

**HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR**

SWP No.1611/2012
CMP No.2600/2012

Date of Order:23.08.2014
State of J&K & ors.

Qamar Rayees Khan

Vs.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing Counsel:

For the petitioner(s)/Appellant(s): Mr. Jahangir Iqbal Ganai.

For the respondent(s): Mr. Mehraj-ud-din, GA(for R1).

Mr. Wasiq vice Mr. Azhar-ul-Amin (for R2&R3)

i) Whether to be reported in Digest/Journal: YES

ii) Whether to be reported in Press/Media: OPTIONAL

(ORAL)

With the consensus of learned counsel for the parties, petition taken up for final disposal at its admission stage.

Heard and Considered.

Admit.

1. Case set up by the petitioner is that vide advertisement notice No.12-PSC of 2006 dated 28.12.2006, issued by J&K Public Service Commission (for brevity 'PSC'), applications were invited for filling up various posts which include 44 posts of Lecturer Computer Application who were to be adjusted in the Degree Colleges of Higher Education Department. The requisite number of candidates vis-à-vis respective categories were selected and appointed. Two candidates did not join, as a result whereof, Deputy Secretary to Govt. Higher Education Department vide communication No.Edu-Coll/Coord.-746/2011 dated 16.05.2012, addressed to the Secretary,



PSC, has conveyed that from amongst 43 candidates two candidates, namely, Rumaan Bashir and Kaisar Javed, have not joined the concerned Colleges. The said posts have remained unfilled, therefore, recommend two candidates, one from open and another from RBA category, from the wait list available with the PSC so that left out vacancies are filled. The respondent PSC has not acted on such request, which prompted the petitioner to file the instant petition.

2. Respondents No.2 and 3 have filed their reply wherein it is stated that Rule 51 of the Jammu & Kashmir Public Service Commission (Business and Procedure) Rules, 1980 has been substituted vide notification No.PSC/EX/11/44 dated 30th March, 2011. Clause (v) prescribes procedure for determination of suitability of the candidates for appointment, both under open and reserved category. In view of this development, the communication dated 16.05.2012 could not be acted upon because the candidates in the wait list do not satisfy the requirement.
3. It is further stated in the reply that the earlier selection for the posts of Lecturer Computer Application in Higher Education Department was cancelled ab initio vide order

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High Court of J&K, Srinagar

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No.172-PSC of 2011 dated 20th May, 2011, therefore, fresh process of selection was initiated which attracts applicability of the substituted Rule as notified in the month of March, 2011.

4. Learned counsel for the petitioner would submit that the process of selection, in fact, has been set in motion with the issuance of advertisement notice in the year 2006. Based on that advertisement notice, the selection as was made has been cancelled but again selection process continued on the basis of said notification from amongst the candidates who possessed requisite qualification and eligibility in accordance with the terms and conditions of the said advertisement notice of 2006.
5. The substituted Rule 51 has a prospective effect which position is supported by the note as appended to the notification providing for substitution of Rule 51. The said note reads as under:

NOTE: —

This shall come into force with immediate effect but shall not apply to the selections for which process has been initiated by the Commission before the notification of the amended rule. Such selections shall be regulated in terms of conditions prescribed in the relevant advertisement/notification/ notice for the post".

6. Contention of the learned counsel appearing for PSC, that since fresh selection has been made, therefore, substituted Rule would apply, is misplaced. The position of notification of the year 2006 and the selection based thereon has to be governed by the earlier rule as was in vogue at the relevant point of time.
7. According to learned counsel for the respondent No.1, it is PSC who has to take decision and to make recommendations and only then respondent No.1 has to proceed further in accordance with law.
8. This petition is disposed of with the following directions:

- (I) Respondents No.2 and 3 shall accord consideration to the request as made vide communication dated 16th May, 2012 and thereafter to take measures for recommending two candidates as required in terms of the said communication in accordance with earlier rules as were in vogue prior to March, 2011.
- (II) On receipt of recommendations, whatever made in response to the communication dated 16th May, 2012, respondent No.1 shall take the final decision with reasonable dispatch.

9. Disposed of as above along with connected CMP.

Sgt
23-08-14

sd.
Hon'ble Judge

cas: 36806 -

at 2191/1
23/08/2014

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BEFORE THE HON'BLE HIGH COURT OF J&K AT SGR

In the case of:

SWP No. 1611 /2012

Qamar Rayees Khan, aged 35 years

S/O. Ghulam Mohammad Khan

R/O .Qamarwari, Srinagar

...Petitioner

Versus

1. State of Jammu and Kashmir through
Commissioner/Secretary to Government
Higher Education Department
Civil Secretariat, Srinagar
2. J&K Public Service Commission
Poloview Srinagar
through its Secretary
3. Chairman J&K Public Service Commission
Poloview Srinagar

...Respondents

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High Court of J&K, Srinagar