



Jammu and Kashmir State Information Commission

شنیشن کمیٹ انفارمیری اسٹیٹسٹ کشمیری جموں ا
(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.601-2018

Decision No. SIC.CO.SA.601-2018/1126

Final Order

(Second Appeal)

- Appellant** : Heena Hanief Mir D/o Mohd Haneef Mir
A/P C/O Z.A. Qazi, Advocate, J&K High Court,
Jammu.
- Respondents** : First Appellate Authority (FAA) /Public
Information Officer (PIO) O/O, PSC, J&K,
Srinagar.
- Date of registration** : 28-03-2018
- Date of decision** : 24-05-2018

Brief Facts:

Briefly the facts of this case are that the appellant filed RTI application dated 28-11-2017 with the PIO, O/O Chairman, J&K, Public Service Commission, seeking the following information:

- (i) *Kindly provide the detailed report/information regarding the details of marks obtained by the applicant in the above referred written test*

for the post of 10+2 lecturer Urdu. Copy of Roll No 4303861 of applicant is enclosed.

- (ii) Kindly provide details of those candidates who have qualified in the written test and who have disqualified in the written test.*
- (iii) Kindly provide the final selection list of those candidates who have selected for the said post.*

Her RTI application was responded by the PIO, J&K PSC vide communication dated 21-12-2017, stating that the information sought for can be accessed through their (PSC) official website.

Aggrieved by the PIO's response, the appellant filed 1st Appeal with the First Appellate Authority, J&K PSC Jammu on 08-01-2018. The 1st Appeal was never disposed of. The appellant filed 2nd Appeal with the State Information Commission (SIC) received on 28-03-2018.

Proceedings before the Commission:-

This 2nd Appeal came up for hearing before the Commission today on 24-05-2018. The hearing was attended by Sh. Irshad Ahmad /PIO J&K PSC. The counsel for the appellant was heard through voice call as the appellant did not appear despite due notice. The counsel for the appellant stated that the requisite information has not been provided by the PIO till date. In response, the PIO submitted that the said RTI application was responded on 21-12-2018 asking the appellant to visit the official website of the Commission as the information sought for by her is available there. He further submitted that the appellant did not choose to appear before the FAA despite notice. The PIO submitted counterstatement which was taken on record.

Both the parties were heard.

Decision:-

On perusal of the basic RTI application of the appellant (the then applicant), it is evident that the information sought for by her is givable under the J&K RTI Act, 2009 hence should have been provided by the PIO at the very outset. Instead, the PIO has referred the applicant to the official website of the

PSC. Although, reply of the PIO cannot be termed refusal to give information in terms of Section 7(2), Section 7(1) read with Sections 7(9) and Section 2(i) envisage provision of givable information by the PIO and of taking recourse to inspection of records available in electronic mode on the website. Therefore, the PIO, J&K PSC should have provided the givable information and also offered inspection of the website. The PIO could have even downloaded the requisite information in the form of hard copy and despatched to the appellant. Be that as it may, the J&K PSC is well advised to continue to disclose results and provide examination related information electronically, but whenever an RTI application is received even about information that is uploaded, information should ordinarily be provided in terms of Section 7(1) read with Section 7(9), as far as possible.

In view of the above, the PIO is directed to provide all the information to the appellant as sought for by her barring third party information of the other candidates for example qualification or degree certificates, OMR Sheets or Answer Sheets etc which will ordinarily necessitate proceedings under Section 11 and decisions in terms of the said Section and relevant Apex Court orders. Names of candidates who have qualified the written test and those who have not qualified as asked for in the RTI application can be given and also the final selection list. The needful may be done within 15 days from the date of the receipt of this order.

Before parting, the State Information Commission would like to record its concern about the failure of the FAA in J&K PSC in disposing of the 1st Appeal filed by the applicant. The FAA is an important authority under the scheme of J&K RTI Act, 2009 and is responsible for adjudicating upon the reply of the PIO in 1st appeal. The FAA carries the added responsibility of making reference under Section 16(3) to the SIC in case of failure of the PIO to perform his/her duties in accordance with the provisions of the Act and such reference can become a ground for imposition of penalty on the erring PIO. The FAA, J&K PSC is therefore advised to perform her/his statutory duties and discharge responsibilities as enshrined under the J&K RTI Act, 2009, as otherwise she/he

can be held accountable for failure to perform her/his statutory duties and prescribed functions as a Public Servant.

With the above observations/directions this 2nd Appeal is disposed of. Copy of this order be also sent to Chairman, J&K Public Service Commission, J&K as head of Public Authority for information.

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

Sd/-
(Khurshid A. Ganai)
Chief Information Commissioner
J&K State Information Commission

File No: SIC.CO.SA.601-2018_5202-66

Dated: 14-06 -2018

Copy to:

01. Chairman, Public Service Commission J&K, Srinagar for information and necessary action.
02. First Appellate Authority (FAA), Public Service Commission J&K, Srinagar for information and necessary action.
03. Public Information Officer (PIO), Public Service Commission J&K, Srinagar for information and necessary action.
04. Private Secretary to HCIC for information of the HCIC.
05. Appellant, Heena Hanief Mir D/o Mohd Haneef Mir At present C/O Z.A. Qazi, Advocate, J&K High Court, Jammu 18007 for information.
06. Office File.

(Sheikh Fayaz Ahamd)
Registrar
J&K State Information Commission

Zahoor A. Bhat