

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No.482/2008

Date of Decision: 11.03.2015

Dr. Shamima Vs. State and Ors

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge.

Whether approved for reporting in Law/Journal: **Yes**
Whether approved for publication in Press/Media:

Appearing counsel

For the petitioner(s) : Ms.Rehana Fayaz, Advocate.

For the respondent(s) : Mr.Azharul Amin, Advocate.

(Oral)

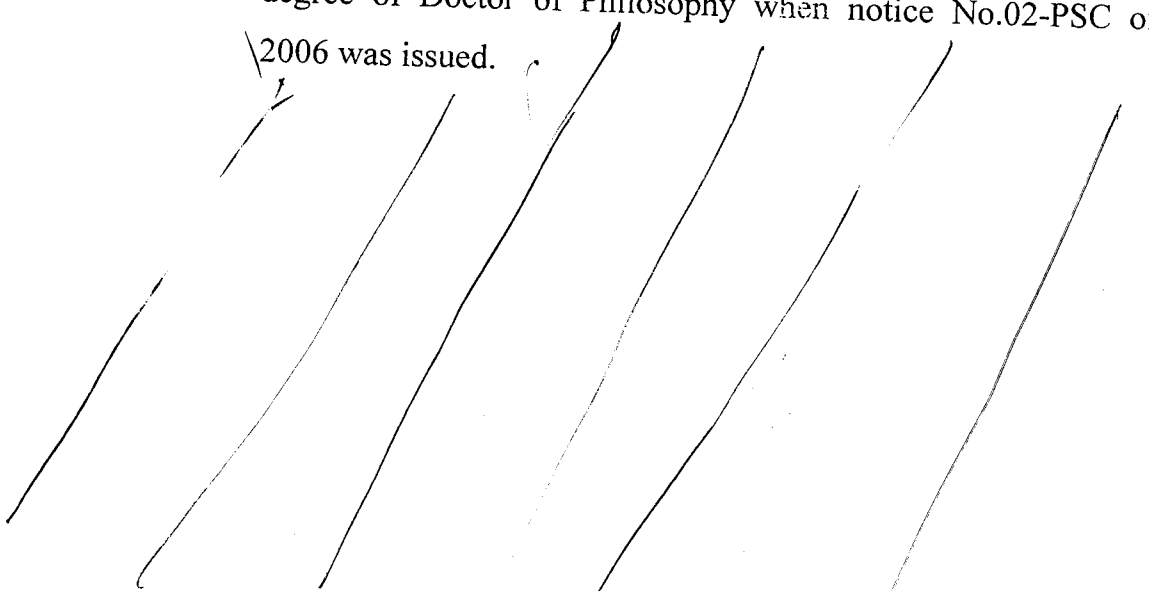
1. Petitioner admittedly obtained degree of Doctor of Philosophy in the discipline of Urdu on 15th February, 2006.

The respondent-Government referred posts of Lecturer 10+2 in the discipline of Urdu to the Public Service Commission for making selection of the meritorious candidates for being appointed on the said posts.

2. The respondent-Public Service Commission issued notifications No.14-PSC of 2003, No.14-PSC of 2005 and No.02-PSC of 2006. The petitioner, whose date of birth is 2nd March, 1964, was provisionally allowed to participate in the selection process.

3. The petitioner was not considered for being selected and appointed on the post of 10+2 Lecturer, as admittedly, she was overaged and was not possessed of the degree of Doctor of Philosophy in Urdu upto the time Advertisement notice No.14-PSC of 2005 was issued. She, however, was possessed of degree of Doctor of Philosophy when notice No.02-PSC of 2006 was issued.

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4. The petitioner was not called for interview which constrained her to file the writ petition. The petitioner was permitted to participate in the selection process in view of the interim order passed by the Court in writ petition. In the selection process in respect of Notification No.02-PSC of 2006 she crossed the cutoff merit, inasmuch as, she secured 62.36 marks as against the cutoff marks of 54.96, but was not recommended for being appointed on the post of Lecturer 10+2.

