



Jammu and Kashmir State Information Commission

(Constituted under The Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/CO/SA/485/2017

Decision No. SIC/CO/SA/485/2017/1005

Final Order:

Appellant : Sh. Mohammad Rafiq Jan, S/o Mohammad latief,
R/o Firdousabad, Lane No.06 Batamallo, Srinagar.

Respondent : FAA/PIO J&K, J&K Public Service Commission (PSC).

Date of decision : **06-10-2017**

Decision : Appeal disposed of.

Brief Facts:

Briefly the facts of this appeal are that the appellant filed RTI application dated 01-03-2017 with the Public Information Officer, (PIO) J&K Public Service Commission (PSC) seeking following information:

1. Please provide me with the documentary details including the Xerox of the relevant documents (experience certificate M.phil Degree, Ph.D Degree etc.) that were submitted by the selectee namely Suhaib Ahmad Bandh S/O Bashir Ahmad Bandh R/o Village Chakool, Awantipora, on the basis of which the said candidate was selected for the post of the Assistant Professor in Environmental Science in February 2017 at Jammu in response to the Advertisement no. 12-PSC (DR-P0 of 2014 dated 29-05-2014.
2. Please provide me with the documentary details including the Xerox of the relevant documents (experience certificate M.phil Degree, Ph.D Degree etc.) that were submitted by the selectee namely Suhaib Ahmad Bandh S/O Bashir Ahmad Bandh R/o Village Chakool, Awantipora, on the basis of which the said candidate was selected for the post of the 10+2 Lecturer in Environmental Science in 2012 in response to the advertisement no. 07-PSC of 2009 dated 09-03-2009 and 60-PSC (DR-S) of 2012 dated 26-09-2012. It is reported these experience certificates are fake as the said person was perusing M.Phil at the same time.
3. Please provide me with the documentary details including the Xerox of the relevant documents (experience certificate M.phil Degree, PhD Degree etc.) that were submitted by the selectee namely Zubair Ahmad Wani S/o Ghulam Ahmad Wani R/o Newa Pulwama, on the basis of which the said candidate was selected for the post of the Assistant Professor in Environmental Science in February 2017 at Jammu in response to the advertisement no. 12-PSC (DR-P0 of 2014 dated 29-05-2014. It is

reported that the said selectee has M.Phil from the department of Environmental Biology and he was given 03 points for the M.Phil, which is otherwise against the rules of PSC.

4. Please provide me with the documentary details including the Xerox of the relevant documents (experience certificate M.phil Degree, PhD Degree etc.) that were submitted by the selectee namely Shazia Lone D/o Ghulam Ahmad lone R/o Bategam, Kupwara on the basis of which the said candidate was selected for the post of the Assistant Professor in Environmental Science in February 2017 at Jammu in response to the advertisement no. 12-PSC (DR-P0 of 2014 dated 29-05-2014. It is reported that the said selectee has PhD without MSP and this PhD without MSP was considered and was given due weight.

The PIO J&K PSC vide letter dated 03-04-2017 issued notice to the said person whose information was sought by the appellant invoking section 11(1) of the J&K RTI Act, 2009, asking them to reply within 10 days from the receipt of the notice. The appellant, however, filed 1st appeal on 07-04-2017 with the First Appellate Authority (FAA). Meanwhile the PIO vide letter dated 15-04-2017 asked the appellant to deposit the fee for (50) pages @ Rs 2/- per page. In response to the said letter, the appellant vide his letter dated 09-05-2017 informed the PIO that as per the provision of the Act, he is not required to deposit the fee for obtaining information and that case is pending before the FAA.

The appellant at last filed 2nd appeal before the SIC which was received on 12-06-2017

Proceedings before the State Information Commission (SIC):

The SIC vide letter dated 03-07-2017 issued notice to the concerned third party whose information was sought by the appellant seeking their objections to the 2nd appeal filed by the appellant. The notice was also sent to the respondents for filing reply to the 2nd appeal.

In response to the SIC notice, respondents filed counter statement inter-alia submitting that after receiving the RTI application of the appellant, they issued notices to the concerned persons regarding whose qualification information was sought by the appellant. That in response Sh. Zubair Ahmad Wani and Ms. Shazia Lone requested that the information pertaining to them may not be provided, however no response was received from Sh. Suhaib Ahmad Bandh and therefore, information pertaining to him was decided to be disclosed. That information seeker was asked to deposit the requisite fee for getting the said information, however, instead of doing so he filed 1st appeal.

