

Government of Jammu and Kashmir
J&K Services Selection Board
Hema Complex, Sector -3, Channi Himmat, Jammu
(www.jkssb.nic.in)

ORDER NO. 55 -SSB of 2021
DATED: 05 -02-2021

Subject: - SWP NO. 592/2009 titled Saleem Akhter V/s State & Ors.

WHEREAS, the Jammu & Kashmir Services Selection Board advertised 247 posts of Teachers in School Education Department; District Cadre Samba pursuant to Advertisement Notice No. 01 of 2008 dated 22.04.2008 under Item No. 001 with the category wise breakup of posts was as under:-

OM-141, RBA-49, SC-20, ST-25, ALC-08, OSC-04 Total 247 and the qualification prescribed for the post was as under: -

"10+2, preference will be given to the candidates having higher qualification and those having passed M.Ed, B.Ed and Diploma in ETT / NTT." ; and

WHEREAS, the criteria prescribed for the posts by the Board is as follows:-

i.	10+2	30 points
ii.	Graduation	10 points
iii.	B.Ed	15 points
iv.	Post-Graduation	10 points
v.	M.Ed	10 points
vi.	Doctorate (Ph.D)	05 points
vii.	A) M.Phil	02 points
	B) Ph.d	03 points
viii.	Viva-Voce	20 points
	Total	100

WHEREAS, the petitioner namely Saleem Akhtar applied and competed for the post of Teacher, District Cadre Samba under ST category and on account of non-consideration of her PG degree and feeling aggrieved of the final Select List to the extent of ST category, approached the Hon'ble High Court by way of SWP No. 592/2009 titled Saleem Akhtar Vs State and others, seeking following reliefs:-

Writ of Certiorari quashing the selection of private Respondent No. 4 to 17 for the post of Teachers, under ST Category, made pursuant to Advertisement Notice No.01/2008 dated 22.04.2008, District Cadre Samba, published in local daily newspaper 'Daily Excelsior' in its issue, dated

22.01.2009 by treating it as null, void in as much as against the rules and norms.

Writ of Mandamus commanding the respondents to accord consideration to the case of the petitioner for selection to the post of Teacher, District Cadre Samba under ST Category and so also select the petitioner as Teacher by treating the petitioner higher in merit than the Respondent No. 4 to 17 and also issue appointment letter in favour of the petitioner by releasing all consequential benefits; and

WHEREAS, the Hon'ble High Court upon consideration of said writ petition as well as the objections of the Board allowed the writ petitioner vide its judgment/order dated 07.02.2017 with the following directions: -

"6. Admittedly, the result of M.A Urdu examination was declared on 17.04.2008, which is evident from the communication of Controller of Examination of Maulana Azad National Urdu University. Once the result is declared the candidate can be said to have acquired the aforesaid qualification. The petitioner as well as respondent Nos. 7 to 17 had obtained Post Graduation qualification in Urdu from Maulana Azad National Urdu University, however, in the case of respondent Nos 7 to 17, the mark-sheets were issue on 08.04.2008, whereas in the case of petitioner the same was issued on 17.06.2008. Mere late issuance of mark-sheet in the case of petitioner would not deprive her of having qualification, which he had already acquired before the last date of submission of application form..... the petitioner had acquired the qualification prior to the last date of submission of application, therefore, petitioner is eligible for consideration of her qualification i.e. Post-Graduation Degree in Urdu.

8. In view of the preceding analysis, the respondents are directed to consider the claim of the petitioner for appointment to the post of Teacher by taking into account the Post-Graduation qualification acquired by the petitioner in Urdu and in case it is found that the petitioner has found more marks than the last candidate, the respondents are directed to cancel the selection of last candidate after affording an opportunity of being heard and thereafter to appoint the petitioner, if she is found to have secured more marks than the last selected candidates. Let this exercise be completed within a period of four months from the date the certified copy of this order made available to the respondents by the petitioner.

With the aforesaid direction, the writ petition stands disposed of."

WHEREAS, in due deference to above referred judgment dated 07.02.2017 passed by the Ld. Single Judge of the Hon'ble High Court, an exercise was initiated in the Board for reframing the Selection List in respect of ST Category and it was

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decided to provide an opportunity of being heard to the candidate likely to be affected by the implementation of the judgment by way of a speaking notice. In the first instance, a candidate namely Rubeena Parveen Choudhary figuring at S. No. 25 of the Select List under ST Category was provided an opportunity of being heard, however, subsequently, it was found that another candidate namely Shaghfta Andleeb, not arrayed as party respondent in the original writ petition was likely to be affected on account of implementation of the judgment and accordingly, in terms of notice issued under endorsement No. SSB/S-10/09/533-37/18 dated 18.04.2018 was offered an opportunity of being heard before recommending the name of the petitioner for the post of Teacher, District Cadre Samba under ST Category and was accordingly asked to attend the office of the Board on 26.04.2018 alongwith the relevant records; and

WHEREAS, feeling aggrieved of the Notice dated 18.04.2018, issued by the Jammu and Kashmir, Services Selection Board and the writ Court judgment dated 07.02.2017, approached the Hon'ble High Court by filing LPA bearing No. 48/2018 titled 'Shaghfta Andleeb V/S State of J&K and others', which was dismissed by the Division Bench of the Hon'ble Court vide judgment dated 19.03.2019 in the following manner:-

"Be that as it may, considering the facts of the present case and the law on the subject, we feel that the judgment and order impugned warrants no interference. Letters Patent Appeal is accordingly found to be without any merit and is accordingly dismissed."; and

WHEREAS, feeling aggrieved by the judgment/order dated 19.03.2019 passed by the Hon'ble High Court in LPA No. 48/2018 titled 'Shaghfta Andleeb V/S State of J&K and others, the appellant herein (Shaghfta Andleeb) approached the Hon'ble Supreme Court by way of SLP bearing no. 14508/2019 titled Shaghfta Andleeb V/S State of J&K and others. The Hon'ble Supreme Court vide judgment dated 08.07.2019 dismissed the said SLP with the following direction which is reproduced as under: -

"The Learned Counsel appearing for the Petitioner seeks permission to withdraw this Special Leave Petition with liberty to make a representation to the Government which shall be considered by the Government within a period of three months from today, taking into account of fact that the petitioner has been working for ten years.