5. The claim of the writ petitioner is that she is eligible in her own right for being subjected to the selection process in view of the mandate contained in Government Order No.1500-GAD of 2000 dated 21.12.2000. Learned counsel invited attention of the Court to said Government Order.

6. This Court has directed for reserving one post of Lecturer 10+2 and in view of the material placed on record alongwith IA No.628/2015 there are 196 posts available in the discipline of Urdu.

7. Mr. Azharul Amin, learned counsel for the respondent-Commission vehemently argued that the petitioner at no point of time was eligible being overaged, for being selected and appointed on the post of Lecturer 10+2. Learned counsel further submitted that the Government Order No.1500-GAD of 2000 provided for inserting a clause in the Advertisement Notice in respect of overaged candidates who could file application forms only when they would be exceptionally qualified. Learned counsel submitted that all such applications were rejected by the Commission as it was in the discretion of the Commission to take such a decision. Learned counsel further submitted that the candidature of the petitioner was rejected on the ground that the qualification possessed by the petitioner was not exceptional.

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8. In order to appreciate the contentions raised at bar, Government Order No.1500-GAD of 2000 and Note-A of Notification No.02-PSC of 2006 dated 17.01.2006 are taken note of:-

Government Order No.1500-GAD of 2000

Dated: 21.12.2000

Whereas the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, the Civil Service Regulations and Recruitment Rules for individual posts confer powers to relax these rules in suitable cases in Government including powers to relax the age limits for recruitment prescribed thereunder; and

Whereas no specific procedure has been laid down to deal with claims seeking relaxation of age; and

Whereas, in the absence of procedure, the General Administration Department is considering requests in this behalf as and when they are received from intending candidates.

Now, therefore, it is hereby ordered that:-

- (i) *In the advertisements inviting applications for direct recruitments to jobs under the Government and autonomous bodies a clause shall be inserted to the effect that the recruiting agencies reserve the right to further consider the candidature of an applicant notwithstanding the fact that such candidate may have crossed the upper age limit, if such agency comes to a view, upon examination of the application and supportive documents that such a candidate is otherwise exceptionally qualified.*
- (ii) *The recruiting agency shall on consideration of each such case refer the matter to the administrative departments concerned for considering relaxation of the upper age limit, giving justification for such relaxation.*
- (iii) *The concerned administrative department shall upon receipt of the recommendations from the relevant recruiting agencies such as the J&K Public Service Commission and*

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SECRETARY
GENERAL ADMINISTRATION DEPARTMENT
JAMMU AND KASHMIR

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the subordinate selection Board etc process the case for consideration of the Chief Minister in co-ordination;

- iv) *The result of such over-aged candidate shall be declared by the recruiting agency only after relaxation is approved in terms of (iii) above.....”.*

Note-A of Notification No.02-PSC of 2006 dated 17.01.2006

“Note A: Overaged candidates who claim to possess exceptional qualification relevant to the concerned subject can also apply without prejudice to the right of the Commission to reject the application forms.”

9. Government Order No.1500-GAD of 2000 dated 21.12.2000 would show that the Government took a conscious policy decision to allow those candidates, who are exceptionally qualified, to participate in the selection process for the posts, which were referred by them to the Public Service Commission. In terms of the aforesaid order the Public Service Commission is enjoined with the duty of inserting a clause in the Advertisement Notice, indicating therein, that the recruiting agencies reserve the right to further consider the candidature of an applicant notwithstanding the fact that such candidate may have crossed the upper age limit, if such agency is of the opinion, upon examination of the application and supportive documents, that such a candidate is exceptionally qualified.

