

(2022) 08 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1438 Of 2022

Boby Mehta And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Jammu And Kashmir Civil Services (Judicial) Recruitment Rules, 1967 — Rule 39

Citation : (2022) 08 SHI CK 0052

Hon'ble Judges : A.A. Sayed, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Abhishek Dulta, Balram Sharma

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. The only thing left in the selection process was issuance of appointment letters in favour of the selected persons i.e. the three petitioners herein. At that stage, the respondents cancelled the entire selection process, giving cause of action to the petitioners to invoke the extraordinary jurisdiction of this Court.

2. After hearing learned counsel on both the sides and on going through the pleadings of parties, the admitted factual position that emerges is :-

2(i). On 12.07.2021, Station Headquarters Shimla (respondent No.4) ordered the Board of Officers to publish advertisement for recruitment of 3 Firemen against NACs in national and local newspapers. The recruitment notice was accordingly published on 21.07.2021 in 'The Times of India' & 'Himachal Jagran'. Applications were invited in this notice from eligible male candidates for the three posts of Firemen. Two out of these three posts were meant for General category candidates and one was reserved for candidates belonging to Scheduled Castes category. The eligibility criteria was also laid down in the advertisement.

2(ii). The petitioners applied for the post in question under the advertisement. The Board of Officers of the respondents assembled on 12.08.2021. Total 57 applications were accepted, inclusive of 32 applications of candidates belonging to General category and 25 applications belonging to Scheduled Castes category. The proceedings held by Board of Officers were found to be in order, accepted & duly countersigned by respondent No.4-Station Commander Shimla on 14.08.2021.

2(iii) Admit cards were issued to the eligible candidates by the respondents. The petitioners were also issued admit cards on 16.08.2021. They were directed to report for undertaking physical and written test on 29.08.2021 at 304(Independent) Supply Platoon ASC at Jutogh Cantt (Shimla).

2(iv) The Board of Officers of respondents assembled at Jutogh on 29.08.2021 and conducted the selection proceedings. 49 out of 57 applicants reported. 27 candidates did not clear the physical test. 22 candidates, who cleared the physical test including the petitioners were asked to take the written test. The petitioners amongst others appeared in the written test. The Board of Officers prepared the merit-list of 22 candidates. This merit-list was found to be in order. It was accepted and duly countersigned by respondent No.4 on 09.09.2021. Based on this merit-list, the petitioners emerged meritorious candidates for the three advertised posts of Firemen and were eventually selected. Respondent No.4 also kept four candidates in reserve based on the merit-list.

2(v) Letters were issued to the petitioners on 09.09.2021 informing them of their provisional selection for the posts of Firemen. The selection was termed as provisional as the petitioners' medical tests and other formalities including verification of their documents etc. were yet to be carried out. The petitioners were directed to report on 20.09.2021 to Station Headquarters at Shimla for purpose of their medical examination and also for checking of their documents. The petitioners complied with this direction. Their documents were verified by the respondents at Station Headquarters Shimla. Petitioners also underwent medical examination. Police verification with respect to their antecedents was also carried out.

Complete board proceedings and verified documents of the petitioners were forwarded by respondent No.4 to respondent No.3 (Headquarter PH & HP(I) Sub Area) for issuance of actual appointment letters in favour of the petitioners.

2(vi) Appointment orders were not issued to the petitioners.

After waiting for about three months, petitioner No.2 on 08.01.2022 wrote a letter to respondent No.5- The Administrative Commandant, Station Headquarters, Shimla requesting for indicating the time-line for their joining the posts. At that stage, the officials at Station Headquarters Shimla responded on 27.01.2022 (Annexure P-5 Colly) by saying that the competent authority has directed that recruitment for Civilian Defence Employee will be carried out centrally for all units under Western Command under the aegis of HQ PH & HP (I)

Sub Area vide letter No.318/1/Gen/GS (SD) dated 02 Oct 2021.

2(vii) Citing the aforesaid reason, the recruitment process undertaken by respondent No.4 and selection of petitioners therein was directed to be treated as cancelled. Aggrieved against the cancellation of recruitment process and also against the cancellation of their selection under this recruitment process, the petitioners have preferred the instant writ petition praying for following reliefs:-

"i) That the writ in the nature of Certiorari may kindly be issued directing the Respondents to quash the impugned order dated 27th January 2022 (Annexure P-5 (Colly)).

2. That the writ in the nature of Mandamus may kindly be issued and respondents may be directed to issue appointment letters to the petitioners for the post of Firemen."

3. It will be apt to reproduce the relevant contents of the impugned communication dated 27.01.2022:-

"PROVISIONAL SELECTION FOR THE POST OF FIREMEN

1. It is intimated that competent authority has directed that recruitment for Civilian Defence Employee will be carried out centrally for all units under Western Command under the aegis of HQ PH & HP (I) Sub Area vide letter No.318/1/Gen/GS (SD) dated 2 Oct 2021.

2. In view of above, it is intimated that recruitment process carried out by this Headquarters for 03 X Firemen Civilian Defence Employee against Non Availability Certificate based on which provisional selection was forwarded to you vide this Headquarters letter No. 1023/3/GS (SD) dated 09 Sep 2021 is hereby

CANCELLED.

3. You may consider to apply for the same through recruitment process being undertaken centrally.

4. This is for your information please.

(Ravi Bisht)

Lieutenant Colonel

Officiating Station Staff Officer

For station Commander"

In terms of above communication, on 02.10.2021, the competent authority had directed that the recruitment for Civilian Defence Employee would be carried out centrally for all units under Western Command under the aegis of HQ PH & HP (I) Sub Area.

