



**JAMMU & KASHMIR PUBLIC SERVICE COMMISSION SOLINA
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Subject:- Consideration order in compliance to Hon'ble Central Administrative Tribunal, order dated 21.06.2023, passed in OA No. 612/2023 titled Azher Mehmood & Ors vs UT & Ors.

Order No. **154**-PSC of 2023.

Dated: 14-07-2023.

1. **Whereas**, the Agriculture Production Department vide their indent No. ASHF-AHOGAZ/15/2021-03 (C.No. 37821) dated 02-09-2022 referred the 23 vacancies of Veterinary Assistant Surgeons (VAS) in **Animal Husbandry Department** to be filled through direct recruitment in terms of J&K Animal Husbandry (Gazetted) Service Recruitment Rules, 1988 issued vide SRO-359 dated 01-12-1988 read with amendments notified vide SRO-546 dated 10-12-2018, with the following break up:

OM	RBA	SC	ST	EWS	ALC/ IB	SLC	PSP	TOTAL	Remarks
12	03	02	02	02	nil	01	01	23	01 vacancy under 4% Horizontal Reservation for Hearing Impairment

2. **Whereas**, the Answering Respondent-Commission advertised these posts vide Notification No. 26-PSC (DR-P) of 2022, dated: 20.12.2022, and the cut-off date for determining the eligibility was 21.01.2023; and,
3. **Whereas**, 595 application forms were received against the above advertised posts; and,
4. **Whereas**, the applicants in the instant OA did not possess the requisite qualification (B.V.sc) on the cut-off date i.e. 21.01.2023, hence were not eligible for the post advertised and admittedly haven't applied for the said posts, therefore, they have no vested right against these posts; and,
5. **Whereas**, subsequently the Agriculture Production Department furnished another indent bearing No. ASHF-SHOGAZ/195/2021-03 dated 16-03-2023 referring 25 vacancies of Veterinary Assistant Surgeons (VAS) in **Department of Sheep Husbandry** to be filled through direct recruitment in terms of J&K Sheep Husbandry (Gazetted) Service Recruitment Rules, 1987 issued vide SRO-119 dated

06-03-1987 read with amendments notified vide SRO-547 dated 10-12-2018, with the following breakup:

OM	RBA	SC	ST	EWS	ALC/ IB	SLC	PSP	TOTAL	Remarks
12	03	02	03	01	01	01	02	25	01 vacancy under 4% Horizontal Reservation for PHC

6. **Whereas**, the Answering Respondent-Commission advertised these pots vide No. 09-PSC(DR-P) dated 27-03-2023, and the cut-off date for determining the eligibility was 30.04.2023 ; and,
7. **Whereas**, the Commission in response thereof received another 106 applications in addition to 594 applications received in response to the first Notification dated 20.12.2022; and,
8. **Whereas**, it was specifically mentioned in the second advertisement notification that the candidates who have applied in response to the first notification and are still eligible for the posts notified vide second notification dated 27.03.2023 need not apply, which is in conformity with the rule 18 of J&K Public Service Commission (Business & Procedure) Rules, 2021; and,
9. **Whereas**, the applicants filed the instant OA before the Hon'ble Tribunal parrying:
 - i. Stay the note mentioned in condition no 04 of the advertisement Notification dated 27.03.2023 and not to treat the candidature of the candidates in the notification dated 20.12.2022 who applied pursuant to Notification dated 27.03.2023 along with the applicants,
 - ii. Direction to the respondents to treat the applicants eligible and consider for selection for the posts advertised vide Notification No 26-PSC (DR-P) of 2022 dated 20.12.2022 as the examination of the applicant was delayed due to COVID-19.
 - iii. Direction to the respondent No 02 to give almost 06 months to prepare for the written examination pursuant to notification dated 20.12.2022 and 27.03.2023 for the posts advertised pursuant to above mentioned.
 - iv. Directing the respondent No 02 to conduct the examination separately pursuant to the above said Notifications dated 20.12.2022 and 27.03.2023 by debarring the candidates who have applied pursuant to Notification dated 2012.2022 in Notification dated 27.03.2023.
10. **Whereas**, the Hon'ble Tribunal while hearing the instant OA on 21.06.2023 has directed as under:

