

# **Rajesh Gupta And Ors. vs State Of J And K And Ors. on 13 December, 2006**

## **Equivalent citations: 2007(3)JKJ80**

### **JUDGMENT**

Y.P. Nargotra, J.

1. The Jammu & Kashmir Service Selection Board (hereinafter referred to as the Selection Board) vide its Advertisement Notice No. 10 of 2005 dated 29.12.2005 invited the applications for the post of Motor Vehicle Inspector (Survey) and Motor Vehicle Inspector (Tech.) for the State cadre as well as for the Divisional cadres of Jammu Division and Kashmir Division. The eligibility qualification/criteria prescribed for the said posts is "diploma in Auto Mobile Engineering from any recognized institute having at least 5 years experience in any recognized institution of the State Transport Undertaking." The last date prescribed for submission of the application forms was 31.1.2006.

2. In response to the said notification, the petitioners along with other candidates submitted their applications. However, thereafter, various representations were received by the Government as well as the Selection Board regarding the discrepancy in the eligibility qualification vis--vis the qualification prescribed for the same post in the past. The Service Selection Board vide No. SSB/SEL/Secy/06/5597/06 dated 15.2.2006 took up the matter with the Transport Department for clarification. The Transport Department after examining the provisions of Central Motor Vehicles Act, 1988 issued the clarification. Consequently, the Selection Board on the basis of clarification received issued Corrigendum No. DIP/J-4225 dated 21.2.2006 in the following terms:

Now therefore kindly read qualifications for the post of Motor Vehicle Inspectors advertised vide Notification No. 10 of 2005 dated 29.12.2005 as under:

1. Minimum general educational qualification of a pass in X standard and

2. (i) a diploma in Automobile Engineering (3 years Course) or

(ii) a diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course) or

(iii) any qualification in either of the above disciplines declared equivalent, by the Central Government or State Government.

3. Working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy good vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine, and
4. Must hold a driving license authorizing him to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles.

Consequent upon the criteria for shortlisting and follow up process notified for the post vide Notification No. 11 of 2005 dated 29.12.2005 (gazetted in the issue of 29th December 2005) shall stand modified as under:

1. Weightage for the basic tech qualification with one year experience = 60
2. Degree (B.E.) in relevant discipline = 10
3. M.E. in the relevant discipline = 10
4. Viva-voce = 20

3. Thus, the Selection Board by issuance of Corrigendum has prescribed/modified the eligibility qualification/criteria for selection of the candidates for the posts advertised. The petitioners being not satisfied with such modified eligibility qualification are questioning the legality of Corrigendum on the apprehension that they may be thrown out of the competition on account of their ineligibility to appear under the new eligibility qualification/criteria set out by the Corrigendum.

4. The case of petitioners is that the posts of Motor Vehicle Inspector (Survey) and Motor Vehicle Inspector (Tech.) are governed by the Jammu & Kashmir Transport Controller's (Subordinate) Service Recruitment Rules, 1974 and are referred to in Clause (IV) under Category "B" of Schedule 'A' appended to the rules, in which the qualification prescribed is the same as was in the original notification dated 29.12.2005, therefore, the qualification prescribed by the Corrigendum being contrary to the recruitment rules is invalid.

5. The stand of respondents is that in terms of Section 213 of Motor Vehicles Act the State Government as well as the Central Government is empowered to prescribe the minimum qualifications for the post of Motor Vehicle Inspector. Pursuant to the said power and in exercise of the power vested under Section 124 of the Constitution of J&K, the State Government has prescribed the qualification in the relevant recruitment rules, whereas the Central Government also in exercise of the said power has by issuance of Notification No. 443(E) of 1989 prescribed the minimum qualification for the post of Motor Vehicle Inspector. The minimum qualification prescribed by the Central Government was required to be read along with the qualification prescribed by the State Government for prescribing the eligibility qualification/criteria for the posts advertised. In this view of the position, the Corrigendum has been issued and, therefore, there is no illegality in changing the eligibility qualification for the posts advertised through the Corrigendum in issue.

6. I have heard learned Counsel for the parties.

7. The post of Motor Vehicle Inspector is in the cadre of Transport Department. The State in exercise of the powers under Section 124 of the Constitution of J&K has enacted the Jammu & Kashmir Transport Controller's (Subordinate) Service Recruitment Rules, 1974 for regulating the recruitments into the said cadre. As per Schedule 'A', Clause IV, entry 'B', the eligibility qualification prescribed under the recruitment rules was as follows:

Diploma in automobile Engineering from any recognized institution have at least five years experience in any recognized institution of State Transport Undertaking.

Vide SRO 429 dated 15.7.1986 the eligibility qualification prescribed for the post of Motor Vehicle Inspector was substituted as follows:

Diploma in automobile Engineering from any recognized institution.

