

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT SRINAGAR**

**LPA no. 36/2020**  
**CM no. 955/2020**

**(Virtual Mode)**

**Reserved on 19.04.2021**  
**Pronounced on 23.04.2021**

J&K Service Selection Board

.... Appellant(s)

Through: Mr Mir Suhail, AAG  
Mr Sajjad Ashraf, GA  
V/s

Ashiq Hussain Shah and others

... Respondent(s)

Through: Mr S. A. Naik, Advocate  
Mr M. A. Chashoo, AAG

**CORAM:**

Hon'ble Mr Justice Ali Mohammad Magrey, Judge  
Hon'ble Mr Justice Vinod Chatterji Koul, Judge

**JUDGMENT**

**Per Magrey, J**

01/- This intra Court Appeal, for short appeal, is directed against the judgment/ final order passed in writ petition, SWP no. 1997/2011, on 17.08.2019, for short impugned judgment, whereby the writ petition, filed by the respondents, has been allowed.

02/- The brief resume of the events that led to the filing of this appeal are taken note of, in the first instance, thus:

03/- The respondents are stated to have applied under a reserved category, (RBA), for the post of Draftsman Civil (Backlog), pursuant to an advertisement notice issued in this behalf by the appellants and were subsequently shortlisted also. Subsequent thereto, the respondents have been called for the interview and based on their performance in the interview they were expecting selection and appointment against the post in question. However, the provisional list issued by the respondents reflected the name of one candidate from Reasi of Jammu Province having been selected for the post of Draftsman Civil, Divisional Cadre, Kashmir, against the advertised 213 such posts.

04/- Feeling aggrieved, the petitioners filed a representation before respondent no. 2 seeking reasons of their exclusion from the select list, and the petitioners were informed that respondents are not bound to appoint them despite posts being available. The petitioners felt constrained to file a writ petition, SWP no. 951/2010, which upon consideration by the writ court was disposed of on 24.12.2010 in the following terms:

*“In view of these facts I find the petition can be and is disposed of at this very stage without objections from the other side with the direction to the Service Selection Board to consider the case of the petitioners on the basis of certificates issued by the Director Technical Education and pass appropriate orders, if the petitioners fulfill the requisite qualification/ eligibility they be selected/ appointed against the posts available.”*

05/- It is further stated in the writ petition that the petitioners, subsequently, filed a review petition seeking rectification of error inasmuch as the order mentioned in the order 24.12.2010 that the case of the petitioners be considered on the basis of certificates issued by the Director Technical Education instead of mentioning that case be considered on the basis of certificates issued by the concerned institution recognized by the Director Technical Education. The review petition was allowed by the court in terms of order dated 10.2.2011 and the error so pointed out was rectified.

06/- Subsequent thereto, the petitioners are stated to have filed a contempt petition bearing no. 193/2011 wherein the respondents appeared and filed their statement of facts/ compliance stating therein that the Director Technical Education informed the SSRB that four trades of Kissan Institute of Technology including Draftsman (Civil) are affiliated with the National Council of Vocational Trainings. Furthermore, it is stated to have been pleaded by the respondents in the statement of facts/ compliance report that the Secretary, State Board of Technical Education, J&K Jammu informed the SSRB that the certificates of the petitioners are not genuine, therefore, on the said information the claim of the petitioners has been rejected in terms of order dated 08.06.2011 on the ground that they did not fulfill the requisite condition of eligibility for the post of Draftsman (Civil).

07/- Aggrieved of the consideration order the petitioners filed yet another writ petition, SWP no. 1708/2011 challenging the consideration order dated 08.06.2011. The Writ Court, on consideration of the matter, in terms of order dated

23.08.2011 dismissed the writ petition by observing that since there is no challenge made to the communication dated 18.01.2011 relating to the genuineness of certificates of the petitioners, therefore, the writ petition cannot be entertained. However, while dismissing the writ petition the petitioners were afforded liberty to have recourse, if they so choose, to permissible remedial measures.

08/- The petitioners, subsequently, obtained the copy of the communication dated 18.1.2011 and filed a writ petition no. SWP 1997/2011, and challenged the order dated 08.06.2011 and communication dated 18.01.2011 on the grounds taken in the memo of writ petition. The writ court, on consideration of the matter has passed the impugned judgment holding that the certificates of the petitioners are genuine having been obtained from an Institution which is registered by the Government of Jammu and Kashmir and the Central Government as also affiliated in NCBT Government of India, New Delhi and allowed the writ petition of the petitioners/ respondents herein, in the following terms:

*“i) By issuance of writ of certiorari, the impugned Communication bearing No. SBOTE/Verification/21011/1412 dated 18.01.2011 issued by respondent No. 3 and Order No. 101-SSB of 2011 dated 08.06.2011 issued by respondent no. 2 are quashed.*

*ii) By writ of mandamus respondents are directed to make further follow up in pursuance to the shortlisting of the candidates made for filing of posts of Draftsman, Category RBA and to treat the trade certificates issued by Kissan Institute of Technology R.S. Pora Jammu as ‘genuine’ for filing up of the post of Draftsman Civil. Respondents are further directed to prepare the selection list and to make appointment accordingly of all the petitioners for the posts for which they had applied.”*

