



GOVERNMENT OF JAMMU AND KASHMIR  
SCHOOL EDUCATION DEPARTMENT  
CIVIL SECRETARIAT JAMMU/SRINAGAR  
(Legal Section)  
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Subject: CPSW No.98/2019 in SWP No.573/2002 titled Jagdish Chander V/s Sarita Chouhan & Others.

Government Order No. 68 -Edu of 2022.

Dated- 11 /02/2022

Whereas J&K Services Selection Board issued Notification No: 01 of 1999 dated: 09.3.1999 inviting applications for the post of Teachers in various districts including District-Udhampur. The last date for receipt of the applications was fixed up to 31.03.1999 which was subsequently extended upto 15.04.1999.

Whereas, the Petitioner namely Sh.Jagdish Chander, applied for the post of Teacher in District-Cadre-Udhampur under Scheduled Caste (SC) category but in the meanwhile, the petitioner was appointed as ReT Teacher on 05.10.2000 in Girls School, Nagrota Panjgrain, Udhampur.

Whereas in terms of Notice No: SSB/PA/Secy/826/2001, dated 02.03.2001, the J&K Service Selection Board had notified the following selection criteria:-

|                     |   |                                      |
|---------------------|---|--------------------------------------|
| Basic Qualification | : | 40 points\                           |
| Graduation          | : | 10 points (1 <sup>st</sup> Division) |
|                     | : | 06 points (2 <sup>nd</sup> Division) |
|                     | : | 04 points (3 <sup>rd</sup> Division) |
| Post Graduation     | : | 10 points (1 <sup>st</sup> Division) |
|                     | : | 06 points (2 <sup>nd</sup> Division) |
|                     | : | 04 points (3 <sup>rd</sup> Division) |
| B.Ed                | : | 10 points                            |
| M.Ed                | : | 10 points                            |
| Viva Voce           | : | 20 points                            |

Whereas thereafter the Services Selection Board issued short listing criteria on 30.4.2001 *inter alia* mentioning therein that additional qualification/reserved category certificates which have been issued after last date of receipt of application forms shall not be considered.

Whereas interview/viva voce was held and select list of Teachers for District Cadre-Udhampur was issued and published by the Services Selection Board on 03.01.2002 and Sh. Jagdish Chander (Petitioner) and some other candidates were not selected.

Whereas Sh. Jagdish Chander and others approached the Hon'ble High Court through SWP No. 573/2002, challenged the selection of private respondents figuring from S.No. 5 to 33, selected under SC category and also prayed for issuance directions to the official respondents to select and appoint them as Teachers under SC category, District Cadre-Udhampur.

Whereas the petitioner No.1, Sh. Jagdish Chander contended in his petition that he was possessing basic qualification of 10+2 and also higher qualification i.e; B.Sc at the time of submission of his application form. Besides, he also claimed to have had appeared in B.Ed examination, the result of which was declared on 08.03.1999, but was shown as re-appear in paper-III. Subsequently, he passed the said paper on 18.05.1999 after declaration of revaluation result of the said paper.

Whereas in the meanwhile, Petitioner No.1, Sh. Jagdish Chander, ReT Teacher was regularized as Teacher in the year 2005 and subsequently promoted from RReT Teacher to Master grade in the year 2013 and was adjusted in Middle School Kothi Zone-Ghordi District-Udhampur.

Whereas in the meantime SWP No. 573/2002 was listed before the Hon'ble High Court and was disposed of by the Hon'ble High Court of J&K vide its order 30.3.2016 with the following directions :-

"I would thus, hold that petitioner No.1 shall be deemed to have acquired B.Ed degree on 08.03.1999, that is, a day prior to the vacancy notification, when the result of B.Ed was originally declared. He cannot be said to have acquired B.Ed qualification after the cutoff date merely for the reason that result on revaluation was declared after cutoff date. His inability to obtain his B.Ed degree or a certificate prior to cutoff date, could not have come in the way of giving him the benefit of B.Ed and doing so was nothing but penalizing him without any fault on his part and





infraction of his fundamental right of equality enshrined under Article 14 of the Constitution.