8. It be seen that in the advertisement notice dated 29.12.2005 the eligibility qualification prescribed for the post was as per the un-amended rules. Be it so, by the Corrigendum dated 21.2.2006 the eligibility qualification, which has now been prescribed, is admittedly not in accordance with the eligibility qualification prescribed by the amended recruitment rules of 1974. The qualification which has now been prescribed is in consonance with SO 443(E) dated 12.6.1989 issued by the Central Government in exercise of the powers conferred by Sub-section (4) of Section 213 of Motor Vehicles Act, 1988. Section 213 of the Act reads as follows:

Appointment of motor vehicles officer.-- (1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers, thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of Indian Penal Code (45 to 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualification which the said officers or any class thereof shall possess for being appointed as such.

(5) In addition to the powers that may be conferred on any officer of the Motor Vehicles Department under Sub-section (3), such officer as may be empowered by the

State Government in this behalf shall also have the power to,-

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made there under are being observed:

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person, who, he has reason to believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept:

Provided that,-

(i) any such search without a warrant shall be made only an officer of the rank of a gazetted officer:

(ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise:

(iii) where the search is made without a warrant, the gazetted officer concerned shall record in writing the grounds for not obtaining a warrant and report to his immediate superior that such search has been made;

(c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act:

(d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed:

(e) launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any Court:

(f) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(6) The provision of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure under the authority of any warrant issued under Section 94 of that Code.

9. From the bare reading of Section 213(4), it is manifest that the Central Government has been empowered to prescribe the minimum qualification for the officers who may be appointed in the Motor Vehicles Department. It is in exercise of this power the SO 443(E) dated 12.6.1989 has been issued. It reads as follows:

SO 443(E), dated 12.6.1989.--(1) In exercise of the powers conferred by Sub-section (4) of Section 213 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby prescribed that the minimum qualification for the class of officers consisting of the category of Inspector of Motor Vehicles or Assistant Inspector of Motor Vehicles (by whatever names called) shall be as under:

**Qualification:**

(1) Minimum general educational qualification of a pass X standard; and (2) a diploma in Automobile Engineering (3 years course) or a diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course); and (3) working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine; and (4) Must hold a driving licence authorizing him to drive motorcycle, heavy goods vehicles and heavy passenger motor vehicles.

2. Nothing contained in the notification shall apply to an officer appointed to such post before the first day of July, 1989 and to an officer appointed to discharge function of a non-technical nature.

3. This notification shall come into force on the first day of July, 1989.

10. It be seen that on one hand the State Recruitment Rules prescribe the eligibility qualification for the post of Motor Vehicle Inspector and, on the other the Central Government in exercise of the powers vested under Sub-section 4 of Section 213 of Motor Vehicles Act has provided the minimum qualification for the post of Motor Vehicle Inspector.

The question arising for consideration is which out of the two qualifications can be validly deemed to be the necessary eligibility qualification for the post of Motor Vehicle Inspector for the purposes of recruitment. In *S. Satyapal Reddy v. Govt. of A.P.*, the Supreme Court has observed as follows:

5. Having given our anxious consideration to the respective contentions, we find that the State's contention merits acceptance. It is seen that marginal note in Section 213 for "appointment of Motor Vehicles Officers" indicates the subject-matter of the section. Sub-section (1) says that the State Government may, for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and "appoint as officers thereof such persons as it thinks fit". The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act.

It includes the power to prescribe qualifications to select suitable officers. The Parliament preserved that power to the State Government under Section 213(1) itself by allowing it to appoint the officers whom it finds fit to carry into effect the provisions of the Act. Sub-section (4) gives power to the Central Government, having regard to the object of the Act, by a notification in the Official Gazette "to prescribe minimum qualification" which the officers or class of officers thereof shall possess for being appointed as such officer or to the cadre belonging to the State Government. Under Entry 41 of List II (State List) of VIIth Schedule to the Constitution, the public service includes the services of the officers to be appointed under Sub-section (1) of Section 213 of the Act. No doubt, as contended by the learned Counsel for the appellants that the Act receives paramountcy, since under Entry 35, the subject under the Act covers the concurrent field. Sub-section (4) of Section 213 also preserves the power to prescribe qualifications higher than that "minimum qualification" prescribed by the Central Government to appoint the "said officers or any class thereof shall possess for being appointed as such.