According to the respondents, the recruitment process in question was not

carried out centrally under the aegis of HQ PH & HP (I) Sub Area (respondent No.3). The recruitment process in question was conducted by respondent No.4 i.e. Station Commander, Station Headquarters, Shimla H.P. For this reason, the recruitment process carried out by respondent No.4 was cancelled, which automatically meant cancellation of the selection of the petitioners in the said recruitment process.

3(i) The decision of the respondents statedly taken on 2.10.2021 to carry out centralized recruitment process for all units under the Western Command under the aegis of respondent No.3 will have no effect on the recruitment process, that was initiated prior to 2.10.2021. The recruitment process involved herein was not only initiated prior to 2.10.2021 but for all practical purposes, it was concluded before 2.10.2021. The provisional selection letters were issued to the petitioners on 09.09.2021. By 20.09.2021, the remaining formalities i.e. the medical tests, verification of the petitioners' documents and the police verification of their antecedents/character had also been completed. What was left, was only issuance of actual appointment letters.

3(i)(a) In (1993) 2 SCC 573 (Asha Kaul Vs State of Jammu and Kashmir), select list of 20 candidates was prepared and recommended by the Public Service Commission. The State Government approved the list to the extent of first thirteen candidates. The question before the Hon'ble Apex Court was whether the State Government could approve the select list in part. The Government inter alia defended its action under Rule 39 of the J&K Civil Services (Judicial) Recruitment Rules, 1967, which provided that 'the list of selected candidates after it is approved shall be published by the Government Gazette and a copy thereof shall be sent to the court along with the waiting list, if any, furnished by the Commission for record in their office'. Hon'ble Supreme Court held that Rule 39 does not confer an absolute power upon the Government to disapprove or cancel the select list sent by the Public Service Commission. The Government can refuse to approve the select list only after holding due inquiry. If, the Government is satisfied that the selection has been vitiated either on account of violation of a fundamental procedural requirement or by consideration of corruption, favoritism or nepotism, in such a case, the Government is bound to record the reasons for its action and produce the same before a Court, if and when summoned to do so. It was also held that the Government cannot pick and choose candidates out of the list.

3(i)(b) In (1991) 3 SCC 47 (Shankarsan Dash Vs Union of India), the Hon'ble Apex Court held that 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.

3(i)(c) Similarly in (1995) Supp 2 SCC 230 (R.S. Mittal Vs Union of India), it was observed that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment . But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel.

3(i)(d) In (2019) 2 SCC 798 (Dinesh Kumar Kashyap and others Vs. South East Central Railway & Others), it was held that "arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test, they have to again travel to appear for the interview and medical examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State."

In view of the law settled down by the Hon'ble Apex Court, in the facts of the case, the appointments due to the petitioners against the posts of Firemen cannot be denied to them on the ground that subsequent to their selection, rules/policy of recruitment had undergone change. In the facts of the case, the new policy/rules can be applied only prospectively and not retrospectively to the recruitment process already conducted under different set of rules/policy.

3(ii) Another reason given in the reply by the respondents is that the Headquarters PH & HP (I) sub area (respondent No.3) had not issued appointment letters to the selected candidates (petitioners) since the recruitment was not carried out as per existing policy. It has further been submitted in the reply that the respondents were required to follow the procedure mentioned in centralized recruitment of Defence Civilian Employees at Command level dated

13.10.2017. That this letter was forwarded by the Headquarters Western Command directly to respondent No.4 on 13.10.2017 but not to respondent No.3.

3(ii)(a) Reading of letters dated 13.10.2017, 19.03.2021 & 30.03.2021 does not make it clear as to whether the detailed mentioned therein were proposals simplicitor or the same had attained form of some final policy. Nonetheless the fact remains that respondent No.4 had undertaken a painstaking exercise for recruitment to the three posts of Firemen in question under recruitment notice dated 21.7.2021.

Total 57 candidates including the petitioners had applied for the posts in question. The petitioners emerged meritorious for the three advertised posts. They were provisionally selected on 09.09.2021 pending their medical tests and completion of other requisite formalities. The essential documents of the petitioners were verified by respondent No.4 on 20.09.2021, besides conducting their police verification and medical examinations. Insofar as the petitioners are concerned, the selection process was complete in all respects on 20.09.2021. Only the appointment letters remained to be issued to them. The appointment letters cannot be denied to them on account of a subsequent policy of the respondents issued on 2.10.2021 for holding centralized recruitment for Defence Civilian Employee. Such Policy can have prospective effect and will not affect the selection process already undertaken by respondent No.4 under a particular set of rules/instructions etc.

3(ii)(b) Instant is not a case where there are any allegations of illegalities or irregularities in the conduct of selection process. It is nobody's case that the recruitment process was carried out in an arbitrary or discriminatory manner. In fact, the documents on record show that the procedure for centralized recruitment, for all practical purposes more or less matches with the procedure followed by respondent No.4 for the recruitment process in question, which culminated in selection of the petitioners. It is also well settled that rules of the game, the criteria for selection cannot be altered in the middle or after the process of selection has commenced.

4. In view of above discussion, we find merit in the contentions of the petitioners. This writ petition is accordingly allowed. The impugned decision of the respondents contained in letter dated 27.01.2022 (Annexure P -5 colly) for cancelling the recruitment process as well as selection of the petitioners is quashed. Respondents are directed to take the selection process in question to its logical conclusion by issuing appointment letters to the petitioners for the posts of Firemen advertised vide recruitment notice dated 21.07.2021 (Annexure P-1), within a period of four weeks from today. Pending miscellaneous applications, if any, shall also stand disposed of.