

(2023) 11 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2676 Of 2013, IA No. 02 Of 2013, 01 Of 2015, 4334 Of 2023

Abdul Majid Ganai

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 18-11-2023

Acts Referred:

Citation : (2023) 11 J&K CK 0047

Hon'ble Judges : Wasim Sadiq Nargal, J

Bench : Single Bench

Advocate : Danish Majid Dar, Sajad Ashraf

Final Decision : Dismissed

Judgement

Wasim Sadiq Nargal, J

1. The petitioner, through the medium of the instant petition, has called in question the advertisement notice dated 20.12.2013, issued by respondent No.3, which according to the petitioner, is in violation and supersession of rules and regulations, besides seeks quashment of empanelment of the private respondent No.4.

2. The brief case of the petitioner is that the petitioner is a diploma/degree holder in dental sciences from recognized Institute and has a vast practical medical experience to handle dental health care at district Ganderbal at various levels of operation. Further case of the petitioner is that the official respondent No.3 issued advertisement notice in a daily newspaper 'Greater Kashmir' in its issue dated 13.10.2013, wherein the applications from medically trained persons in various medical disciplines were invited for job absorption at district Ganderbal under National Health Rural Mission (NHRM). The petitioner being degree/diploma holder in dental sciences and also being eligible in terms of aforesaid advertisement notice dated 13.10.2013, applied for the post of Dental Technician figuring at S.No.12. Respondent No.3 thereafter, after screening the applications

so received for the post in question, made short list of eligible candidates for the viva-voce and in the short list of eligible candidates so prepared, the respondent No.3 had carried the names of only five candidates which include the name of the petitioner in the said list.

3. Ld. Counsel for the petitioner submits that the private respondent No.4 had never applied for the said post nor was figuring in the said short list, but during the viva-voce, official respondents interviewed him for the said post. Further case of the petitioner is that the respondents played hide and seek and did not publish or issue the list of successful candidates as Dental Technician and with a view to frustrate the rights of the petitioner and other deserving candidates issued fresh advertisement notice dated 20.12.2013 by inviting fresh applications for the said post by changing the terms and conditions of the advertisement notice with ulterior motive to adjust their own favourites at the cost of the petitioner and others. It is further submitted that vide fresh advertisement notice, the condition of the written test was introduced, which was not there in the earlier advertisement notice dated 13.10.2013.

4. Further case of the petitioner is that the fresh advertisement notice has been issued to adjust their blue-eyed candidates under the guise of fresh terms to fulfil the advertised posts including the post falling under programme and scheme of NHRM with written test.

5. It is further submitted by the petitioner that the rules and regulations, as asserted verbally by the respondents had no authority to nullify the earlier process of interview to frustrate its legality and enforceability

6. Learned counsel further submits that it is the settled preposition of law that after publication of advertisement notice, no authority whatsoever is authorized to change, alter, modify, substitute or add any of such conditions.

7. Learned counsel vehemently argued that the issuance of 2nd advertisement notice dated 20.12.2013, which is impugned in the instant petition, is patently illegal, unconstitutional and has been issued with the intention to hoodwink the process of law with a view to adjust their own blue eyed candidates through backdoor, causing grave prejudice to the petitioner and other meritorious candidates, who figured in the earlier select list.

8. Learned counsel further submits that the short listed candidates including the petitioner in the earlier advertisement notice were called for interview and thus, the official respondents were under statutory obligation to declare the results of the successful candidates but instead of that, 2 nd advertisement notice was issued with a view to adjust their own favourites.

9. It is submitted that the conduct of the respondents can be substantiated by the perusal of the fact that the respondents with a view to hide their guilt initially interviewed respondent No.4, while as per record he never applied for the said post, yet with a view to adjust him, official respondents issued fresh

advertisement notice dated 20.12.2013, which is not permissible under law.

10. Per contra, reply has been filed on behalf of the respondents, in which specific stand has been taken that the petitioner has no tangible reason or cause or locus standi to challenge the fresh advertisement notice for the post of Dental Technician, as the petitioner can also participate in the fresh process of selection, which has been undertaken in view of fresh guidelines issued by J&K State Health Society, J&K NRHM for all districts including district Ganderbal for various posts including the post of Dental Technician. Thus, the fresh advertisement notice does not suffer from any legal infirmity, as alleged by the petitioner.