Respondents requested that the said 2nd appeal be dismissed.

The 2nd appeal came up for hearing before the SIC on 21-08-2017. The hearing was attended by Sh. Ishtiyag Ahmad Bhat, PIO, J&K PSC. The appellant did not attend. From the perusal of the records and submission of the PIO, J&K PSC, the SIC felt that it is desirable to give another notice to the third parties in the instant 2nd appeal. Therefore, the appeal was adjourned with the directions for calling the said third party for hearing on the next date.

The appeal was again listed for hearing on 13-09-2017. Sh. Ishtiyag Ahmad PIO, J&K PSC attended the hearing. Neither the appellant nor third parties made their presence before the SIC, as such the hearing was adjourned.

The appeal came up for final hearing on 06-10-2017. The hearing was attended by Sh. Ishtiyag Ahmad PIO, J&K PSC and appellant. During the hearing the appellant submitted that he has not been provided the requisite information till date. The PIO submitted that the appellant was asked to deposit the fee for getting the information pertaining to Sh. Suhaib Ahmad Bandh, however, information pertaining to other two candidates cannot be disclosed keeping in view the reservations on their part.

The third party did not attend the hearing despite due notice under section 16(5) of the J&K RTI Act, 2009.

The SIC asked the appellant to prove his contention that the documents/certificates of the third party about which he is seeking information are fraudulent. This was in view of the principle of the law that if any person wants the "court" to believe in any fact, he should first prove that fact. The appellant however, failed to produce any evidence in support of his contentions.

The SIC during the different hearing heard both the respondent and the appellant and considered the rival contentions.

Decision:

The SIC after hearing the submissions of both the parties and perusing the records observes that the appellant has sought information regarding qualification documents of some candidates who qualify as a "third party" as defined under section 2(1) of the J&K RTI Act, 2009. The PIO is expected to follow the procedure under section 11 when he "intends to disclose any information or record". Which also means that the PIO has come to the conclusion that the information is not covered by any of the exemptions under the RTI Act.

Section 11 gives only an opportunity to the third party to put forth his/her objections before the PIO takes a decision to disclose or not to disclose the information. Section 11(1) clearly envisages that submission of third party shall be kept in view while taking a decision about disclosure of information. The third party objections/opposition to disclosure need not always become a ground for non-disclosure.

The PIO has to follow the procedure under section 11 only when he intends to disclose the information and has reason to believe that the information relates to a third party and that the third party treats it as confidential.

Now coming to the 2nd appeal proceedings the SIC served notice twice to the third party to give them opportunity of being heard as per section 16(5) of the Act, however, the third party did not turn up. The appellant and the PIO were heard.

Taking overall view of this 2nd appeal and the fact that the third parties did not attend the SIC hearings despite notices under section 16(5) and produced no good grounds for non disclosure, it is directed that the PIO shall disclose the information sought for by the appellant though his original RTI application. This course of action will be in the interest of transparency of the examination and selection system in the J&K PSC and will leave to great accountability in the said organization.

As against the above course of action, blocking of information for no apparent reasons will not be in the interest of transparency. The Third Parties have failed to attend the hearings and to provide any grounds for non-disclosure of information.

The 2nd appeal is disposed of subject to the above directions.

Copy of the order be provided free of cost to the parties.

-sd/-

(Khurshid A. Ganai) **IAS Retd.**,
Chief Information Commissioner,
J&K State Information Commission.

No. SIC/CO/SA/485/2017

Dated: / /2017.

Copy to the:

1. First Appellate Authority (FAA) J&K Public Service Commission for information.
2. Public Information Officer (PIO), J&K Public Service Commission for information & compliance.
3. PS to CIC for information of HCIC.
4. Sh. Mohammad Rafiq Jan, S/o Mohammad Latief Jan R/o Firdous Abad Lane No-06 Batamaloo, Srinagar.
5. Guard file.

(Dr. Ghulam Mohi-ud-din)
Joint Registrar,
J&K State Information Commission.