of 1999 dated 09.03.1999, invited applications for the posts of Teachers in various Districts, including 313 posts for District Baramulla. The qualification prescribed for the post of Teacher was as under :-

“(10+2) with 50% marks and above. However, 50% marks will not apply to graduates and an Experience to be given preference.”

7. The SSB issued interview notification for the aforesaid post of Teacher for District Cadre Baramulla and criteria for short-listing of candidates was also notified as under: -

OPEN CATEGORY

A. 10+2 (HSP-II) = 73.32% and above marks in (10+2)

B. GRADUATION

Ist Division = 48.32% and above marks in (10+2)

IInd Division = 58.32% and above marks in (10+2)

IIIrd Division = 63.32% and above marks in (10+2)

C. POST GRADUATION

Division in Graduation		Division in Post Graduation	%age of marks in 10+2
i.	Ist	Ist	All eligible
ii.	Ist	Ist	All eligible
iii.	Ist in (10+2)	IInd	38.32% and above marks
iv.	IInd	Ist	All eligible
v.	IInd in (10+2)	IInd	43.32% and above marks
vi.	IInd in (10+2)	3 rd	48.32% and above marks
vii.	3 rd in (10+2)	Ist	38.32% and above marks
viii.	3 rd in (10+2)	IInd	48.32% and above marks
ix.	3 rd in (10+2)	3 rd	53.32% and above marks

8. All the eligible candidates who fulfilled the short-listing criteria, were called for interview vide interview notification, issued by the Board. The selection criteria for the post of Teacher was under:-

- i. Weightage to Basic Qualification 10+2 = 40 pts.
 - ii. Graduation 1st Div = 10, 2nd Div = 06, 3rd Div = 04 = 10 pts.
 - iii. B.Ed. = 10 pts.
 - iv. P.G. 1st Div = 10, 2nd Div = 06, 3rd Div = 04 = 10 pts.
 - v. M.Ed. = 10 pts.
 - vi. Viva voce = 20 pts.
- Total = 100 pts.

9. The respondents also fulfilled the short-listing criteria and were accordingly interviewed by the Service Selection Board. The select list of the successful candidates for the post of Teacher in District Cadre Baramulla was duly published after the completion of the selection process. The respondents failed to figure in the select list and consequently assailed the selection for the post of Teacher in District Baramulla in the writ petition.

10. The learned Single Judge disposed of the writ petition vide judgment dated 06.04.2016 on the ground that the Chief Education Officer had interviewed some candidates, and some were interviewed in his place by some Principal. This change of composition of Selection Committee from time to time would change the manner and method of adjudging the merit and suitability of competing candidates, as uniform treatment was not meted out to all the candidates. Thus, a direction was issued to respondent Nos. 11 to 13 to consider and appoint the petitioners as General Line Teachers in District Baramulla against the available posts without disturbing the appointment of selected candidates.

11. The learned Writ Court has issued the direction for appointment of the respondents without considering the fact that they had failed to secure the requisite merit for selection and their names did not figure in the select list prepared by the Services Selection Board. It is well settled that a candidate who participates in a selection process without any demur and, upon being unsuccessful, turns around to challenge the same, is

estopped from doing so and is deemed to have acquiesced in the procedure adopted for selection.

12. The record produced by the Services Selection Board reveals that the respondents/writ petitioners had participated in the selection process but failed to make the grade for selection. The merit position of the respondents/writ petitioners, as reflected from the record, is reproduced hereunder:

S No.	Name	Category	Points
1.	Rifat Ara	OM	31.00
2.	Shagufta Akhter	OM	43.13
3.	Shamima Aziz	OM	36.29
4.	Paramvir Singh	OM	38.27
5.	Devinder Kour	OM	29.67
6.	Ravinder Kour (Not existing in the award)	-	-
7.	Nain Kour	OM	42.92
8.	Rajbeer Kour	OM	Absent
9.	Firdous Ahmad Wani	OM	36.13
10.	Birgees Zahira Kanroo	OM	43.80

13. The Services Selection Board has also placed on record the merit position of selected candidates, i.e., party respondents in the writ petition which is reproduced hereunder:

Name	Category	Points
Afshana Yaqoob	OM	47.59
Farhat Rashid	OM	54.40
Najam-u-Nissa	OM	48.46
Zahida Bano	RBA	40.84
Nafeesa Bano	OM	46.66
Mubina Hassan	OM	60.80
Bashir Ahmad Malik	OM	53.12
Mehboob-ul-Nissa	OM	48.79
Tahira Bano	OM	46.66

14. A comparison of the aforesaid merit position of the respondents/writ petitioners with that of the selected candidates reveals that none of the respondents/writ petitioners figured in the select list nor any recommendation was made in their favour by the Services Selection Board. The last selected candidate in the Open Merit Category had secured 45.23 points whereas the last selected candidate in the RBA Category had secured 33.63 points. Consequently, the respondents/writ petitioners could not be selected as they failed to obtain the requisite merit. The criteria for the post of Teacher had already been revised and recast pursuant to the directions passed by this Court and additional weightage for higher qualifications had been duly provided.

15. The Hon'ble Supreme Court considering the issue regarding whether a candidate who participated in the selection process can turn around and challenge the same has held that it is a settled principle of law that a person having consciously participated in the interview process.

16. The Hon'ble Supreme Court in case titled ***Madan Lal & ors. Vs. State of J&K and ors.***, AIR 1995 SC 1088 in para 9 has held as under:-

“9.....The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.....”

17. Again in case titled *K. H. Siraj Vs. High Court of Kerala & ors.*, 2006 (6) SCC 395, the Hon'ble Supreme Court in para 73 has held as under:-

“73.The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper.”

18. The only ground, on which the appellants had been directed to appoint the respondents, is that they have suffered prejudice because of change in the composition of selection process but this fact would have no bearing on the merit obtained by all the candidates, who appeared in the interview. The respondents have failed to show that any prejudice has been suffered by them and the fact that they were the candidates, who were interviewed by the Chief Education Officer or some other person, has not borne out from the record. It is well settled that the principle regarding changing the rules would have no application when change is with respect to the selection process but not the qualification or the eligibility.

19. The selection criteria had been well settled with the weightage given to the basic qualification, B.Ed. PG, and viva voce, thus, the respondents having failed to make the grade in the interview process, could not have been considered for appointment to the post of teacher in the selection for the year 1999 in which no post was reserved. This apart, from 1999 till date, many selections have taken place and the respondents admittedly cannot be adjusted on these posts which stood commenced in the year 1999.

20. In State of Uttar Pradesh vs. Karunesh Kumar & ors., it has been held as under:

“32. The respondents have also placed reliance on the decision of this Court in the case of K. Manjusree (supra). However, in our considered view, the facts of the aforesaid decision are quite different from the present case. A change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were non- suited from participating in the recruitment process. The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job.”

21. In view of the aforesaid facts and circumstances of the case, we are unable to agree with the view taken by the learned Single Judge. The respondents, having failed to secure the requisite merit in the selection process, cannot be considered for appointment to the post of Teacher pursuant to Advertisement Notification No. 01 of 1999.

22. For the foregoing reasons, the Letters Patent Appeal is allowed and consequently, the judgment dated 06.04.2016 passed by the learned Writ Court is set aside.

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

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