11. In so far as assertion of the interview of respondent No.4 is concerned, official respondents have stated in Para-8 of their reply, that respondent no.4 had also applied for the post of Dental Technician, which is evident from the receipt No. 76-Gbl dated 24.10.2013 and was figuring at S.No.6 in the overall merit list framed for the said post and he was not called for interview and no notice was issued in this behalf, as claimed by the petitioner. Thus, the allegations of the petitioner to that extent, is factually incorrect and denied specifically.

12. Respondents have also taken a specific stand that the earlier notification was cancelled/withdrawn and fresh notification was issued on 20.12.2013 in light of the fresh guidelines issued by the competent authority i.e. J&K State Health Society, J&K NRHM for hiring candidates for RBSK/DEIC.

13. It is submitted by the learned counsel for the respondents that in the aforesaid backdrop, the said post was re-advertised and fresh applications were invited from the eligible candidates of district Ganderbal for the same posts including the post of Dental Technician to be hired on contractual basis under NRHM in which following criteria was prescribed for the post of Dental Technician:-

“Matric with diploma in Dental Assistant Training from SMF or any other recognised Institute”

14. Respondents further stated that the interview conducted for the post of Dental Technician as per the earlier notification dated 13.10.2013 was held null and void by issuance of fresh advertisement notice. Thus, according to the learned counsel for the respondents, the decision regarding re-advertisement of the said post was strictly in accordance with the fresh guidelines issued by the J&K State Health Society, J&K NRHM and does not suffer any legal infirmity, as the petitioner is not debarred from competing against the post in question in light of the fresh advertisement notice and no prejudice has been caused to the petitioner by issuance of the said advertisement notice.

In the light of the aforesaid submissions, learned counsel for the respondents seeks dismissal of the writ petition.

Legal Analysis:

15. Heard Learned Counsel for the parties and perused the record. The questions which emerge for the consideration of this Court are as under:

(i) Whether the petitioner has any right of selection/ appointment against the posts advertised and subsequently withdrawn?

(ii) Whether any prejudice has been caused to the petitioner by issuance of the re advertisement notice dated 20.12.2013 ?

(iii) Whether there existed valid reasons which necessitated such a course?

16. In reply to question No. (i) firstly, it would be apt to notice the legal position as regards the right of a candidate to challenge the action of the State or any other authority whereby advertisement notice inviting applications for certain posts has been withdrawn or selection has been abandoned

17. In *Shankarsan Dash v. Union of India* (1991) 3 SCC 47 it has been clearly laid down by the Supreme Court that a candidate does not acquire a right to be appointed against a vacancy by mere inclusion of his name in the selection list. The relevant para of the said judgment is reproduced below:

'7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwahat*, *Neelima Shangla v. State of Haryana*, or *Jatinder Kumar v. State of Punjab*'

18. Again, in *Asha Kaul (Mrs.) v. State of J&K* (1993) 2 SCC 573, it has been categorically laid down by the Supreme Court that mere inclusion of a candidate in the select list does not confer upon the candidate an indefeasible right to appointment

19. Further, In *Manoj Manu and Anr. V. Union of India & ors.* (2013) 12 SCC 171, it was held by the Apex Court that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to government to fill up the vacancies. 20. Same view has been

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20. Same view has been taken by this Court in case titled Aabida Mumtaz and Another versus State of J&K and Others 2022 SCC OnLine J&K 183, the relevant para of which is reproduced below:

"14...it is clear that a candidate has no right to challenge the action of State or any other authority whereby an advertisement notice has been withdrawn or the posts have been re-advertised. In fact, in the instant case only an advertisement notice was issued by the respondents in the year 2008. The selection process, admittedly, did not take off thereafter. It is a settled law that a right to be considered crystallizes only after a candidate is called for interview pursuant to the advertisement. The empanelment of a candidate at best is a condition of eligibility for the purpose of appointment and empanelment by itself does not amount to selection or create a vested right to be appointed. In the instant case, the petitioners were not even empaneled. Therefore, they have no right to challenge the decision of the respondents to withdraw the advertisement notice."

