
(2023) 02 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1888, 1977 Of 2019

Irshad Ahmad Lone & Ors

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 02-02-2023

Acts Referred:

Citation : (2023) 02 J&K CK 0024

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Moomin Khan, Sajad Ashraf, Sahfqat Nazir

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioners have challenged order bearing No.DCK/ARA/19 dated 29.05.2019, issued by respondent No.3, in terms whereof provisional selection list of Rehber-e-Khel for Zone Drugmulla has been withdrawn. Challenge has also been thrown to order No.DCK/LS/ARA/106-112 dated 28.05.2019, issued by respondent No.3, whereby, on the basis of the recommendations made by the Committee constituted pursuant to order No.DCK/LS-ARA/66-72 dated 13.05.2019, a decision has been taken to withdraw the provisional select list of Rehbar-e-Khel for Zone Drugmulla and a fresh process for engagement against the positions of Rehbar-e-Khel for the said Zone has been directed to be initiated.

2) It is pertinent to mention here that initially the petitioners had filed a writ petition bearing WP(C) No.1888/2019, challenging order No.DCK/LS-ARA/66-72 dated 13.05.2019, issued by respondent No.3, whereby a fresh Committee was constituted for scrutinizing the objections filed against the provisional select list of Rehbar-e-Khel for Zone Drugmulla. However, during the pendency of the aforesaid writ petition, respondent No.3, on the basis of the recommendations of the said Committee, decided to withdraw the provisional select list and go for fresh selection.

3) The facts that have emerged from the pleadings of the parties are that respondent No.4 issued an Advertisement Notice bearing No.01 of 2018 dated 13.01.2018, inviting applications from the eligible candidates for engagement of Rehbar-e-Khel in the Department of Youth Services & Sports within District Kupwara on zone basis including for Zone Drugmulla. The total number of vacancies was 223 and the total number of zones was 13. It appears that the petitioners, in pursuance of the aforesaid Advertisement Notice, offered their candidatures against 12 positions advertised for Drugmulla Zone. The interview of the eligible candidates was conducted on 06.07.2018 and after conclusion of the selection process, the petitioners were provisionally selected for 12 posts of Rehbar-e-Khel in Drugmulla Zone.

4) It appears that the private respondents felt aggrieved by their non-selection and they filed objections to the provisional select list dated 25.01.2019 issued by respondent No.4. It also appears that some of the candidates filed writ petition (SWP) No.210/2019 before this Court and the said writ petition came to be disposed of in terms of order dated 08.02.2019. Vide the aforesaid order, the petitioners therein were directed to approach the Chairman Selection Committee with objections by or before Monday, the 11th of February, 2019, and the Chairman was directed to consider the objections and pass an order thereon. It was further directed that until the objections are considered by the respondents, the process of selection shall not be concluded.

5) In pursuance of the aforesaid order of this Court, order No.DCK/LS-ARA/750-54 dated 20.02.2019, came to be issued by respondent No.3, whereby a Committee of officers was constituted to examine the objections received against the provisional select list dated 25.01.2019. The Committee submitted its report, whereby it was recommended as under:

- The selection in respect of Zone Drugmulla and Zone Trehgam shall be kept on hold till the objections are examined and disposed of properly.
- The candidates whose qualification certificates/testimonials have been questioned/challenged to be fake need to be verified and till the same is completed, their selection shall not be finalized.

6) Pursuant to the aforesaid recommendations of the Committee, formal approval to the engagement of various selected candidates in 12 Zones of District Kupwara leaving out Zone Drugmulla, was accorded and a select list bearing No.DG-YSS/Estt/12227-33 dated 08.03.2019 was issued by respondent No.2.

7) Another meeting of the Committee of officers was held on 08.03.2019 for examining the objections against the provisional select list pertaining to Zone Drugmulla. The Committee in its report observed as under:

- a). The committee members were apprised of the fact that the merit list was kept available in the office of the DYSSO Kupwara.

b). The selection has been made on the basis of the merit obtained in academic & interview.

c). Out of 12 selected candidates 06 candidates are related to the officials of the department, working in different schools/offices of the district. However, no one is related to the members of the interview panel.

