

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP no.193/2010
IA no.244/2010
c/w SWP no.538/2010
IA no.4425/2011

Date of order: 19.12.2014

Abdul Ahad Peer Vs State &ors

Coram:

Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing Counsel:

For Petitioner(s): Mr M.Y. Bhat, Adv
For Respondent(s): Mr Azharul Amin, Adv
Mr T.A.Lone, Dy.AG vice Mr J.A.Kawoosa, Sr.AAG

1. I have gone through pleadings and heard learned counsel for parties.
2. Facts are not in dispute.
3. Petitioner, admittedly, participated under RBA Category in selection process initiated by respondent commission. With Rules "J&K Reservation Rules, 2005", replacing SRO 126, he obtained fresh Resident of Backward Area Certificate on 25th November 2008.
4. Respondents do not dispute petitioner's status. What is averred and used as ground to deny him benefit of selection is his failure to produce RBA Certificate within stipulated time.
5. It is well settled that mere failure of a candidate to produce certificate evidencing particular status that earns him a benefit, is not to deprive such candidate of benefit otherwise available to him because of status he indisputably enjoys. Reference in this regard may be made to **Tasneem Kounsar and ors versus State and others [SLJ 2003(I) 155]**; **Surjeet Singh Bali Vs. State of J&K and others [SLJ 2007 (I) 18]**; and **J&K SSRB & anr versus Narinder Paul Chaudhary & ors [2011 (3) JKJ 445 (HC)]**.

6. Petitioner's claim gets reinforced, by earlier certificate granted to him by competent authority under SRO 126 of 1994. Record available on file and expected to have been brought to notice of respondent Commission, would reveal that petitioner all along enjoyed status of RBA, till selection was made and, therefore, was rightly included at Serial No.04 in Select List, notified on 20th December 2009.

7. Against above backdrop, writ petition is allowed and Order dated 8th January 2010, quashed qua petitioner. Respondent Commission is, by writ of mandamus, commanded to recommend petitioner for appointment under RBA Category to respondent no.1 as Dental Surgeon in respondent department in accordance with rules. Respondent no.1, on receipt of recommendations, shall consider petitioner's appointment on basis of recommendations made in accordance with rules. Let the exercise be completed by respondent Commission within four weeks and thereafter respondent no.1 by four weeks from the date of receipt of copy of order.

8. Disposed of.
Srinagar, 19/12/14

Sd/- Honble J. Justice Hasnain Massadi
(Judge)

Application No. 1797-(B)
Date of Opp. for the copy 20/12/14
Date of which copy was ready for delivery 26/12/14
Date of making over the copy to The applicant 26/12/14
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High Court of J&K, Srinagar

Dated 26/14 Day of Dec 20 14
AUTHORISED UNDER SECTION
OF EVIDENCE ACT

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HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR.

SWP NO. 193/10

Abdul Ahad peer aged 40 yrs S/o Ali Mohamed Peer resident of Dardapora Kralpora
Tehsil and Distt Kupwara Kmr through Muhstaq Ahmad unto-son of Ghulam
Mohammad unto-resident of Devar Lolab Age 50 yrs.

.....Petitioner.

Vs.

1. State of J&K through Commr Cum Secty to Govt Health and medical
Education Deptt, Civil sectt, Jammu/Srinagar.
2. J&K Public Service Commission, through Secty Jammu/Srinagar.
3. Secty J&K Public service commission, (Mr. M. A. Bukhari) Srinagar/Jammu
.....respondents.

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Assistant Registrar
High Court of J&K, Srinagar

Dated 26/11 Day of Dec 2019
NOTARISED UNDER SECTION
OF EVIDENCE ACT

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