10. Clause (i) of the aforesaid Government order has to be read in conjunction with other clauses of the said Government order. It appears that this conscious policy decision was taken by the Government to appoint exceptionally qualified candidates which would be in the interests of the Government/Institutions. In order to enable such type of

candidates to participate in the selection process, conscious policy decision was taken by the Government to make them eligible for such selection process, notwithstanding, this fact that on the cutoff date for filing the applications such a candidate was overaged.

11. The said decision appears to have been taken for yet another reason that the candidate, who acquire higher qualification, may, while pursuing the studies, cross the upper age limit, fixed by the Government for making appointments in the Government service. This conscious policy decision taken by the Government has to be given the real meaning and has to be translated into reality by implementing it in its letter and spirit.

12. In the case on hand, the petitioner admittedly has acquired highest degree in the discipline of Urdu. The Doctor of Philosophy in a particular subject in the State of J&K is highest qualification, which is awarded to a candidate and, this, in terms of Government Order No.1500-GAD of 2000, was exceptional qualification possessed by the candidate. In view of aforesaid fact situation, the case of the petitioner was to be referred to the administrative department concerned for considering relaxation of upper age limit. But unfortunately in the present case, without any lawful justification, candidature of the petitioner has been illegally and arbitrarily rejected by the Public Service Commission.

13. In the Counter affidavit it is stated that right of the candidate for filing application form was not absolute, inasmuch as, the Public Service Commission reserved right to reject such applications. It is also pleaded in the counter affidavit that Public Service Commission did not consider the candidature of such candidates for selection in view of having sufficient number of eligible candidates available within age

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limit and requisite higher qualification. This is the only ground taken in the counter affidavit for rejecting the candidature of the petitioner.

14. The Public Service Commission is a recruiting agency which is duty bound to follow the directions of the State Government in making recruitments besides following its own rules and regulations. Without considering the purpose and import of Government Order No.1500-GAD of 2000 and solemn intendment underlying the said Government order, the Public Service Commission rejected the candidature of the petitioner because the candidates within age were available to them.

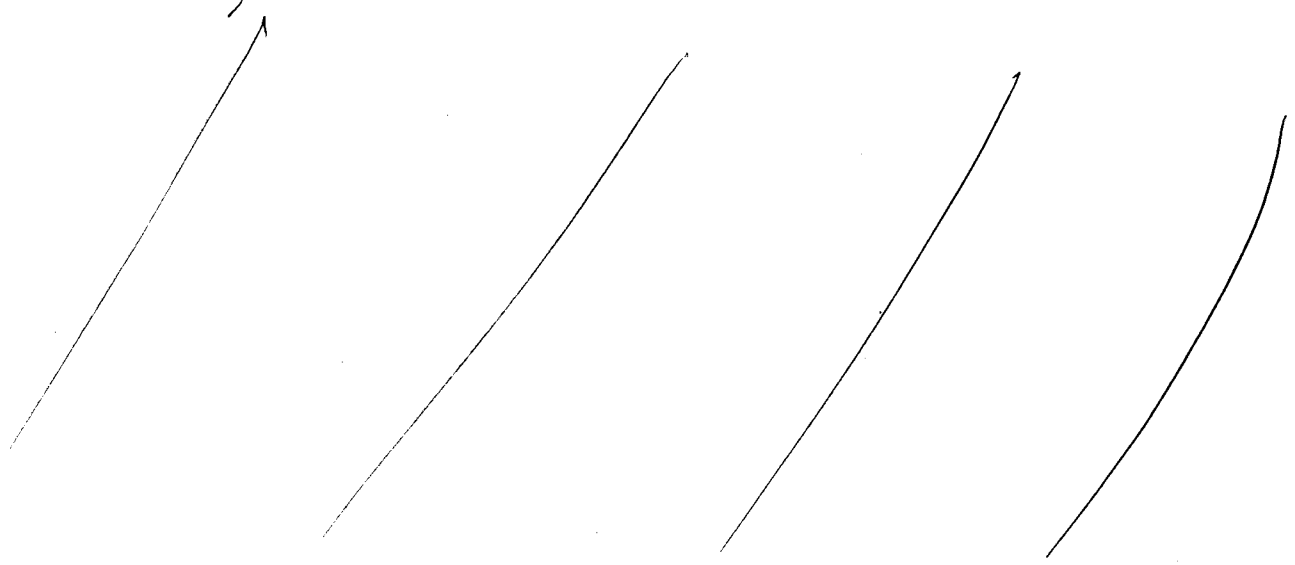
15. The Government, when it took the decision which was followed by issuance of Government order, was conscious that the candidates within the prescribed age limit would be available in almost all recruitment processes. This order, as already stated, has been issued to provide best material to the Government as also to mitigate the hardships of those candidates who secure highest qualification and while attaining such degree cross the upper age limit. The decision of Government which is reflected in the aforesaid Government order is not only fair, reasonable but is just as well. If the Government order is not in absolute terms given effect to, then probably no candidate would dare to secure higher qualification because in the process candidate may cross the upper age limit and loose right of consideration for being selected and appointed on a particular post. The consequence would be huge loss to the people of State.

