

Darshan Singh and ors. Vs. State of J and K Through Chief Secy. and ors.

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Court : Jammu and Kashmir

Decided On : Apr-08-2004

Reported in : 2005(2)JKJ232

Judge : Permod Kohli, J.

Acts : Jammu and Kashmir State Subordinate Services Recruitment Rules, 1992 - Rule 10; ;Jammu and Kashmir State Subordinate Services Recruitment Rules (Amendment), 1998

Appeal No. : SWP 2938/2002

Appellant : Darshan Singh and ors.

Respondent : State of J and K Through Chief Secy. and ors.

Advocate for Def. : Neeru Goswami, Dy. A.G.

Advocate for Pet/Ap. : D.S. Chauhan, Adv.

Disposition : Petition allowed

Judgement :

Permod Kohli, J.

1. The J&K; Service Selection Board issued Advertisement Notice No. 01 of 1999 dated 9.3.1999 inviting applications from the eligible permanent residents of the

State of Jammu and Kashmir for the posts of teachers in District Kathua. Petitioners being eligible, applied for the same and participate in the selection process held by the Selection Committee constituted by the Selection Board. Select list of the candidates for appointment to the posts of teachers is issued on 4.1.2002, which was published in local newspaper namely Daily Excelsior (Anx-C). Alongwith the select list, waiting list was also issued. As many as 165 candidates were listed in the Open Merit Category and 33 candidates in the waiting list for the said category. Separate list was issued for reserve category. However, all the petitioners being candidates in the Open Merit Category, these two lists are relevant for the purpose of present petition. Petitioners herein were unable to find berth in the select list, however, their names have been reflected in the waiting list at Serial Nos. 9, 10 and 11. It is the positive case of the petitioners that as many as eleven candidates did not join the service and two candidates left the service after some time having been selected and appointed in some other service. The candidates appearing at Serial Nos. 10, 20, 30, 32, 40, 42, 98 and 120 did not submit their documents whereas candidates appearing at Serial Nos. 27, 163 and 53 of the select list did not join on appointment. In all, 11 candidates did not join from the select list. The authorities operated waiting list upto Serial No. 8 as against 11 available vacancies due to non-joining of the selectees. Petitioners are next in order of merit in the waiting list and they being at Serial Nos. 9, 10, and 11, claim to be entitled to appointment against the available vacancies. Petitioners on being informed of the availability of the vacancies and operation of the waiting list to limited number of vacancies, approached the respondents by various representations. The representations made by petitioners were duly recommended by the Director School Education as also the Hon'ble Minister for Education. Petitioners have also placed on record affidavits from some of the candidates, who have not joined the service on appointment.

2. The State-respondent has filed detailed objections. Respondents in Para-F of the reply, admitted that eight candidates in Open Merit Category did not join. In grounds, it is further admitted that three more candidates who were appointed, also did not join. In Para-J also, it is admitted that two candidates after joining, resigned pursuant to their appointment as Accounts Assistants in the Finance Department. The respondents have also admitted that the petitioners are in the

waiting list at Serial Nos. 9, 10 and 11 i.e. immediately after eight persons who have been appointed from the waiting list.

3. In view of the above admitted factual position, the only question that arises for consideration is, whether the petitioners have any right to seek appointment being in the waiting list against unfilled vacancies. The selection to the post in question is governed and regulated by the J&K; State Subordinate Services Recruitment Rules, 1992. Sub-rule (vi) of Rule 10 of the aforesaid rules was amended in the year 1998 and following was introduced:

'The Board shall also finalise waiting list of 20% of the total number of selected candidates and forward the same to the concerned department. The waiting list shall remain in force for a period of one year from the date of its receipt or till a fresh selection is drawn up by the Recruitment Board, whichever is earlier.'

4. The aforesaid rule clearly envisage that a waiting list to be operated upon within a period of one year or till the next selection whichever is earlier. Indisputedly, 11 candidates did not join after being selected/ appointed and two resigned after joining. As far the vacancies that became available on resignation of the two candidates are concerned, petitioners or for that matter any other candidate in the waiting list, have no right to be considered for appointment against those vacancies. The said vacancies once filled up and fallen vacant after the selectees/appointees resign, are required to be again put to fresh selection. However, the waiting list is required to be operated upon in respect to the vacancies fallen vacant, where the selectees did not join. It is admitted case of the respondents that waiting list was operated upon and as many as eight candidates from the waiting list have been appointed. The respondents have not shown any valid reason as to why the waiting list was operated upon only for eight candidates as against 11 vacancies available due to non-joining of selectees/appointees. Petitioners are admittedly next in the order of merit in the waiting list and as many as three vacancies are still available against which petitioners have had a claim.

5. Mrs. Neeru Goswami, Dy. AG appearing for respondents has placed reliance upon *State of Punjab v. Raghubir Chand Sharma and Anr.*, AIR 2001 SC 2900, *K. Jayamohan v. State of Kerala and Anr.*, AIR 1997 SC 2619 and *Sanjoy*

Bhattacharjee v. Union of India and Ors., AIR 1997 SC 2179.

6. This issue also came up for consideration in Prem Singh and Ors. v. Haryana State Electricity Board and Ors. reported as (1996) 4 SCO 319, wherein it has been held:

'From the above discussion of the case law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, The Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2-11-1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were taken likely to arise because of retirement etc. by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62.....'

7. I have considered the judgments referred to above by the parties. The case in hand is clearly distinguishable. In the present case, there is specific provision for the waiting list, which remains in force for period of one year. The obvious object, is to operate the said list in the event of availability of vacancies due to non-joining

of the candidates within the said period. The vacancies were available within the period of one year due to non-joining of the candidates. Therefore, respondents were under obligation to operate the waiting list to the extent of availability of vacancies. As a matter of fact, respondents did operate the waiting list but upto eight candidates. Why the three vacancies remained unfilled despite availability of candidates on the waiting list, has not been indicated in the reply. Mrs. Goswami has failed to satisfy the court on this count. Petitioners being next in merit and the vacancies available, they have a right to be considered for appointment. It is not the case of respondents that any decision has been taken not to appoint any person or fill up the vacancies for any valid reason. Respondents cannot be permitted to deny similar treatment to the petitioners as has been accorded to the other persons in the waiting list particularly in view of the availability of the vacancies.

8. For what has been stated above, this petition is allowed. A direction is issued to respondent-State to consider the petitioners for appointment against three available vacancies due to non-joining of the candidates. Let appropriate orders be passed within a period of three months from today.