"Issue notice, returnable by 24.07.2023. Meanwhile, it shall be open to the respondent no. 2 to address these concerns of the examinees. At this stage, we are not passing any order on the conduct of date of examination. However, the concern of these examinees may be examined on merit. Respondent No.2 will examine these requests and take a decision within next four weeks or in any case before the final declaration of results".

11. **Whereas**, the posts advertised through above two notifications are having the same syllabus i.e. syllabus of BVSc, therefore, the Answering Respondent-Commission decided to conduct a joint examination for both the Notifications as the minimum qualification required for both the posts is also the same i.e. Bachelor's Degree in Veterinary Sciences & Animal Husbandry. However, separate merit lists will be drawn for both the Notifications; and,
12. **Whereas**, it is pertinent to mention here that the syllabus for the post of Veterinary Assistant Surgeon, has remained unchanged for so many years, therefore, the allegations of the Applicants regarding giving only one month's time for preparation after notifying the syllabus is totally baseless, misconceived, and made to mislead this Hon'ble Tribunal. The advertisement was issued on 27.03.2023 and the written test for the post was conducted on 25.06.2023, making it clear that 03 months preparation time was given to the candidates for preparation to the MCQ based written test, besides, all the applicants before this Hon'ble Tribunal are fresh graduates, who have graduated after the cut-off date for the first notification and all of them have very fresh memory of the subject compared to the persons who have applied in response to the first notification for which the cut-off date was 21.01.2023. Naturally, all those persons applying for the first notification have acquired the qualifying degree at least one year earlier to the present Applicants, meaning that their memories of the subject will not be as fresh as the applicants in the OA. They are at better footing in competing for the posts in the second notification compared to the persons who are older than them; and,
13. **Whereas**, the prayer of the applicants mentioned at Para 9(iv) supra is totally against Article 14 & 16 of the constitution, besides being against ethical and moral values. It is strange to see how applicants in prayer are demanding their eligibility against a Notification when they were not eligible at all and have not even applied in response to the said

notification, and make the other candidates who had applied against the first notification ineligible (bar) for the second notification, when actually they are eligible for both the Notifications. Law is settled on this very point ***that in seeking public employment, normally and ordinarily, the candidates must possess the requisite essential qualifications for the post as on the cut-off date in terms of the rules, or as may be fixed in the advertisement.***

14. **Whereas**, the joint written test for the supra two notifications was conducted on 25.06.2023, wherein the applicants also participated against the posts advertised vide second Notification; and,
15. **Whereas**, the contention of the Applicants that their right under Article 14 has been violated is totally baseless and has been made without application of mind and is not tenable in the eyes of law for the reason that the mandate of Article 14 is **equality among equals**. However, in the instant case, the Applicants have not applied against the posts advertised by way of first Notification i.e. Notification No. 26-PS (DR-P) Dated 20-12-2022, whereas, on the contrary, the candidates who have applied against the first notification are eligible for both the notifications. That it is not out of place to mention here that the aim of the Applicants is that the candidates who have applied against the Notification No. 26-PSC (DR-P) of 2022 dated: 20.12.2022 (first Notification) should not be allowed to compete for the posts advertised in the second notification is totally unjust, inhumane and contrary to law; and
16. **Whereas**, That according to Rule 19 of the J&K Public Service Commission (Business & Procedure) Rules, 2021 provides that last date as prescribed in the notification shall be the last/cut-off date for determining the eligibility against the said application/notification. Rule 19 of the Public Service Commission (Business & Procedure) Rules, 2021 are reproduced hereunder for ready reference:

19. **Cut-off Date**

The cut-off date specified under Rule 18 shall be determined as under:

