

(2011) 10 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 895 of 2010 and CMP No. 1386 of 2010

Mohamad Lateef Mattoo

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 29-10-2011

Acts Referred:

Citation : (2011) 4 JKJ 355

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hasnain Massodi, Judge

1. The petitioner claims to have responded to advertisement notice No. 10 of 2008 dated 30.07.2008 issued by respondent J&K Service

Selection Board-respondent No. 2 herein, wherein applications were invited from eligible candidates for vacant posts of Junior Engineers lying

vacant in Public Works (Roads & Buildings) Department of State Government. The respondent No. 2 after the selection process was completed

issued a selection list of 113 Candidates in Open Merit category. However, the petitioner did not find place in select list, and instead was shown at

S.No. 13 in the waiting list. The respondent No. 1 acting on the selection list vide Government order No. 209-PW (R&B) of 2009 dated 17th

September 2009 accorded sanction to appointment of 170 candidates including 112 candidates in Open Merit category. It appears that 11

candidates appointed vide aforementioned Government order, 10 from Open Merit category and one from ALC did not report to the appointing

authority and after usual formalities 11 candidates from waiting list-10 from Open Merit category and one from ALC were appointed as Junior

Engineers. The respondent No. 1 thereafter vide Government order No. 112-PW(R&B) of 2010 dated 19.03.2010 appointed one Nasim Ahmad

Kabli figuring at S.No. 12 in the waiting list as Junior Engineer on account of failure of one Tajamul Hussain Trambo to join the post. However,

four of the selected/appointed candidates in Open Merit category at S.No. 2, 9, 14, and 20 who initially joined as Junior Engineers, submitted their

resignation leaving four of the posts of Junior Engineers vacant. According to the petitioner one Ms. Ruksana Mir D/O. Ghulam Hassan Resident

of Qazipora Potoshal though selected and appointed as Junior Engineer was not eligible for the post as the candidate acquired eligibility much after

the cut off date mentioned in the Advertisement Notice. Shri Shujat Hussain Son of Dr. Niyaz Ahmad Resident A-4 Syed Colony Habak

Hazratbal, also selected and appointed as Junior Engineer, it is stated, submitted his resignation in order to pursue his M-Tech Course.

2. The petitioner's case is that all 6 posts of the Junior Engineers that became available due to resignations and ineligibility, should be filled up from

the candidates shown in the waiting list and that the petitioner figuring at S.No. 13 was entitled to be considered and appointed as Junior Engineer.

It is insisted that the respondent No. 1, is under a legal obligation to operate the waiting list from S.No. 16 onwards. The petitioner has quoted

instances of the respondent No. 1, operating the waiting list to fill up the vacancies that had become available due to resignation of the appointed

candidates. The petitioner in Para 17 of the petition has restricted his claim and that of other candidates shown in the waiting list after him, to 5

posts of junior Engineers that according to the petitioner have become available on account of the resignation of the 5 Junior Engineers who have

been appointed as Assistant Engineers or are undergoing M-Tech Course in NIT Srinagar. On the strength of averments made in the petition a writ

of mandamus is sought directing the respondents No. 1, to operate the waiting list published on 10.06.2009 from S. No. 16 onwards and appoint

petitioner as Junior Engineer (Civil) Grade-II State cadre in the pay band of Rs. 5200-20200+ Grade Pay Rs. 2800 against one of the five

available vacancies of Junior Engineers with effect from the date such posts became available.

3. The writ petition is opposed on the grounds that the selection process having been completed with the appointment of selected candidates, the posts fallen vacant due to resignation of the appointed candidates cannot be used to operate the waiting list. It is insisted, that the posts fallen vacant due to resignation of appointed candidates are new vacancies, to be filled up by a fresh selection process. The respondents in their reply have admitted that 11 candidates though included in the select list did not join and that the said posts were offered to the candidates shown in the waiting list and appointments made vide Government order No. 321-PW(R&B) of 2009 dated 16.12.2009. It is also admitted that one more candidate was appointed on failure of Shri Tajamul Hussain Trambooo included in the select list to take up the job. The respondents while admitting that 4 of the selected candidates were subsequently appointed as Assistant Engineers on their selection by the Public Service Commission, insist that the 4 vacancies are ""future vacancies"" and not to be offered to the candidates shown in the waiting list. The respondents deny that Miss Ruksana Mir shown at S. No. 82 in the Government order No. 203/PW dated 17.09.2009 did not full fill the eligibility criteria. It is insisted that the candidate satisfied the eligibility criteria and was duly selected and appointed as Junior Engineer. The respondents have not taken a definite stands as regards resignation of Shri Shujat Hussain to pursue M. Tech. Course and insisted that the plea was a matter of record. It is reiterated that the positions left vacant due to resignation of the selected candidates are ""future vacancies"" not to be filled up from amongst the candidates shown in the waiting list, but to be thrown open to all eligible candidates.