16. The condition Note-A in the advertisement notice is not in consonance with Government order to the extent it reserves right for the Commission to reject the applications.

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17. In this case the Public Service Commission has not stated that the petitioner was not possessed of exceptional qualification. It, otherwise, would mean that the petitioner was possessed of exceptional qualification which, as already stated, she in fact is possessed of. Rejecting her candidature on the only ground that candidates in the prescribed age limit were available, cannot be countenanced in law. Such a decision of PSC in essence has defeated the Government order supra. The petitioner has secured the necessary grade for being selected and appointed on the post of Lecturer 10+2. She has been denied the right of appointment illegally and arbitrarily and on the ground which cannot be justified in law. The constitutional sentinel portrayed in Article 16 of Constitution of India stands guard to the rights of petitioner. Article 14 and 16 reflect the constitutional values and constitutional morality. Petitioner's rights stand protected by these constitutional provisions.

18. Since much water has flown down from the date selection process was concluded, asking the Public Service Commission at this distance of time to refer the case of the petitioner to administrative department for considering relaxation of upper age limit, would be doing further injustice to the petitioner. In normal circumstances the Public Service Commission, who has adjudged the merit of the petitioner and has admitted that she has secured merit more than last cutoff point and is eligible for being recommended for the post of Lecturer 10+2, would have been directed to recommend name of the petitioner. But at the moment there is neither Chairman nor members in the Public Service Commission. This would delay the matter and cause further hardships to the petitioner.

19. The petitioner has secured the merit, the Government has to be directed to appoint her.

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20. For the above stated reasons, this petition alongwith connected IAs is **disposed of** in the following manner:

Respondent No.1 is directed to consider and appoint the petitioner on the post of Lecturer 10+2 in the discipline of Urdu and after issuance of appointment order the competent authority shall post the petitioner in the institution wherever her services would require to be utilized. The appointment order be issued within two weeks from the date copy of this order is served.

The petitioner in the peculiar facts of this case is deemed to be within age for the purpose of her appointment.

S. M. A. S.

Sd/- Hakim Judge

No: 9324 dated: 13/3/18

Copy to Regd. No. 3
for compliance.

13/3/18
[Signature]

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JOINT REGISTRY
HIGH COURT OF PUNJAB

Dr. Shamima
D/o Muhammad Akbar Mir
R/o Hawal, Srinagar
Aged 44 years

...Petitioner

Vs

01. State of Jammu and Kashmir through
Commissioner Secretary to Government
Higher Education Department, Civil
Secretariat, Jammu/Sgr.
02. Jammu and Kashmir Public Service
Commission through its Chairman
Residency Road Srinagar
03. Secretary Jammu and Kashmir Public
Service Commission Srinagar/Jammu
04. Selection Committee through its
Secretary Public Service Commission
Srinagar

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HIGH COURT OF J&K

...Respondents