

PETITIONER:
JAMMU & KASHMIR PUBLIC SERVICE COMMISSION

Vs.

RESPONDENT:
FARHAT RASOOL & ORS.

DATE OF JUDGMENT 02/11/1995

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
RAMASWAMY, K.

CITATION:
1995 SCC Supl. (4) 621 1995 SCALE (6)182

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

HANSARIA. J.

Special leave granted.

2. The appellant is Jammu and Kashmir Public Service Commission. It has felt aggrieved at the mandamus issued to it by the Division Bench of the Jammu and Kashmir High Court to declare the result of respondent No.1's selection and forward the same to the State, to whom direction given is to appoint the respondent to the post of Assistant Engineer (Elect) and to treat him as having been appointed from the date other candidates whose names found place in the select list were appointed and give him all consequential service benefits.

3. The appellant has a serious grievance to the direction issued by the Division Bench who set aside the order of the single Judge, who dismissed the writ petition of the respondent in limine.

4. According to the appellant, the aforesaid direction were not merited inasmuch the respondent had made a false declaration, when he had applied for the post in question on 13.2.1988 stating, inter alia, that he had passed B.E. examination in 1987 securing 5608 marks out of 8000. According to the appellant the respondent had really come to pass the aforesaid examination on 30.3.1989 as would appear from Notification No.55/BEF of 1987 (August) issued by the Controller of Examinations, as per document the respondent had secured 5569 marks.

5. The case of the respondent on the other hand is that the result of the examination in question had been announced on 30.10.1987 and his result was withheld for some technical reason and the same having been taken care of a formal declaration of his result was made on 31st March, 1988. A perusal of the impugned judgment shows that the Division Bench had by and large accepted the case of the respondent and, therefore, held the appellant-commission was not justified in taking a view that the respondent was not

eligible for selection for the post in question. As against this, learned single Judge had accepted the case of the appellant.

6. Shri Riaz A. Jan, learned counsel appearing for first respondent, took pains to satisfy us that the statement of the respondent in his aforesaid application that he had passed the examination as stated in the application form is correct. Learned counsel has sought to sustain this submission by referring us, inter alia, to the Certificate of the University that the respondent was admitted to the Degree of Bachelor of Engineering in the Year 1987 (August); and two communications of the Assistant Controller of Examinations which are dated 15.4.1992 and 1.10.1993. In the first communication it has been stated that the respondent had passed the concerned examination which was held in August, 1987, the result of which examination was declared vide Notification of even number dated 23.10.1987. In the second, the Assistant Controller of Examinations has stated that the result of the respondent was withheld because of incomplete registration; and he should be deemed to have passed the said examination vide Notification of 23.10.1987. We are also referred by the learned counsel to the interview sheet prepared by the Deputy Secretary of the appellant-Commission on 21.4.1992 in which column three relating to B.E. Degree/marks reads as "UK 8/1987 DIV.I 69.7%. On the strength of this Court's decision *Charles K. Skaria v. Dr. C. Mathew*, 1980 (2) SCC 752, it is urged by the counsel that as the respondent's success in the examination was brought to the knowledge of the selection committee before completion of selection and as the result of the examination had been published before that date, the respondent was eligible.

7. A perusal of the concerned documents makes it clear that when the general results were declared on 23.10.1987, as to the respondent it was stated 'MPS/IR'. The acronym "MPS" stands for marks for previous semester(s) awaited, and "IR" for incomplete registration. It thus shows that the result of the respondent had been withheld not only for incomplete registration but non-availability of marks of his previous semester as well. On these having become available, the result of the respondent was declared vide Notification No.55/BEF of 1987 (August) on 31.3.1988, in which the marks obtained were also given as 5569 out of 8000.

8. The University's Certificate can be of no assistance to the respondent as it merely says about the admission to the Degree in 1987 (August). As to when had this event really taken place cannot be known from this document. The two certificates of Assistant Controller of Examinations on which reliance has been placed by the respondent's counsel cannot alter the position that by 13.2.1988, when the respondent had applied for the post in question, he had not passed the examination in question as had been stated by him in his application form. The further wrong information given in the application form about securing of 5608 marks out of 8000 marks. It seems to us that a mention was made about marks secured to lend credence to the statement made by the respondent that he had passed the examination, which in fact he had not done by 13.2.1988.

9. So, we are of the opinion that the Division Bench of the High Court took a wrong view about the fulfilment of the eligibility condition. The decision of this Court in the aforementioned case cannot be called in aid by the respondent because there the question for examination was entirely different. The present is a case where almost a fraud was sought to be played by the respondent by giving

wrong information as to his eligibility, benefit of which fraud cannot be allowed to the respondent.

10. The appeal is, therefore, allowed. The impugned order is set aside. The result is that the writ petition filed by the respondent No.1 stands dismissed. On the facts and circumstances of the case, we leave the parties to bear their own costs throughout.

JUDIS