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Supp

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 3308/2025

CM No. 7940/2025

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 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 its order dated 13.12.2022). The merit of the last selected candidate was 28.61 points. The petitioner figured 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 (Karate Championship) was submitted by him.

3. Aggrieved of cancellation of his provisional selection, the petitioner preferred a writ petition bearing SWP No. 77/2011, subsequently transferred to Central Administrative Tribunal, Jammu Bench and re-numbered as TA No. 1774/2021. An application bearing MA No. 691/2022 came to be preferred by the petitioner for disposal of TA No. 1774/2021 in the light of order dated 09.08.2021 and the TA No. 1774/2021 was disposed of by the Tribunal vide order dated 07.07.2022 with a direction to the respondents to consider the petitioner for the post of

Physical Education Teacher in the light of 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 petitioner 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 petitioner in respect of the disputed certificate are deducted, still then the petitioner would figure in the select list, as in that eventuality, he would secure 31.29 points whereas the merit of the last selected candidate was 28.61 points. It was also contended by the petitioner that the Crime Branch vide communication No. CR/DYSP-HQ/PLO-13-6274 dated 03rd July 2013 had in categoric terms stated that the National Sports Certificate of the petitioners was genuine but issued by an 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 urged by the petitioner before the learned Tribunal, in the present petition.

5. The respondents have filed the response thereby narrating the factual aspects 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 had also received a letter dated 28.07.2010 from Zonal Headquarters Crime Branch and academic/sports certificate of 58 candidates including the petitioner were sent to the Crime Branch Kashmir vide Letter dated 11.10.2010 for verification. The respondents 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 the petitioner were found to be fake. By placing reliance on the said communication, a meeting was convened 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 Certificates 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. It is the stand of the respondents that once a candidate attempts to secure an appointment by misrepresentation or fraud, he cannot be granted any benefit. In nutshell, the stand of the official respondents is that the certificate of the petitioner was found to be fake and therefore his provisional selection was cancelled.

6. Mr. Yawar Hussain, learned counsel appearing on behalf of the petitioner has argued that even if the disputed Certificate is excluded for the purpose of determining the merit, still 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 certificate was genuine but issued by an un-recognized Association.
7. 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 as it was issued by the un-recognized Association, therefore he is not entitled to any relief.
8. Heard learned counsel for the parties and perused the record.
9. 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 dated 22.11.2022 passed by respondent No. 3 reveals that he has simply relied upon the communication dated 03.01.2011 to observe that the petitioner had submitted fake National Sports Certificate. The order dated 22.11.2022 is silent in respect of communication dated 03.07.2013 of the Crime Branch, wherein it was stated that the disputed Certificate was genuine but issued by an un-recognized Association.

10. Be that as it may, in his application before the learned Tribunal the petitioner had specifically mentioned in respect of communication dated 03.07.2013 issued by the Public Information Officer, Crime Branch, Kashmir. In the operative part of the order impugned, the learned Tribunal has only noted *“that the respondents have taken the point that the Crime Branch vide its communication dated 03.07.2013 reported that the said Certificate was genuine, the same was not issued by a recognized Association.”* but has not returned any

- finding in respect of the effect of the communication dated 03.07.2013 on the merits of the claim of the petitioner.
11. It is worthwhile to mention here that the application of the petitioner was decided by the learned Tribunal in haste and without inviting any response from the official respondents.
12. It needs to be noted that 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 this petition and pursuant to order dated 25.03.2025, learned counsel for the respondents had produced communication dated 07.04.2025 demonstrating that 29 posts of Physical Education Teachers were lying vacant in District Budgam as is reflected in the order dated 08.04.2025. On 08.04.2025, 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 various candidates belonging to different districts of the Valley had 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. Offences were proved against 07 accused, but the petitioner was not included in the array of the accused. 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 an un-recognized Association. Had the petitioner submitted any fake or forged certificate, this Court would not have shown any indulgence. The petitioner had submitted a certificate issued by an un-recognized Association and at the most while scrutinizing the documents submitted by the candidates, respondent

No. 4 could have excluded the said Certificate while determining the merit of the petitioner. The certificate submitted by the petitioner though was invalid for the purpose of determining the merit of the petitioner but was neither fake nor forged. This court is of the considered view that there was no misrepresentation or fraud on the part of the petitioner. Had the petitioner submitted the fake or forged certificate, then the respondents would have been correct in saying that the petitioner was guilty of fraud or misrepresentation.

13. It is contended by the petitioner that even if that certificate is excluded for determining the merit of the petitioner, still the petitioner would fall within the merit list.
14. After having examined the order passed by the learned Tribunal, this court finds 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 reason.

15. In view of what has been said and discussed above, 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 determine the merit of the petitioner afresh after excluding the invalid certificate and consider the claim of the petitioner for appointment as Physical Education Teacher under District Cadre Budgam against the post reserved in terms of order dated 27.12.2023. The aforesaid exercise be concluded within a period of three months from the date of receipt of a certified copy of order by the respondents.

16. Disposed of.

(Mohd Yousuf Wani)
Judge

(Rajnesh Oswal)
Judge

SRINAGAR

18.04.2025

Aasif