

(2018) 06 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : SWP No.1766 OF 2017

KUNAL SHARMA

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

Date of Decision : 07-06-2018

Acts Referred:

Citation : (2018) 06 J&K CK 0019

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Respondent No. 2 vide his Notification No. 01 of 2015 dated 31.3.2015, invited applications for filling up of Class-IV posts in various districts of the State which included four posts of Class-IV in district Samba. The breakup of the posts in so far as district Samba is concerned, was indicated in the following manner :

Open Merit : 2

RBA : 1

SCA : 1

Total : 4

2. The petitioner being eligible, also applied for the aforesaid post in Open Merit Category along with other eligible candidates. The selection was conducted by the selection committee headed by the Chief Medical Officer, Samba. In the select list issued by the respondents, the petitioner was

placed at Serial No. 1 in the waiting list of Open Merit Category. Ujaala Sharma and Sahil Jamwal were placed at Serial No. 1 and 2 in the

select list. It is claimed by the petitioner that the candidate namely Ujaala Sharma who was figuring at Serial No. 1 in the Open Merit Category, did

not join the service and consequently her selection/appointment was cancelled. Petitioner submits that he being the candidate figuring at Serial No.1 of

the wait list, became entitled to be appointed on the post in the Open Merit Category that fell vacant due to cancellation of appointment of

Ujaala Sharma on account of her failure to join her service. The petitioner also claims that immediately after the post against which Ujaala

Sharma was appointed became available, he submitted representation to respondent No.2 for operating the waiting list which had not yet

expired.

3. On being notified, respondent Nos. 1 to 3 appeared in the matter and filed their objections. In the objections, it is pleaded that pursuant to

Advertisement Notice No. 01 of 2015 dated 31.3.2015, process for filling up of four posts of Class-IV in district Samba was set in motion. The

selection committee entrusted with the job, issued provisional selection list in which the name of the petitioner figured at Serial No.1 in the waiting list

of the Open Merit Category. The provisional selection list was subsequently made final and all the four selected candidates were appointed. It is

submitted that pursuant to her appointment order dated 2.10.2016, the candidate namely Ujaala Sharma who was figuring at Serial No.1 of the select

list of the Open Merit Category, submitted her joining on 05.11.2016 in the department along with all requisite documents. It is next contended that

with a view to utilize the services of the appointed candidates, the respondent No. 3 vide his Order No. 02 NG of 2016 dated 29.12.2016, issued order

of adjustment of the candidates against the vacant posts in different Health Institutions. Ujaala Sharma was, accordingly, adjusted in Sub Centre,

Nonath Block, Nud. The candidate namely Ujaala Sharma, however, did not join and report in this regard was submitted by the Block Medical Officer,

Samba vide his communication No. BMO/S/1410-11 dated 09.1.2017. It is stated that the candidate namely Ujaala Sharma was treated to be

unauthorisedly absent and notices were issued to her to rejoin her duties . She did not join despite repeated notices, as such respondent No. 3

vide his No. CMO/S/5212-15 dated 30.3.2017 cancelled her appointment.Â Lastly, it was pleaded thatÂ the vacancyÂ caused due to cancellationÂ

of appointment of Ujaala SharmaÂ on account of her unauthorized absence, is future vacancy which is required to be advertised for fresh selection.

4. Having heard learned counsel for the parties and perused the record, it is abundantly clear that pursuant to her selection, Ujaala SharmaÂ

submitted her joining report to respondent No. 3 on 05.11.2016 and was subsequently adjusted in Sub Centre, Nonath Block, NudÂ by respondent No.

3 on 29.12.2016. It is true that Ujaala Sharma did not join in Sub Centre, NonathÂ Â and remained on unauthorized absence.Â She was put on

several notices for resumption of her duties but she failed. Consequently, her appointment was cancelled ab initio.

5. In the backdrop of aforesaid factual scenario, the question that falls for determination in this court is, as to whether the post which fell vacant due to

the cancellation of order of appointment of Ujaala Sharma, is future vacancy to be filled up by fresh appointment and selection or is the vacancy

arisen due to non-joining of Ujaala Sharma against which the petitioner being at Serial No.1 in the wait list, is entitled to be appointed.Â Â

6. It is true that pursuant to the recommendation of selection committee, respondent No.3 vide his order No. 01-NG of 2016 dated 20.10.2016Â

appointed all the selected candidates including Ujaala SharmaÂ as Class-IVÂ with a direction to reportÂ to the office of respondent No.3 within 21

daysÂ from the dateÂ of issuance of appointment orderÂ alongwith requisite certificatesÂ inÂ original. In the aforesaid order, it was further

provided that in case the selected candidates failed to report within the stipulated period, their appointments would be deemed to have been

cancelledÂ ab initio without further notice. Clause -5 of theÂ orderÂ of appointment aforesaid which is relevant, is reproduced hereunder :Â

â??The appointee shall report to this office within 21 days from the date of issuance of this appointment order alongwith the requisite certificates in

original. In case they fail to report within the stipulated period, their appointment shall be deemed to have been cancelled ab initio without any further

notice.Â

As directed, amongst others, Ujaala Sharma submitted her joining report in the office of respondent No.3 on 05.11.2016. There is nothing on record to

show that the joining report though submitted by Ujaala Sharma on 05.11.2016, was actually accepted by respondent No.3. Respondent No.3 vide his

another order bearing No. 02-NG of 2016 dated 29.12.2016, ordered adjustments of appointed candidates in different Sub Centers of Block

Nud . Ujaala Sharma was accordingly, posted in Sub Centre, Nonath and alongwith others was given 21 days to join providing further that in

case of failure to join within the stipulated period, appointment shall be deemed to have been cancelled ab initio without any further notice. It is not

in dispute that Ujaala Sharma did not join at Sub Centre, Nonath. Accordingly, Ujaala Sharma was served with several notices by respondent

No.3 to resume duties but she failed. Consequently, respondent No.3 cancelled the appointment of Ujaala Sharma for her failure to join her service

within 21 days from the date of issuance of appointment order.

7. Ordinarily, with the joining of Ujaala Sharma in the office of Chief Medical Officer, Samba, the post ought to be taken as filled up but the fact

remains that joining of Ujaala Sharma in the office of Chief Medical Officer, Samba was only for the purpose of verification of the documents and

nothing more. I am saying so because there was no post in the office of Chief Medical Officer, Samba where Ujaala Sharma could have joined. It is

only the place of her adjustment i.e. Sub Centre, Nonath where substantive vacant post was available and Ujaala Sharma was supposed to join.

She did not join within the stipulated period and, therefore, entailed cancellation of her order of appointment.

8. Viewed thus, it cannot be said that the post that fell vacant due to failure of Ujaala Sharma to join at Sub Centre, Nonath, is future vacancy which is

required to be filled up by fresh Advertisement Notification.

9. In these peculiar facts and circumstances, I am inclined to hold that the post which fell vacant on account of failure of Ujaala Sharma to join at Sub

Centre, Nonath Block, Nud, is required to filled up by operating the wait list.

10. In view of the aforesaid, this petition alongwith connected MP is allowed. Respondent No.3 is directed to issue order of appointment in favour

of the petitioner as Class-IV against the post which has fallen vacant due to the cancellation of order of appointment of Ujaala Sharma

within a period of four weeks from the date certified copy of this order is made available to the respondent No. 3.