Permission granted.

The Special Leave Petition is, accordingly, dismissed as withdrawn with aforesaid liberty."; and



WHEREAS, the matter was placed before the Board in its 156th meeting held on 04.09.2019 and the Board after due deliberations decided to refer the matter to Law Department through GAD for seeking opinion. Accordingly, the matter was referred to GAD vide communication No. SSB/Legal/2202-2203/19 dated 06.12.2019 and the General Administration Department vide Communication No. GAD(Legal)F-640/19 dated 22.01.2020 informed that the "matter has been examined in the General Administration Department in consultation with the Department of Law, Justice and Parliamentary Affairs and the Board is advised to clearly specify the legal issues on which the advice/opinion is being sought in the matter."; and

WHEREAS, again the matter was placed before the Board in its 169th meeting held on 06.05.2020 and the Board has decided after taking into account all relevant factors including the directions passed by the Hon'ble Supreme Court and the Hon'ble High Court, that it has been deemed expedient to refer the matter to Department of Law, Justice and PA through GAD for seeking advice with reference to specific legal issues, and accordingly, in continuation to communication No. SSB/Legal/2202 -2203/19 dated 06.12.2019 vide communication No.SSB/Legal/S-10/09/4859 dated 19.06.2020 requested the General Administration Department to take up the matter with the Department of Law, Justice and PA for seeking advice in reference to the judgment order dated 07.02.2017 passed in SWP No. 592/2009 titled Saleem Akhter v/s State &Ors., judgment/order dated 29.03.2019 passed in LPA No. 48/2018 titled Shagufta Andleeb V/s State &Ors., judgment/order dated 08.07.2019 passed in SLP No. 14508/2019 titled Shagufta Andleeb v/s State &Ors; and

WHEREAS, the General Administration Department vide communication No. GAD(Legal)F-640/19 dated 03.12.2020 forwarded the advice/Opinion of the Department of Law, Justice and PA which is reproduced as under:-

"Returned. There is apparently no contradiction between the judgment passed by Single Judge and Hon'ble Supreme Court of India. Hon'ble Single Judge has directed to consider case of petitioner Saleem Akhter after taking into account post-graduation degree acquired by petitioner and if merit of petitioner is higher than last selected candidate, his/her selection can be cancelled after affording him/her opportunity of being heard. Hon'ble Supreme Court has also directed that appellant (who is last in merit list) has been given liberty to make a representation to the Government which shall be considered by Government within a period of three months taking into account the fact that petitioner has been working for ten years. Opportunity of being heard would mean considering the relevant fact that she has been working for ten years, as




such, department has to issue a speaking order considering all facts and circumstances of the case.

WHEREAS, in due deference to the directions passed by the Hon'ble High Court, the matter was placed before the 178th meeting of the Board held on 10.01.2021 and after threadbare discussion, it was decided to prepare a self-explanatory note covering all factual and legal aspects and recommend the matter to the Administrative Department for further necessary action; and

WHEREAS, the J&K Services Selection Board after considering the claim of the petitioner namely, Ms. Saleem Akhter who secured 32.19 points and as per the Hon'ble High Court Judgment/Order dated 07.02.2017, found that after giving weightage to her Post Graduation Degree (6.42), she comes under Selection Zone having secured 38.61 points; and

Now, therefore, in deference to the judgment dated 07.02.2017 passed in SWP No. 592/2009 titled Saleem Akhter v/s State & Ors and as per the recommendation of the Board, the petitioner namely **Saleem Akhtar W/O Abdul Khaliq R/O Narol, Tehsil Mendhar, District Poonch** is hereby recommended to the Indenting Department for the post of Teacher (School Education Department), District Cadre Samba pursuant to Advertisement Notice No. 01 of 2008 dated 22.04.2008 under Item No. 001 at serial no. 13 under ST Category having the merit position of 38.61 points. Consequently, the candidate figured at S. No. 13 under ST Category shall now move to Position S. No. 14, so on and so forth. However, the terms and conditions will be same as per Selection List forwarded to the Indenting Department vide Communication No. SSB/Sel/Secy/09/1802-06 dated 20.05.2009.

BY ORDER


(Sachin Jamwal) KAS,
Secretary
J&K Services Selection Board
Jammu

Dated: 5.02.2021

No. SSB/Legal/S-10/09/183-86/2021

Copy to the:-

1. Administrative Secretary to Government, School Education Department, Civil Secretariat Jammu for information and necessary action.
2. Commissioner/Secretary to Government, General Administration Department, Civil Secretariat, Jammu.
3. Pvt. Secretary to Chairman, JKSSB for information to the Chairman.
4. Saleem Akhtar W/O Abdul Khaliq R/O Narol, Tehsil Mendhar, District Poonch.
5. Selection Division/ Record file.
6. In-Charge Website.