The Supreme Court further observed:

7. It is thus settled law that Parliament has exclusive power to make law with respect to any of the matters enumerated in List I or concurrent power with the State Legislature in List III of the VIIth Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the entries in List III. If the said law is inconsistent with or incompatible to occupy the same field, to that extent the State law stands superseded or becomes void. It is settled law that when Parliament and the Legislature derive that power under Article 246(2) and the entry in the Concurrent List, whether prior or later to the law made by the State Legislature, Article 246 gives power, to legislate upon any subject enumerated in the Concurrent List, the law made by Parliament gets paramountcy over the law made by the State Legislature unless the State law is reserved for consideration of the President and receives his assent. Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the Court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the Court has to make every attempt to reconcile the provisions of the apparently conflicting laws and Court would endeavour to give harmonious construction. The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the law. The proper test would be whether effect can be given to the provisions of both the laws or whether both the

laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Government and the Central Government in working the provisions of the Act. It is the State Government to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. By necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Government to man the Motor Vehicles Department. What was done by the Central Government was only the prescription of minimum qualifications, leaving the field open to the State Government concerned to prescribe if it finds necessary, higher qualifications. The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an officer or post under the State. Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under Sub-section (4) of Section 213 of the Act. In the latter event, i.e., prescribing lesser qualifications, both the rules cannot operate without colliding with each other. When the rules made by the Central Government under Section 213(4) and the statutory rules made under proviso to Article 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers of the State Government vis-à-vis the qualifications prescribed by the Central Government under Sub-section (4) of Section 213 of the Act.

11. From the above observations of the Apex Court, it stands firmly settled that the State Government as a necessary adjunct is entitled to prescribe the qualification for recruitment or conditions of service for the officers to be appointed in the Transport Department. However, while prescribing the same, the State Government may accept the qualification or prescribe higher qualifications, but in no case prescribe any qualification less than the qualification prescribed by the Central Government under Sub-section 4 of Section 213 of the Act. In the present case, by the recruitment rules the State Government has now prescribed the eligibility qualification for the said posts, but the same is lesser than the qualification prescribed by the Central Government. Therefore, in view of the provisions made in Sub-section 4 of Section 213 of Motor Vehicles Act, 1988, the qualification prescribed by the Central Government has to be treated as the minimum qualification, and the qualification prescribed by the State Government in the recruitment rules has to be taken as the additional qualification to the extent it is not included in the qualification prescribed by SO 443(E) dated 12.6.1989.

12. However, the contention of learned Counsel for petitioners is that the above said position of law would apply in the State of Jammu & Kashmir only if the provisions of Motor Vehicles Act are held

to be applicable to the State. His contention is that the power to enact the Motor Vehicles Act flows from entry 35 of Concurrent List of Seventh Schedule of the Constitution of India. He submits that various articles of Constitution of India have been extended to the State of Jammu & Kashmir by the Constitution (Application to Jammu & Kashmir) Order, 1954. According to him, Article 246 of the Constitution of India, which deals with the subject matter of laws made by the Parliament and by the legislatures of the State, has been extended to the State of Jammu & Kashmir with certain modifications. Under the said modifications, though initially entry 35 of the Concurrent List was extended to the State of Jammu & Kashmir, however, later on by the Constitution (Application to Jammu & Kashmir) Amendment Order, 1964 the said entry has come to be omitted. Thus, according to him, the necessary consequence was that the Parliament lost the power of enacting the Motor Vehicles Act for the State and, therefore, from that date the Motor Vehicles Act, which was in force in the State, lost its validity and application in the State of Jammu & Kashmir. He argues that once the Motor Vehicles Act became not applicable to the State of Jammu & Kashmir, the SO 443(E) dated 12.6.1989, which prescribes the minimum qualifications under Sub-section 4 of Section 213 of Motor Vehicles Act, also became redundant and, therefore, the minimum qualification prescribed for the post of Motor Vehicle Inspector has to be the one which stood prescribed by the State in the relevant Recruitment Rules of 1974.

13. The contention of learned Counsel for petitioners though is attractive but without any force. The same appears to be based on misconception of law. Article 246 of the Constitution of India, as extended to the State of Jammu & Kashmir by the Constitution (Application to Jammu & Kashmir) Order, 1954, in its modified form would read as follows:

246. Subject-matter of laws made by Parliament and by the Legislature of States.--(1) Notwithstanding anything in Clause (2), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Parliament and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

14. From the bare reading of Article 246 of the Constitution of India, as applicable to the State of Jammu & Kashmir, it is manifest that so far as the Union List in the Seventh Schedule is concerned, the Parliament has the exclusive power to legislate in respect of the matters coming within the entries of the said list. And so far as the Concurrent List in the Seventh Schedule is concerned, the Parliament as well as the State Legislature both have the powers to legislate on any of the matters mentioned under different entries of the said list, provided the said entries by notification issued under Article 370 of the Constitution of India stand specified.