09/- Feeling aggrieved of the impugned judgment, the appellants have filed the instant appeal seeking setting aside of the impugned judgment *inter alia* on the grounds that impugned judgment did not appreciate the stand taken by the Board in the reply affidavit; the controversy has not been appreciated in its right perspective as the writ court passed in the impugned judgment has only taken note of the fact that the Institute from where the petitioners are stated to have obtained the certificates in question is a registered Institute without mentioning anything about the genuineness of the certificates itself as the dispute is not in regard to the

recognition of the institute from where the certificates have been obtained but of the certificates itself; that no discrimination is meted out to petitioners as has been held by the writ court as the petitioners' cannot seek equality with those who are having valid certificates; that the appellants, being recruiting agency, only rejected the candidature of the petitioners on the basis of the letter no. SBO-TE/verification/2011/1412 dated 18.01.2011 issued by the State Board of Technical Education certifying therein that the certificates of nine candidates including the petitioners are not genuine; that the appellants even after passing of the impugned judgment took up the matter with the J&K State Board of Technical Education to ascertain as to whether the certificates in question have been issued to the petitioners by the competent authority and the State Board of Technical Education in terms of communication No. SBOTE/Verify/2019/941 dated 27.11.2019 intimated the appellants that neither the examinations of the petitioners have been conducted nor any certificate issued in this behalf by the said Board; the impugned judgment is *ex-facie* contrary to the law and facts of the case.

10/- We have heard learned counsel for the parties.

11/- Mr Mir Suhail, AAG, submits that the impugned judgment is bad in law as the stand of the respondents has not been appreciated by the Writ Court. He further submits that the conclusion arrived at by the Writ Court is incorrect as the same was solely based on the registration of the Institution when the dispute was entirely on the certificates in possession of the petitioners.

12/- Learned Additional Advocate General further submits that the plea raised by the respondents/ petitioners before the Writ court that the verification report was submitted by the Board of Technical Education mechanically is nullified by the fact that even after the passing of the impugned judgment the Board reiterated its stand and went further on to add that neither their examinations have been conducted nor any certificate has been issued in this behalf.

13/- He further submits that in view of the clear stand taken by the Board of Technical Education that certificates in possession of the petitioners and relied upon by them are fake, the directions issued by the Writ Court in terms of impugned judgment cannot withstand the test of law.

14/- The learned Additional Advocate General, therefore, prays that the appeal be accepted and the impugned judgment be set-aside and the writ petition of the petitioners/ respondents be also dismissed.

15/- On the other hand Mr S. A. Naik, learned counsel for the respondents, submits that the Writ Court has appreciated the controversy in its right perspective

and the impugned judgment is quite in consonance with law. He submits that the respondents have been discriminated by the appellants in the selection process in question as the candidates, who had obtained the certificates from the same Institution as that of the petitioners, have been considered which amounts to violation of fundamental rights of the petitioners guaranteed by the Constitution.

16/- He, therefore, prays for the dismissal of appeal.

17/- Considered the submissions made.

18/- The finding recorded by the Writ Court holding the respondents/ petitioners therein, entitled for the relief granted in terms of the impugned judgment is bereft of reasons, material and the law. Merely because the Kissan Institute of Technology R.S. Pora, Jammu, which has, allegedly, issued the certificates in question, is a recognized Institute to impart training vis-à-vis certain trades including the one allegedly possessed by the respondents, does not *ipso facto* mean that the certificates produced on its name, without actually having been issued by it, are also genuine.

19/- The findings recorded in paragraph no. 13 of the impugned judgment by the Writ Court is beyond the scope of the powers of the court under Article 226 of the Constitution of India as court has no mechanism/ expertise available to check the veracity of the certificate that meets the requirements of the recruitment rules. In a situation where the academic qualification certificate is questioned by the selection/ appointing authority from the very existence and supported by the certificates of the Board of Technical Education, the learned Writ Court was required, for doing the substantial justice, to evolve a mechanism by virtue of which the genuineness of the certificates could have been ascertained by referring the matter to the Committee consisting of members from the concerned field if at all it was convinced that the genuineness of the certificates has been casually reported.

20/- The question that requires an answer, in the circumstances, would be as to whether the certificates in question are forged having been managed by the respondents of their own without having appeared in any examination in this behalf? To have the question answered the matter is required to be looked into by the Committee of the concerned field who will examine the said issue and frame their opinion accordingly.

21/- In the above background, in acceptance of the appeal, the impugned judgment is set-aside and the writ petition of the respondents/ petitioners is disposed of in the following manner:

- i) The Commissioner-Secretary to the Government, PWD department shall constitute a committee of the officers from the State Board of Technical Education; Directorate of Technical Education and the Service Selection Recruitment Board. The needful shall be done within one week from today.
- ii) The Secretary, J&K Service Selection Board, Director Technical Education and Secretary, State Board of Technical Education shall examine the claim of the petitioners on the strength of the certificates in question. While undertaking such exercise, the Committee shall also hear the respondents/ petitioners in person who shall be at liberty to produce all the documents in support of their claim.
- iii) In the event the Committee comes to the conclusion that the certificates in question are genuine and meets the requirement of State Board of Technical Education, they shall be entitled to the relief claimed in the writ petition. The report shall be submitted to the SSB and Government for doing the needful. However, if it comes to the fore that the certificates in question are actually not genuine and they have not appeared in any examination in this behalf, therefore, do not meet the requirement of the State Board of Technical Education, the matter shall be deemed to be closed with the report of the Committee on such lines.

22/- Copy of the judgment be furnished to the learned counsel for the parties under the seal and signatures of Bench Secretary of the Court.

23/- Disposed of on the above lines.

Srinagar  
23.04.2021  
Amjad Lone PS

Whether approved for reporting: Yes.