8) Upon perusal of the aforesaid report of the Committee, respondent No.3 issued order No.DCK/LS-ARA/771-74 dated 13.03.2019, wherein it was observed that the Committee has not furnished its specific recommendations which the Committee was supposed to do. Accordingly, the Committee was asked to furnish specific recommendations with regard to Zone Drugmulla.

9) According to the petitioners, the Committee of officers again met on 16.03.2019 pursuant to the aforesaid order of respondent No.3 and made a recommendation that the final selection in respect of zone Drugmulla be treated as final whereas the selection of candidates whose qualification certificates/degree/testimonials have been questioned, be kept withheld till the genuineness of qualification certificates/degree/ testimonials are ascertained from the concerned quarters. It was further observed in the report that the candidates in whose favour the verification from the concerned quarters is found genuine, be deemed as selected.

10) However, the official respondents have disputed the aforesaid position in their reply. They have taken a stand that the only recommendation that was made by the Committee of officers pursuant to order dated 13.03.2019 issued by respondent No.3 is that it was provided that the certificates/testimonials of the selected candidates be got verified from the respective institutions before the selection list of Zone Drugmulla is finalized.

11) It appears that upon receipt of the report of the Committee, respondent No.3 issued impugned order dated 13.05.2019, wherein it was observed that the Committee of officers has failed to submit the requisite report which it was supposed to do and, as such, a fresh Committee of officers comprising Additional Deputy Commissioner, Kupwara, Assistant Commissioner (Rev), Kupwara, and Assistant Commissioner Development, Kupwara, was constituted. The said Committee examined the objections of private respondents and other objections that were received against the provisional select list pertaining to Zone Drugmulla and thereafter recommended that the selection process in respect of Zone Drugmulla needs to be revisited. On the basis of these recommendations, respondent No.3 issued impugned order dated 28.05.2019 and the consequent order dated 29.05.2019, whereby a decision was taken to withdraw the provisional select list of Rehbar-e-Khel pertaining to Zone Drugmulla and to initiate a fresh process of selection.

12) The petitioners have challenged the impugned orders on the grounds that once the first committee of officers made the recommendations after examining the objections to the provisional select list, it was not open to the official

respondents to constitute a fresh committee and ignore the earlier recommendations. It has been further contended that there was no reason for the official respondents to constitute a fresh committee and the basis on which the decision regarding constitution of fresh committee was taken, is factually incorrect. It has been further submitted that the withdrawal of the provisional select list by the official respondents has been made on the basis of irrelevant considerations and that the same has been done for extraneous and oblique motives. It has been further submitted that there was no irregularity in the process of selection and, as such, it was not open to the official respondents to withdraw the provisional select list.

13) I have heard learned counsel for the parties and perused record of the case including the pleadings of the parties.

14) Certain admitted facts, that emerge from the pleadings of the parties, are that the objections to the provisional select list pertaining to Zone Drugmulla were received by the official respondents from certain candidates, including the private respondents, who had participated in the selection process. There was a direction of this Court to consider these objections and, accordingly, a committee of officers was constituted.

15) If we have a look at the first report of the Committee of officers, it appears that the candidates had raised objections as regards the non-publication of the merit list. It also appears that objections were also raised relating to the manner in which the marks were awarded in the interview. There were also objections pertaining to relationship of provisionally selected candidates with the officers and officials of the Youth Services & Sports Department.

16) In respect of these objections, the recommendation dated 08.03.2019 of the committee of officers, observed that the merit list was available in the office of respondent No.4. It also records that the selection was made on the basis of the marks obtained in academic and interview. It further records that out of 12 selected candidates, 06 are related to the officers/officials of the Department.

17) The Committee in its report does not deal with the issue as to whether mere availability of the merit list in the office of respondent No.4 amounts to due publication of the list. It also does not state anything about the allegation as to how unduly high marks were awarded to the selected candidates in the interview and finally the Committee, while admitting that 06, out of 12 selected candidates were relatives of the officials of the Youth Services & Sports Department, does not go into the question whether it amounts to any bias. The subsequent recommendations of the Committee made pursuant to order dated 13.03.2019 of respondent No.3, also do not take care of the aforesaid aspects of the matter except reiterating the same. In the backdrop of the aforesaid sequence of events, respondent No.3 was justified in constituting another Committee to go into the objections raised by the private respondents and certain other candidates.