- (a) ***Last date of receipt of application as indicated in the notification shall for all purposes be the cut-off date for determining eligibility, acquiring of minimum qualifications, experience, improvement in the qualification, distinction insports/NCC, Special attributes if any, or any other attribute claimed by the candidate.***

(b) *Experience, improvement in qualification, distinction in sports or any otherspecial attribute/s acquired by the candidates after the cut-off date (i.e the last date for receipt of applications) shall neither be taken into account nor given anyweightage.*

(c) *The age of the candidate, however, shall be reckoned with reference to 1stJanuary of the year in which posts have been advertised.*

17. **Whereas**, pertinent to mention here that the Applicants have not participated in the selection process against the first notification i.e. Notification No. 26-PSC (DR-P) of 2022 Dated 20-12-2022 being ineligible on the cut-off date, as such, they cannot claim any parity with the eligible candidates. The Hon'ble High Court of J&K at Srinagar in WP(C) 408/2022-titled Saima Ashraf Vs UT of J&K & Ors (Date of Decision: 27-03-2023), which is the latest judgment has observed as under:-

“24 (A) It is a well settled legal proposition that in seeking public employment, normally and ordinarily, the candidates must possess the requisite essential qualifications for the post as on the cut-off date in terms of the rules, or as may be fixed in the advertisement. Consequently, the candidates would be required to submit all the requisite supporting certificates/documents on or before the cut-off date mentioned, failing which, the candidature may be rejected.

This is in consonance with the mandate of Article 14 and 16 of the Constitution so that there is equal opportunity amongst candidates equally placed by ensuring competition with level playing field so that any one which is deficient in the essential qualification is not allowed to compete with those who possess the essential qualifications. Further, if any candidate not having the essential qualifications is allowed to apply, claim can be made by other ineligible candidates to apply, which cannot be permitted.


24(B) *While the above proposition of law remains a fundamental part of service law jurisprudence relating to public employment, we have noticed certain exceptions carved out that when it relates to submission of certain documents/certificates as seen in some of the judgments of the Hon'ble Supreme Court in Dolly Chhanda (supra), Ram Kumar Gijroya (supra), Alok Kumar Singh (supra) and decisions of this Court in Rimpi Ohri (supra) et al. as noticed above,*

treating to be an essentially procedural lapse which can be condoned under certain circumstances.

24(C) However, when we closely examine these decisions, it would be noticed that in fact, there is no fundamental departure from the above well settled broad proposition of law, in as much as, there is still insistence that on the last date fixed or the cut-off date, the candidate must possess or claim to have possessed the qualification or the attribute required. Thus, the relaxation granted was in respect of submitting/furnishing of document/certificate to support the status, of which the candidate was already possessed of and not of such qualification like academic qualification which has to be obtained by the candidate by making effort and does not naturally inhere in the person by virtue of his status/position.

24(D) The common thread which runs through these decisions is that even when certificates were allowed to be submitted belatedly, the candidates were already residents of the concerned place or were already possessed of the attribute/status as regards caste or community or the category to which the candidates belonged to and the certificates were considered as proof of the attribute and status or position they were already possessed of. These attributes were not obtained after the cut-off date and the belated submission of such certificate was considered to be a mere procedural lapse.

Now therefore, the concern/objection of the candidate is examined in compliance to the Hon'ble CAT order dated 21.06.2023 passed in OA No 612/2023 titled Azher Mehmood Vs UT & ors, and is rejected being devoid of any merit.


Bashir Ahmad Dar (JKAS)
Secretary
J&K Public Service Commission

No. JKPSC-LEG-36-2023

Dated 14.07.2023

Copy to:

1. Mr. F A Natnoo, Advocate Standing Counsel for information and n.a.
2. Private Secretary to Hon'ble Chairman Public Service Commission for the Information of the Hon'ble Chairman.
3. I/C Website, for uploading the notice on official website.