

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPASW No. 186/2018

Reserved on 12.05.2022
Pronounced on 27.06.2022

State of JK & Anr. ...Appellant(s)

Through: Mr. D. C. Raina, AG with Mr. M. A. Chashoo, AAG and
Mr. Sajad Ashraf, GA.

Vs.

Danish Zia Bhat & Ors. ...Respondent(s)

Through: Mr. Z. A. Shah, Sr. Adv. with Mr. A. Hanan, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

PANKAJ MITHAL, CJ

1. The State of Jammu and Kashmir and the Jammu and Kashmir Service Selection Board together have preferred this LPA against the judgment and order dated 3rd May 2018 passed by the learned Single Judge allowing SWP No. 670/2017 with the direction to the State authorities to operate the wait list of the Junior Engineers (Civil) for the period of one year so as to accord appointment to the candidates from the wait list to the post of Junior Engineer (Civil) against the vacancies falling vacant due to resignation of the candidates selected and joining.
2. The Selection Board issued an Advertisement notification No. 02/2014 dated 30.12.2014 inviting applications for filling up large number of posts of Junior Engineers (Civil). In pursuance of the above advertisement, the petitioners-respondents applied. The selection list was notified on 29.04.2016 and the petitioners-respondents were placed in the waiting list. Subsequent to the aforesaid selection list, the selected candidates were appointed in terms of the Government Order dated 25.05.2016, but two of the selected candidates failed to

join. Accordingly, in their place, two persons at serial No. 1 and 2 from the wait list were appointed. Later on, it transpired that some of the selected candidates who have earlier joined resigned to join as Assistant Engineers pursuant to their selection on the said post in terms of the same advertisement issued by the Selection Board. The petitioners-respondents claimed appointment on the vacancies so arising due to the resignation of the candidates joining as per the above select list.

3. It is in the above background that the petitioners-respondents filed the above writ petition seeking reliefs so as to keep the select list operational for a period of one year to enable them to join as Junior Engineers consequent upon the resignation of the selected candidates who were appointed. The above writ petition has been allowed by the impugned judgment and order.
4. A short question raised in this appeal is as to whether the writ court was justified in directing for the appointment candidates from the wait list to the post of Junior Engineers against the vacancy arising due to resignation of the selected candidates who have joined.
5. The submission is that once a selected candidate from the select wait list joins, the vacancy get exhausted. Accordingly, on his resignation, a fresh vacancy arises which has to be filled up afresh in accordance with law after due advertisement and selection process. The life of the wait list may be for a period of one year, but it remains operable for that period, so as to allow appointments only against the post advertised which have remained unfilled due to non-joining of any candidate for some reason. It would not apply to fill up the vacancy caused due to the selected candidate joining and resigning.
6. The other side has defended the impugned judgment and order on the basis of Rule 14(7) of The Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010 which have been framed in exercise of the powers under Section 15 of The Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010. It is submitted that in addition to the select list, a wait list has to be prepared and the life of such wait list is one year. The purpose of preparation for the said wait list is to consider the candidates of the

wait list against “drop out” vacancy. The “drop out” vacancy would include vacancy which arises due to the resignation of the selected candidates joining the post.

7. It would be profitable to quote sub-rule (7) of Rule 14 of the aforesaid Rules:-

7. “The concerned Selection Committees of the Board shall also draw up a waiting list of 25% of the total number of selected candidates and forward the same, through the Board, to the requisitioning authority for consideration against drop-out vacancies. The waiting list shall remain in force for a period of one year from the date the original select list is sent to the requisitioning authority. The Selection Committees shall not maintain or recommend any select or waiting list for any future vacancy or any vacancy caused on account of resignation by any selectee after appointment.”

8. A reading of the aforesaid sub-rule makes it that the Selection Committee has to draw up the waiting list and the same has to be forwarded to the requisitioning authority for consideration of the names of the wait list candidates against “drop out” vacancy. It also provides that such a wait list would remain in force for a period of one year from the date of original select list. It further provides that the Selection Committee shall not maintain or recommend any select or waiting list candidate for any future vacancy or any vacancy caused on account of resignation by any selectee after appointment.

9. The above provision is in two parts. The first part provides for preparation of a select/wait list which will remain in operation for one year for consideration of the names of wait list candidates against drop out vacancies. The second part emphatically lays down that the selection committee shall not recommend any wait list candidate for any future vacancy or any vacancy caused due to resignation of any selected candidate after he was appointed.

10. The drop out vacancies have not been specified anywhere. Even if we accept the contention of Shri Shah that it would include those vacancies on which the selected candidate joins and resigns but even

then if whole of the provision is read together harmoniously and since the later part specifically mandates that the selection committee shall not recommend any wait list candidate for appointment on any vacancy caused due to the resignation of the selected candidate who has joined, we are of the opinion that the vacancy arising due to the resignation of the selected/appointed candidate would stand impliedly excluded from the drop out vacancies.