18) If we have a look at the impugned order dated 28.05.2019 issued by respondent No.3, it is recorded in the said order that some of the selected candidates have been awarded exceptionally high marks in the interview though they were figuring at the bottom of the list as per the points calculated on the basis of their academic qualification. It has also been noted in the order that the members of the interview panel have not differed on award of marks in the interview to the selected candidates whereas in the case of those candidates who have been rejected, the interview panel is not on the same page in the matter of awarding of marks.

19) The official respondents have annexed along with their reply, a copy of the objections filed by certain candidates in which it has been alleged that 06 selected candidates are close relatives of certain officers and officials of the Youth Services & Sports Department posted in District Kupwara. This fact has not been denied by the official respondents. All the reports of the Committees confirm the fact that 06, out of 12 selected candidates, were the relatives of the officials of the respondent Department. The official respondents have also placed on record the document showing the details relating to the points awarded to the candidates in the interview. This has been done pursuant to the interim order passed by this Court. A look at the said document would reveal that all these 06 candidates, who are stated to be relatives of the officials of the Department, have secured very high marks as compared to the other selected candidates and the candidates who have been rejected. This clearly gives an impression that the interview committee has been influenced by the officers/officials of the Department as a result of which they have awarded higher marks to these six candidates in the interview. Thus, a genuine doubt is cast on the fairness of the selection process.

20) Apart from the above, the record shows that interview of the candidates pertaining to Drugmulla Zone was not conducted by a duly constituted Selection Committee. It is an admitted case of the parties that the interview was conducted by the Additional Deputy Commissioner in place of the Deputy Commissioner, Kupwara. As per Rehbar-e-Khel Scheme, the Selection Committee comprises District Development Commissioner concerned as its Chairman, District Youth Services & Sports Officer as its Member Secretary and District Employment & Counselling Officer and Zonal Physical Education Officer as its members. Thus, the interview of the candidates has not been conducted by a duly constituted Selection Committee because it was not headed by the Deputy Commissioner.

21) It has been contended by learned counsel for the petitioners that the Additional Deputy Commissioner, Kupwara, had the approval of the Deputy Commissioner, Kupwara, to act on his behalf and as such it cannot be stated that the selection was made by an incompetent Committee. In this regard he has placed on record a copy of the communication dated 19.06.2019 whereby the Deputy Commissioner has authorized Addl. Deputy Commissioner/ Assistant

Commissioner on his behalf.

22) Without presence of the Deputy Commissioner, the Committee of the selection members is rendered defective. The authorization issued by the Deputy Commissioner that has been relied upon by the petitioners, would not clothe the Committee with the power to make the selection. Even if it is assumed that the Deputy Commissioner, Kupwara, had issued any such authorization, still then it would not make any difference, as it was not within his competence to delegate his powers to any other officer. The Deputy Commissioner is not competent to change the constitution of the Selection Committee as laid down under the Scheme formulated in terms of the Cabinet Decision. The argument of learned counsel for the petitioners in this regard is, therefore, without any merit. Thus the provisional select list having been made by an incompetent Selection Committee, could otherwise not have been acted upon.

23) There is yet another aspect of the matter which is required to be noticed. The petitioners do not have any vested right to seek a direction upon the respondents asking them to take forward the selection process on the basis of provisional select list, because it is a settled law that mere selection of a candidate does not entitle him to seek appointment to a particular post nor is a candidate, who finds his name in the select list, entitled to seek a direction upon an authority to conclude the selection process so that the appointment orders are issued in his favour.

24) In the instant case, even the selection of the petitioners was yet to be finalized as their selection was provisional in nature subject to the objections. Once the official respondents considered the objections, they withdrew the provisional select list. The same was well within their competence and jurisdiction particularly in view the fact that the selection was made by an incompetent Selection Committee and there were a large number of misdemeanors observed in the selection process. The petitioners cannot challenge the said action of the official respondents because no right has crystallized in their favour by their mere provisional selection.

25) For the foregoing reasons, I do not find any merit in these writ petitions. The same are, accordingly, dismissed.