21. Thus, in light of the aforementioned legal position coupled with the facts and circumstances of the case, it is clear that no vested right of selection / appointment is created in favour of the petitioner, merely, because he participated in the selection process and therefore it is clear that a petitioner has no right to challenge the action of the respondent, whereby, the advertisement notice dated 13.10.2013 has been withdrawn and the posts have been re-advertised vide re-advertisement Notice dated 20.12.2013. Thus, this Court holds that a candidate has no unfettered right to challenge the action of the State or any other authority, whereby, an advertisement notice has been withdrawn or the posts have been readvertised.

22. In reply to question no. (ii) that whether any prejudice has been caused to the petitioner by issuance of the re-advertisement notice dated 20.12.2013, it is manifestly clear that the petitioner is not debarred under the readvertisement notice to compete for the engagement against the said post, as such, the petitioner is at liberty to seek participation in the fresh process, which has been undertaken in view of fresh guidelines issued by the J&K State Health Society, J&K NRHM for all the Districts including District Ganderbal for various categories of posts including that of the post of Dental Technician. Thus, no fundamental, legal or statutory right of the petitioner is infringed by the respondents by cancelling the earlier advertisement notice and subsequently, issuing the fresh advertisement notice. As such, the petitioner has no tangible reason or cause to challenge the re-advertisement of the post of Dental Technician. Thus, the impugned re-advertisement Notification dated 20.12.2013 does not suffer from any legal infirmity at all. Since, no prejudice has been caused to the petitioner by issuance of fresh advertisement notice as the petitioner has fair chance of competing alongwith all eligible candidates.

Accordingly, question (ii) is answered

23. In reply to question No.(iii) it is clear from the record that the advertisement notice dated 11.10.2023 with respect to the posts of DEIC Manager, Data Entry Operator, Lab. Technician, Ophthalmic Assistant as well as Dental Technician was cancelled/withdrawn vide Re-Advertisement Notice published in Greater Kashmir on 20.12.2013 in view of the fresh guidelines issued by the competent authority viz. State Health Society, 1&K NRHM for hiring candidates for RBSK/DEIC. The said posts were, therefore, readvertised and accordingly, fresh applications were invited vide ReAdvertisement Notice published in Greater Kashmir in its issue on 20.12.2013 from the eligible candidates of District Ganderbal for the same posts including the post of Dental Technician to be hired on contractual basis for RBSK/DEIC under NRHM. In addition, the interview conducted for the said post of Dental Technical as per the earlier notification dated 13.10.2013 was also held null and void in terms of Re-Advertisement notice. The decision regarding re-advertisement notice was taken in accordance with the fresh guidelines issued by the competent authority, which has simultaneously been adopted by all the districts including Ganderbal district. Therefore, the advertisement notice dated 20.12.2013 doesn't suffer from any legal infirmity.

24. I am fortified by the decision of this court in Muzaffar Rasool Mir and ors. Vs State and others 2015(2) JKJ [HC] 698. The relevant para is reproduced as under:

"16. Furthermore, the Competent Authority would be well within its powers to change eligibility criteria after the advertisement is issued and withdraw the advertisement notice. It may thereafter re-advertise the posts earlier advertised, now prescribing the changed eligibility criteria. The candidates, who responded to the earlier notice and become ineligible because of change in Recruitment Rules and therefore ineligible under the new Advertisement Notice, cannot insist that their eligibility should be assessed at the touchstone of old and repealed Recruitment Rules and they allowed to participate in the selection process. The only exception possibly would be where malafides are alleged and substantiated on part of the employer or Selection Body in taking such decision

25. Thus this court holds that there were valid and justifiable reasons for the respondents which necessitated them to issue fresh advertisement notice and I don't find any legal infirmity with the same. Therefore, the reasons assigned by the respondents for withdrawing the earlier advertisement notice, appear to be justifiable and no fault can be found in the said decision which is logical. This Court in exercise of its writ jurisdiction, cannot sit over an appeal on the decision taken by the respondents in light of the fresh guidelines issued by the competent authority.

Accordingly, question No.(iii) is answered.

Conclusion:

26. In light of what has been discussed hereinabove, coupled with the settled legal position, the challenge thrown by the petitioner to the impugned

readvertisement Notice, is ill founded and devoid of any merit, therefore, the writ petition deserves dismissal and accordingly, same is dismissed alongwith all connected applications.

27. Registrar Judicial is directed to handover the original record to Mr. Sajad Ashraf, learned GA appearing for the respondents, against proper receipt.