

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR

SWP No. 1015/2015

Reserved on: 19.04.2023
Pronounced on: 05 .06.2023

Ravinder Singh ...Petitioner(s)

Through: - Mr. T.H. Khawaja, Advocate.

Vs.

J & K State Sports Council and ors. ...Respondent(s)

Through: - Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The grievance fostered in the instant petition filed under Article 226 of the Constitution of India by the petitioner is that despite having been found most meritorious candidate among all the aspirants in the selection process, that was initiated by the respondents for filling up two posts of Drivers in the respondent-Council, the petitioner has not been offered appointment on one hand and on the other, the respondent 2 herein being less meritorious than the petitioner and not even eligible according to the Advertisement Notice has been appointed. The petitioner, thus, beseeches and seeks the following reliefs:-

- “(i) An appropriate writ quashing selection and appointment of respondent No. 2.**
- (ii) A writ, order or direction including one in the nature of Mandamus, commanding the respondents to appoint petitioner against one of the post of Driver that had**

been put to advertisement and admit petitioner to all consequential benefits ahead of respondent No. 2.

(iii) Any other writ, order or direction which this Court may deem it fit and proper in the facts and circumstances of the case.”

2. The facts as pleaded in the instant petition and not being disputed by the respondents in their response reveal that the respondent-Sports Council (*hereinafter referred to as the “Council”*) through its Secretary invited applications from the eligible candidates for filling up of various posts including two posts of Drivers, one each available in Kashmir and Jammu Province respectively. The qualifications prescribed for the post in question were that the applicant should be a Middle pass possessing valid Hill Driving Licence for Light and Heavy Vehicles, providing maximum age of 37 years for Open Category and 40 Years for Reserve Category candidates.

3. The petitioner claiming to be possessed of the eligibility prescribed in the Advertisement Notice applied for the said post of Drivers and came to be declared eligible on scrutiny of his documents, whereafter he came to be invited for interview and a test by the Selection Committee. The petitioner appeared before the Selection Committee and performed well, however, having got suspicious on account of non-finalization of the process of selection, applied to the respondent-Council to know the result of selection process, as also if any appointments had been made against the posts in question, which information came to be provided to the petitioner on 16.04.2015, revealing that the petitioner secured more marks than all other four

applicants, who had participated in the selection process, but despite that respondent 2 had been appointed in terms of order dated 23.05.2014 without appointing the petitioner though rated higher in the order of merit. The information furnished to the petitioner also reveals that respondent 2 was ineligible being overage on the cut-off date provided in the Advertisement Notice.

4. **Response** to the petition has been filed by respondent 1 and 3, whereas respondent 2 has chosen not to file the same despite having appeared in person on 07.07.2015.

5. In the response filed by the respondent 1 and 3, the factual averments of the petition have not been controverted while it is being admitted that the petitioner and respondent 2 applied in response to the Advertisement Notice for selection and appointment against the post of Drivers and that the respondent 2 secured 07 points and petitioner secured 08 points. The respondents, however, in the reply have not expressed any justification for appointing a less meritorious candidate being respondent 2 than the petitioner, excepting that the process of filling of post of Driver in Kashmir Province has been kept on hold. All that has been pleaded in the objections is that mere selection to the post does not give a vested right to the petitioner to seek appointment against a post, which according to the respondents lies in the domain of the employer and that the employee is within its power and competence either to fill or not to fill up the post in view of the suitability of the selected candidate. Besides the above, it is also averred that according to the

modification made in the recruitment process in the year 2020, the recruitment in the Council is to be made in accordance with the relevant rules through Government Recruiting Agency.

Heard learned counsel for the parties and perused the record.

6. “The fundamental questions that arise for consideration in the instant petition is as to what are the rights of a candidate, who competes in a selection process and can an employer, who, admittedly, is a “**State**” within the meaning of Article 12 of the Constitution selectively make appointments regardless of the merit determined in a selection process.”

There can be no dispute on the proposition of law that mere selection does not confer any right of appointment and that an employer has a right to abandon the selection process at any time, but the question would be, can it be done arbitrarily without any reasonable and just cause on the sweet will of the employer and can an employer be permitted to resort to pick and choose method while making appointment from a selection list by appointing a less meritorious candidate and leave more meritorious candidate. The answer has to be emphatic “**no not at all**” because ours is a country governed by rule of law and 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 fee

and thereafter, spend time to prepare for the examination, as also money to travel to the place, where tests in furtherance of the selection process is held. If they qualify the written test, they may have again to appear for interview and medical examination and travel again and those, who are successful and are declared to have qualified, have a reasonable expectation that they will be appointed and no doubt, as noticed above, this is not a vested right, yet the employer or the State has to give justifiable non-arbitrary reasons for not offering such successful qualified candidates' appointment, particularly, when the employer is State, as it is bound to act and follow the mandate of Article 14 of the Constitution. It cannot without any reason decline to fill up a post without any lawful justification, which justification must not only be reasonable, should as well be not arbitrary, capricious and whimsical. This proposition of law has been laid down by the Apex Court in case titled as, "**Shankarsan Dash vs. Union of India**, reported in 1991 SCC (3) 47", wherein the Constitution Bench of the Hon'ble Supreme Court, at para-7, following has laid down as under:-

"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 candidate acquires 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.”

A reference hereunder to the judgment of the Apex Court passed in case titled as, “*R.S. Mittal Vs. Union of India*, reported in *1995 Supp. 2 SCC 230*” would also be relevant herein, wherein, at para-10, following has been held:-

“10.It is no doubt correct 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. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law.....

The Central Government’s approach in this case was wholly unjustified.”

The Apex Court further in case titled as, “*Dinesh Kumar Kashyap and ors. Vs. South East Central Railway and ors.* , reported in *2019 (12) SCC 798*” at para-5 held as under:-

“5.At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the Court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. No doubt, it is not incumbent upon the employer to fill all the posts but it must give

reasons and satisfy the Court that it had some grounds for not appointing the candidates who found place in the replacement panel.....”

7. Reverting back to the case in hand, it is an admitted fact that the respondent-Council after undertaking the process of selection qua the post of Drivers in question offered appointment of one post to respondent 2 and denied the said offer to the petitioner herein, that too, overlooking the superior merit of the petitioner, inasmuch as, the ineligibility of respondent 2. The said inaction of the respondent-Council cannot, but said to be arbitrary, capricious and whimsical besides colourable exercise and abuse of power to say the least.

It is pertinent to note that the record of the case produced by the learned counsel for the respondents upon being summoned by this Court bears testimony to the fact that the claim of the petitioner though has been found by the respondents to be genuine, yet the respondents failed to offer appointment of the post in question to the petitioner despite the availability of the post with the respondent-Council.

8. In the backdrop of the aforesaid facts and circumstances and having regard to the position of law laid down by the Apex Court in the judgments (supra), the petition in hand deserves to be allowed. Accordingly, **the same is allowed and by issuance of Writ of Mandamus, the respondent-Council is commanded to offer appointment to the petitioner against the post of Driver and admit the petitioner to all the consequential benefits, to which he would**

be entitled thereto on the same lines the respondent 2 have had been appointed as Driver in the Council and admitted all the consequential benefits thereof.

9. Writ petition is, accordingly, *disposed of*.

10. Record be returned back to the learned counsel for the respondents.

(Javed Iqbal Wani)
Judge

JAMMU
05.06.2023
"Ram Krishan"