4. I have heard Counsel for the parties have gone through the relevant record available on file.

5. The admitted facts need to be revisited in order to zero in on the real controversy involved in the present case. It is admitted case of the parties that the petitioner responded to the advertisement notice No. 10 of 2008 dated 30.07.2008 and on the strength of her merit and performance in the test found place at S. No. 13 in the waiting list. It is also admitted that the select list was notified on 10th June 2009 and was to survive for a period of one year i.e. till 10th June 2010. There is no disagreement between the parties that 11 of the selected candidates in the Open Merit

category and one candidate in ALC category did not join and that 11 candidates from the waiting list in Open Merit category and one candidate from waiting list in ALC category were appointed against the vacancies that remained unfilled due to non joining of the selected candidates. It is further admitted that 4 of the selected candidates resigned after their selection by the Public Service Commission as Assistant Engineers. The petitioner insists that the vacancies that became available because of resignation of the 4 candidates are to be filled up from waiting list. The plea is resisted by the respondents on the ground that the aforesaid vacancies are ""future vacancies"" and are to be filled up by setting into motion the selection process in accordance with rules.

6. It is no more res Integra that once appointments are made pursuant to the recommendations made by the 'authority' saddled with the responsibility to make the selection, the selection process is complete even where such Authority has submitted a waiting list. However, the selection process is not to be taken as concluded on mere issuance of appointment orders based on the recommendations of prescribed Authority but only after a selected candidate in compliance of the appointment orders submits his joining report in accordance with the procedure detailed in his appointment order and he is found to have academic and other testimonials to 'his credit that make him eligible for the appointment. There may be instances when the appointment order may be issued in favour of a selected candidate and the candidate asked to report along-with his original testimonials/certificates within the prescribed period and on verification such one or more certificates may be found not to be genuine or the candidate though appointed may not report within prescribed time having already found some other job and not willing to take up the appointment.

In such cases though the appointment orders are issued the selection process is not complete as selected candidate has either not joined or is found not having the qualification or experience prescribed for the post. All such unfilled posts are to be filled up by making the waiting list operational. However, once an appointed candidate reports within the prescribed time"" with his testimonials and joins the duty and thereafter for one or the other reason puts in his papers or resigns, the post that becomes available is a ""future vacancy"" and cannot be filled up from the waiting list, that has

ceased to exist once the selection process is complete. Guidance in this regard may be sought from law laid down in State of Punjab Vs. Raghubir

Chand Sharma and Another, followed in Ranu Balla v. State LPA(SW) No. 46/2010 decided on 24.03.2011 & Javeed Ahmad Ganai & Anr. v.

State & Ors. LPA No. 100/2011 & IA (c) No. 163/2011 decided on 24.05.2011. The petitioner thus cannot lay claim for his appointment

against any of the posts that became available due to resignation of S/Shri Irfan Ahmad Dar, Nisar Ahmad Dar, Afroz Ahmad Rather and Sunil

Sharma in wake of their selection and appointment as Assistant Engineers. The plea that Ms. Ruksana Mir being not eligible on the prescribed

date, her selection is bad and that the post likely to become available on her deletion from the select list-does not in any manner brighten up the

petitioner's case for the reason that the petitioner has not impleaded Ms. Ruksana Mir as a party/respondent to the writ petition so as to allow her

to contest the claim made by the petitioner. Furthermore, the plea does not find support from the Reply filed by the respondents who insist that

Ms. Ruksana Mir was eligible and validly selected and thereafter appointed as Junior Engineer. The resignation attributed to Shri Shujat Hussain is

neither confirmed by the respondents nor would be the post left vacant because of the resignation made use of by the respondents to operate the

waiting list as the vacancy would be a future vacancy not to be filled up from the waiting list.

7. For the reasons discussed above, the claim set up by the petitioner is not sustainable. The petition is devoid of any merit and is hereby dismissed

along-with all connected CMP's. Interim direction, if any, shall stand vacated.