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Supp

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 3308/2023
CM No. 7940/2023

Mohammad Shafiq Dar

..... Petitioner (s)

Through: Mr. Mohammad Yawar Hussain, Adv.

V/s

Union Territory of J&K & Ors

..... Respondent(s)

Through: Mr. Faheem Nisar Shah, GA
with Ms. Maha Majeed, Adv.

Coram:

Hon'ble Mr. Justice Rajnesh Oswal, Judge.
Hon'ble Mr. Justice Mohd Yousuf Wani, Judge

JUDGMENT(ORAL)

18.04.2025

1. With the consent of the learned counsel for the parties, the matter is taken up for final disposed today itself.
2. An Advertisement Notice No 06 of 2008 dated 28.05.2008 came to be issued by the respondent No. 4 inviting applications for various posts including the post of Physical Education Teacher (PTE) District Cadre, Budgam under Item No. 3. The petitioner participated in

the selection process conducted by the respondent No. 4 and secured 41.29 points (wrongly mentioned as 31.29 points by the learned Tribunal in order dated 13.12.2022). The cut of points was 28.61. The petitioner figures as Serial No. 23 in the Provisional Selection List. Subsequently the selection of the petitioner was cancelled on the premise that the fake National Sports Certificate (Karatee Championship) was submitted by him.

3. Aggrieved of his cancellation of his provisional selection, the petitioner preferred writ petition bearing SWP No. 77/2011 which was subsequently transferred to Central Administrative Tribunal, Jammu Bench (hereinafter referred to as the Tribunal) and was later on re-numbered as TA No. 1774/2021. An application bearing MA No. 1067/2021 was preferred by the petitioner and the same was disposed of by the Tribunal with a direction to the respondents to consider the applicants for the post of Physical Education Teacher in terms of order dated 09.08.2021. When the matter was not considered by the respondents, the petitioner was constrained to file another

application bearing MA No. 691/2022 seeking disposal of the TA. On consideration, TA No. 1774/2021 was finally disposed of vide order dated 07.07.2022 with a direction to the respondents to consider the applicant for the post of Physical Education Teacher (PET) in light of the order dated 09.08.2021.

4. In compliance to the order dated 07.07.2022, the respondent No. 3 vide order dated 22.11.2022 rejected the claim of the petitioner. Being aggrieved of the same, the petitioners approached the learned Tribunal with another Original Application bearing OA No. 1168/2022 challenging the order dated 22.11.2022 on the ground that even if the points awarded to the petitioners in respect of the disputed certificate are deducted, still then the petitioner would fall within the criteria fixed by the official respondents as in that eventuality, he would secure 31.29 points whereas the cut of point was 28.61. It was also contended by the petitioners that the Crime Branch vide communication No. CR/DYSP-HQ/PLO-13-6274 dated 03rd July 2013 had in categoric terms rejected that the

National Sports Certificate of the petitioners was genuine but issued by the un-recognized Association. It appears that no reply was filed by the official respondents to the OA No.1168/2022 filed by the petitioner. However after hearing learned counsel for the parties, the learned Tribunal dismissed the OA No. 1168/2022 vide order dated 13.12.2022 impugned by the petitioner in this petition. The petitioner has in fact reiterated the grounds which were urged by the petitioner before the learned Tribunal. The respondents have filed the response thereby narrating the factual aspect of the case and have stated that during consideration of the appointment, the Crime Branch Kashmir received a written complaint by some aspirants alleging therein that various candidates belonging to the various Districts of Valley have managed their selection through respondent No. 4 against the post of Physical Education Teacher on the basis of fake and invalid National Sports Certificate. The respondent No. 3 has also received a letter dated 28.07.2010 from Zonal Headquarters Crime Branch where under academic/sports

certificate of 58 candidates including that of the petitioner were sent to the Crime Branch Kashmir vide Letter dated 11.10.2010 for verification including 21 candidates from District Budgam. The respondent No. 1 received another communication dated 03.01.2011 from the Crime Branch Kashmir wherein it was stated that the National Sports Certificate of 14 candidates including that of the petitioner were found to be fake. By placing reliance on the said communication, a meeting was conveyed by the respondent No. 1 under the Chairmanship of Secretary to Government Technical Education and Youth Sports and Service dated 10.02.2011. After threadbare discussion it was decided that the appointment of 14 candidates whose National Sports Certificate were found to be fake, be cancelled forthwith. Accordingly the respondent No. 3 vide communication dated 09.03.2011 cancelled the appointment of 14 candidates including the petitioner and the concerned District Youth Service and Sports officer was also intimated. It is the stand of the respondents that once a candidate attempts to secure appointment by

- making misrepresentation or playing fraud, he cannot be granted any benefit. In nut shell, the stand of the official respondents is that his certificate was found to be fake and therefore his provisional selection was cancelled.
5. Mr. Yawar Hussain, learned counsel appearing on behalf of the petitioner has argued that even if the disputed Certificate is accepted for the purpose of determining merit, still then the petitioner would figure in the merit list. He has further drawn attention of this Court towards Communication dated 03rd July 2013 issued by the Public Information Officer Crime Branch, Kashmir in response to the application submitted by the petitioner under Right to information Act to demonstrate that the disputed questioned was genuine but issued by the un-recognized Association.
6. Per Contra, Mr. Faheem Nisar Shah, learned GA submits that the petitioner is not entitled to any relief as he knowingly submitted the Certificate which was not valid and could not have been submitted by the petitioner as it was issued by the un-recognized Association.