For aforementioned reasons, this writ petition to the extent of petitioner No-1 is allowed, however, without disturbing selection and appointment of any other candidate in the select list for the reason of long gap of time after the completion of selection process till date. By issue of writ certiorari, respondent Nos. 2 to 4 are directed to take the petitioner as having been selected as teacher under SC category in District Cadre Udhampur pursuant to Notification No. 1 of 1999 and appoint him accordingly, notionally from the date of appointment of the candidate figuring at serial No.10 in the select list under SC category and monetarily from the date of this judgment and fix his seniority accordingly. respondents are further directed to complete all administrative formalities including creation of supernumerary post, if so required to implement this judgment.

Writ petition to the extent of petitioner Nos. 2 and 3 are dismissed as without any merit".

Whereas, it is admitted fact that petitioner was not eligible before the cut of date i.e. 15.04.1999, because the result of B.Ed was declared on 08.03.1999, wherein petitioner was shown re-appear in paper-III of B.Ed and after re-valuation filed by the petitioner, his result came to be declared on 12.06.2001, wherein the petitioner has passed the said paper.

Whereas there are has two legal aspects in the matter, on one side law says that eligibility is to be determined before cut of date and a candidate's eligibility shall have to be judged with reference to the cut of date and the date alone. It has been held by the Hon'ble Supreme Court in the case titled Ashok Kumar Sharma & others vs Chander Shekher & Another 1997 (4) SCC 18 as under:-

".....we are the respectful opinion that majority judgment (rendered by the Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law, the proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement

or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could have also applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their application ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment".

Whereas, the petitioner filed contempt petition CPSW No. 98/2019 for non-implementation of court order dated 30.03.2016, in which the compliance report was filed by the Department but the same was not accepted by the Hon'ble Court and vide its order dated-01-09-2021, the Department was directed to file fresh compliance report in the matter, failing which respondents 2 and 3 were directed to appear in person.

Whereas the matter was again listed on 04-12-2021 and the Hon'ble Court has been pleased to pass the following order:

**"Mr. Ravi Shanker Sharma, Director School Education, Jammu is present in person in compliance to the order dated-01-09-2021. He submits that they have already taken up the matters with Commissioner Secretary, Education Department, Jammu for implementation and they are seeking appropriate instructions in the matter, as such, last and final opportunity of six weeks is granted to respondents for filing compliance report positively filed by the next date"**

Now, in compliance to Hon'ble Court's order dated-30-03-2016, passed in SWP No.573/2002 and order dated-04-12-2021 passed in the contempt petition, the case of the Petitioner has been re-examined by the department and it has been found that the School Education Department has not received any recommendation from J&K Services Selection Board, which is pre-requisite for selection/appointment of a candidate to a Govt. job and in absence of the recommendation of the J&K Services Selection Board, the petitioner cannot be appointed as Teacher. Accordingly, the order of the Hon'ble Court is being taken up with J&K Services



Selection Board for inclusion of the candidate, in the select list as per order of the Hon'ble High Court of J&K in SWP No.573/2002 titled Jagdish Chander & Ors V/s State of J&K & Ors for exact implementation by the Directorate of School Education, Jammu.

**By order of the Government of Jammu & Kashmir.**


Sd/-  
(B.K.Singh)  
Principal Secretary to Government  
School Education Department

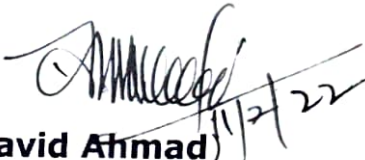
No.Edu-LGL0Jmu(HC)/69/2021-01

Dated-11/02/2022

**Copy to:**

1. Director School Education, Jammu for information.
2. Secretary, J&K, Services Selection Board, Jammu for information.
3. Chief Education Officer, Udhampur for information.
4. Pvt. Secy to Principal Secretary to Government, School Education Department for information.
5. I/c Website School Education Department for information and Necessary action.
6. Govt. Order File.

  
11/2/22

  
(Javid Ahmad)  
Addl. Secretary to Government  
School Education Department