15. Undisputedly, the Motor Vehicles Act comes within entry 35 of the Concurrent List. It may be appropriate to mention here that Article 246 has been extended to the State of Jammu & Kashmir under the Constitution (Application to Jammu & Kashmir) Order, 1954 issued under Article 370 of the Constitution. Relevant part of Article 370 of the Constitution provides as follows:



370. Temporary provisions with respect to the State of Jammu and Kashmir.--(1)  
Notwithstanding anything in this Constitution,-

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir:

(b) the power of Parliament to make laws for the said State shall be limited to-

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

16. The Parliament, therefore, out of the Concurrent List is empowered to legislate for the State only with regard to the matters regarding which with the concurrence of the State Government, the President has by order specified. In the Constitution (Application to Jammu & Kashmir) Order, 1954, the entries were also specified with regard to which the Parliament could legislate. The Constitution (Application to Jammu & Kashmir) Order, 1954 has been amended from time to time and by the Constitution (Application to Jammu & Kashmir) Amendment Order, 1964, entry 35 was omitted; meaning thereby the power to legislate mentioned against the said entry was withdrawn by the State. However, by the Constitution (Application to Jammu & Kashmir) Amendment Order, 1965, the entries for which the Parliament could legislate were redefined, and out of the said List entries 2, 3, 5 to 10, 12 to 23, 27, 28, 29, 31, 36, 37, 38 and 40 to 44 were omitted and by implication the rest of the entries were restored; meaning thereby that the power for legislating in regard to the said entries, which included entry 35, was conferred upon the Parliament.

17. In the State of Jammu & Kashmir there was no Motor Vehicles Act in force until 1968, however, in other parts of the Country excluding the State of J&K, the Central Act, namely, the Motor Vehicles Act, 1939 was in force. In order to extend the said Act to the State, the Parliament in exercise of the powers conferred under the Constitution (Application to Jammu & Kashmir) Order, 1954 and as amended by the Constitution (Application to Jammu & Kashmir) Amendment Order, 1965, under entry 35 of the Concurrent List, enacted the Central Laws (Extension to Jammu & Kashmir) Act, 1968. By Section 2 of the said Act, the Acts mentioned in the Schedule and all rules, orders and regulations made thereunder were extended to the State of Jammu & Kashmir. The Acts extended to the State of J&K included the Motor Vehicles Act, 1939. Thus, in the State of J&K the Motor Vehicles Act, 1939 came into force with effect from 15.8.1968. The Motor Vehicles Act, 1939 was later on came to be replaced by the Motor Vehicles Act, 1988, which came into force with effect from 1.7.1989. The Motor Vehicles Act, 1988 was enacted to consolidate and amend the laws relating to the motor vehicles. Since the power to legislate under entry 35 of the Concurrent List, under which the Motor Vehicles Act has been enacted, stood restored to the Parliament in terms of the

Constitution (Application to Jammu & Kashmir) Amendment Order, 1965, therefore, the Parliament was legally competent to enact this Act for the State of J&K also. In this view of the legal position, the contention of learned Counsel for petitioners that the Motor Vehicles Act is not applicable to the State is without any force and, as such, the same is rejected.

18. It has been next contended by the learned Counsel for petitioners that the eligibility qualification prescribed for the post of Motor Vehicle Inspector under the Recruitment Rules of 1974 could only be legally taken as the basic qualification by the respondents despite the issuance SO 443(E) dated 12.6.1989, because the State has not amended the recruitment rules so as to include the qualification prescribed by SO 443 in the eligibility qualification prescribed. According to him, as the relevant recruitment rules have not been amended suitably so as to incorporate the basic qualification prescribed by the Central Government in exercise of the powers vested in it, therefore, under Sub-section 4 of Section 213 of Motor Vehicles Act, 1988, that qualification can not be included as the eligibility qualification through the Corrigendum in issue.

19. The contention of learned Counsel for petitioners is without any merit. As already said, in view of the law laid down by the Supreme Court both the qualifications have to be taken side by side. On one hand the State is empowered to prescribe the qualification in the recruitment rules in terms of provisions of Section 124 of the Constitution of J&K read with Sub-section (1) of Section 213 of Motor Vehicles Act, and, on the other hand, the Central Government is empowered to prescribe the minimum qualification in exercise of the power vested in it under Sub-section 4 of Section 213 for acquiring the eligibility to the post of Motor Vehicle Inspector. It is, therefore, necessary that the candidates must possess both the qualifications as prescribed by the State as well as the Central Government in terms of SO 443(E) dated 12.6.1989.

20. In view of the above position, Corrigendum No. DIP/J-4225 dated 21.2.2006 issued by the respondents cannot be said to be bad in law.

21. Therefore, the writ petition of petitioners along with the connected CMP being without any merit is dismissed.

22. The respondent-Selection Board shall be free to proceed with the selection process. Interim direction, if any, shall stand vacated.