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7. Heard learned counsel for the parties and perused the record.
8. In the order impugned, the learned Tribunal has in fact wrongly mentioned points secured by the petitioner as 31.29 instead of 41.29. Learned counsel for the respondents has also not disputed the points obtained by the petitioner as 41.29. A perusal of the order impugned passed by the learned Tribunal reveals that the respondent No. 3 has simply relied upon the communication dated 03.01.2011 to observe that the petitioner had submitted fake National Sports Certificate. It is not forthcoming from the aforementioned order that the respondent No. 3 had taken note of the communication dated 03rd July 2013 wherein it was stated that the disputed Certificate was genuine but issued by the un-recognized Association.
9. Be that as it may, in his application before the learned Tribunal the petitioner had specifically mentioned in respect of communication dated 03rd July 2013 issued by the Public Information Officer, Crime Branch, Kashmir and the learned Tribunal has taken note of the said

communication dated 03rd July 2013 in its order impugned but has not returned any finding in respect of the effect of the communication dated 03rd July 2013 on the merits of the claim of the petitioner. In fact in the operative part of the order impugned has only stated “that the respondents have taken the point that the Crime Branch vide its communication dated 03rd July 2013 reported that the said Certificate was genuine, the same was not issued by a recognized Association.” We are at loss to observe as to how such finding can be recorded by the learned Tribunal particularly when the respondents had not filed their response to the application filed by the petitioner thereby impugned order dated 22.11.2022 issued by the respondent No. 3. The learned Tribunal in fact has decided the application of the petitioner in haste and without inviting any response from the official respondents. It needs to be noted vide order dated 27.12.2023, one post of Physical Education Teacher (PHE) District Cadre Budgam was directed to be kept reserved till disposal of the petition and pursuant to order

dated 25.03.2025 learned counsel for the respondents was directed to inform the Court about the vacancy position in terms of order dated 27.12.2023 and learned counsel for the respondents had produced communication dated 07.04.2025 demonstrating that 29 posts of Physical Education Teacher was lying vacant in District Budgam as is reflected in the order dated 08th April 2025. In terms of the same order this Court had requested Mr. Mohsin Qadiri, learned Sr. AAG to produce relevant record with regard to inquiry conducted in respect of authenticity of the disputed certificate of the petitioner. Today Ms. Maha Majeed, Advocate has produced a copy of the status report. A perusal of the same reveals that the Crime Branch Kashmir received a written complaint from one Farooq Ahmad Bhat and others wherein it was alleged that he various candidates belonging to different district of the Valley have managed their selection through J&K SSRB against the post of Physical Education Teachers on the basis of fake and invalid National Sports Certificates. Thereafter FIR No. 06/2011 under Sections 420, 468,

471, 201 RPC was registered in Police Station, Crime Branch Kashmir and investigation was concluded as proved against 07 accused persons but the petitioner was not included in the array of the accused person. Thus it is established beyond doubt that the petitioner had not submitted any fake or forged certificate before the respondents for the purpose of seeking employment. He had only submitted the certificate issued by un-recognized Association. Had the petitioner submitted any fake or forged certificate, this Court would not have shown any indulgence but in view of the fact that the petitioner had submitted certificate by un-recognized Association and at the most while conducting scrutiny of the documents submitted by the candidates, the respondent No. 4 could have excluded the said Certificate while determining the merit of the petitioner. It is contended by the petitioner that even if that certificate is excluded still then the petitioner would fall within the merit list.

10. We are not convinced with the submissions made by Mr. Faheem Nisar Shah, learned GA that the petitioner had

submitted Certificate issued by recognized Association so that he cannot be considered for appointment as Physical Education Teacher. After having examined the order passed by the learned Tribunal, we find that the learned Tribunal has not at all adverted to the merits of the claim of the petitioner and instead has decided the application filed by the petitioner impugning the order dated 22.11.2022 in haste and that too without any hesitation. The order passed by the learned Tribunal is in fact an unreasoned order. Accordingly, the order dated 22.11.2022 passed by the respondent No. 3 and the order dated 13.12.2022 passed by the learned Tribunal are quashed and the respondents are directed to consider the claim of the petitioner for appointment as Physical Education Teacher under District Cadre Budgam. In light of what has been discussed above against the reserved post, the respondents shall exclude the disputed certificate and re-determine the merit of the petitioner afresh. The aforesaid exercise shall be concluded within a period of

three months from the date of receipt of a certified copy of
order by the respondents.

11. Disposed of.

(Mohd Yousuf Wani)
Judge

(Rajnish Oswal)
Judge

SRINAGAR
18.04.2025
Aasif