11. A Three Judges decision in **Rakhi Ray & Ors. vs. High Court of Delhi & Ors. AIR 2010 Supreme Court 932** categorically lays down that vacancies cannot be filled up over and above the number of vacancies advertised as the recruitment of the candidates in excess of the vacancies notified is denial and deprivation of the constitutional right under Article 14 read with Article 16 of the Constitution of those persons who acquired eligibility for the posts in question in accordance with the statutory rules subsequent to the date of notification of the vacancies. Filling up of the vacancies over and above the notified vacancies amounts to filling up a future vacancies which is not permissible in law. In the event, the vacancies notified stands filled up, the process of selection comes to an end and the waiting list cannot be used as a reservoir.
12. The legal position as laid down above makes it clear that only the number of vacancies notified can be filled up through the process of selection and from the select list so prepared. The authorities have no right to fill up any vacancy over and above the vacancies notified as it would amount to filling up of a fresh vacancies encroaching upon the right of all those persons who may become eligible after the notification of the vacancy. It has also been clarified that the vacancy which has been advertised and on which a selected candidate has been appointed if resigns subsequently would lead to the exhaustion of the select panel and no one from the said panel can be pushed up for appointment. In other words, such a vacancy has been described as a fresh vacancy to be filled up after a new advertisement and a fresh selection thereof.
13. **In Surinder Singh & Ors. vs. State of Punjab & Ors. AIR 1998 SC Page 18**, it has been held that a waiting list prepared in an

- examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join, then the person from the waiting list may be pushed up and be appointed. Thus, the purpose of the waiting list is only to provide a candidate to fill the vacancy on the non-joining of the selected candidate.
14. In **State of Punjab vs. Raghbir Chand Sharma & Anr. AIR 2001 SC 2900**, only one post was advertised and the candidate whose name appeared at serial No. 1 in the select list joined the post, but subsequently resigned. The Court held that the post cannot be filled up by offering appointment to the next candidate in the select list. It was observed that the only post in respect of which selection came to be made and select list prepared ceased to exist as soon as one of the selected candidates joined and the vacancy arising on account of the resignation of the said selected and appointed candidate cannot be filled up from the select panel.
 15. A similar view was expressed by the Supreme Court in **Manoj Manu & Anr. vs. Union of India & Ors. (2013) 12 SCC 171**. In the said case, the court observed that there are two situations, *Situation A-* where the candidate who had initially joined but subsequently resigned/quit, thus resulting in creation of vacancies again and *Situation-B-* where out of the recommended candidates, some candidates do not join at all. In *Situation-A*, when the selected candidate joins and subsequently resigns, the vacancy notified gets exhausted and the vacancies arising thereafter has to be filled up by fresh examination.
 16. In **Mukul Saikia vs. State of Assam AIR 2009 SC 747**, the court held that appointment cannot be made of more than the number of posts advertised. Once the appointments are made against the advertised posts, the select list gets exhausted and those who are placed below the last selected and appointed candidate cannot claim appointment against the post which subsequently became available.
 17. This apart, it is settled law by the Five Judges Constitutional Bench of the Supreme Court in **Shankarsan Dash vs. Union of India & Ors. (1991) 3 SCC 47** that the candidate included in the merit list has no

indefeasible right to appointment even if a vacancy exists. But that does not mean that the State can act in an arbitrary manner, meaning thereby that when even the selected candidate has no indefeasible right for appointment, there is hardly any chance for the wait list candidate to seek appointment as of right in the event of existence of a vacancy.

18. **In Raj Rishi Mehra & Ors. vs. State of Punjab & Ors. AIR 2013 SC 3580**, it has been observed that the question whether the candidates whose names are included in the waiting list are entitled to be appointed against the unfilled post as of right must be answered in the negative in view of various earlier precedents of the Supreme Court.
19. In the above legal position, the issue for our consideration is whether on the appointment of the selected candidates and their subsequent resignation, the vacancy that arises would be a fresh vacancy or would be the same vacancy as advertised which can be filled up from the select panel or the wait list. In this regard, sub-rule 7 of Rule 14 of the Rules is very material which provides for the preparation of the wait list which has to remain in force for a period of one year from the date of the original select list and has to be sent to the requisitioning authority for consideration against the “drop out” vacancies. It is in view of the use of the word “drop out” vacancies that Shri Z. A. Shah, learned senior counsel contends that joining of a selected candidate against the vacancy advertised and thereafter on his resignation the vacancy occurring would be a drop out vacancy rather than a fresh vacancy. Therefore, this drop out vacancy has to be filled up from the existing select/waiting list. In this connection, he has cited the dictionary meaning of the word “drop out”. No doubt “drop out” in literal sense may include the vacancies arising due to drop out of the candidates after joining, but upon the plain reading of the last clause of the aforesaid sub-rule 7 of Rule 14 of the Rules, it would be clear that the use of the phrase “drop out” vacancies has been used therein narrowly in context with the vacancies remaining unfilled due to non joining of the selected candidates for any reason.

20. Sub-rule 7 of Rule 14 in its last part clearly states in a mandatory form that the selection committee shall not maintain or recommend any select or waiting list candidate for any future vacancy or any vacancy caused on account of resignation by any selected candidate who gets appointed. The language of the aforesaid provision is clear enough to establish that no candidate from the select list or waiting list shall be appointed on any vacancy which is caused due to resignation of a selected candidate joining the post.
21. In view of the aforesaid facts and circumstances, we are of the firm opinion that the learned Single Judge manifestly erred in law in allowing the writ petition directing the respondents to operate the waiting list of the Junior Engineers (Civil) even against the posts falling vacant due to resignation of the candidates selected and joining within a period of one year from the date of the preparation of the said select list.
22. It may be important to mention here that the select/waiting list prepared may remain operative and valid for a period of one year but that would only be for a limited purpose of appointing the selected/wait list candidates on the vacancies which remains unfilled due to non-joining of the selected candidate for one reason or the other.
23. In view of the above, the judgment and order dated 3rd May 2018 passed in SWP No. 670/2018 is set-aside and the writ petition stands dismissed.

(MOKSHA KHAJURIA KAZMI)
(JUDGE)

(PANKAJ MITHAL)
CHIEF JUSTICE

SRINAGAR
27.06.2022
Altaf

Whether the order is reportable? Yes.