

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No.349/2022
CM No. 2762/2022,
CM No. 898/2022

Reserved on : 27.06.2022
Pronounced on: 07.07.2022

Faizan Amin and another

.....petitioner(s)

Through :- Mr. Z.A.Shah Sr. Advocate with
Ms. Humaira Shafi Advocate.

V/s

UOI and another

.....Respondent(s)

Through :- Mr. T.M.Shamsi ASGI.
Mr.Jahangir Iqbal Ganai Sr. Advocate
with Ms. Ruquiya Advocate
Mr. J.H.Reshi Advocate in
CM No.2762/2022.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

CM No. 2762/2022

1. This is an application by the applicants, namely Mohsin Farooq Kawa and Manzoor Shafi Bhat seeking their impleadment as party- respondents. They are seeking their impleadment on the ground that they are working against the posts of Jr. Engineers against which the petitioners herein have been selected in the selection process conducted by respondent No.2. The applicants claim that they, by performing their continuous duties for more than seven years, have acquired the right of regularization and, therefore, no selection against the posts held by them could be made. They also claim that the selection process conducted by the respondents which has culminated in selection of the petitioners is only an eye wash and conducted only to show door to them.

2. Having heard learned counsel for the applicants and perused the record, I find this application grossly misconceived. The applicants are admittedly the holding the posts of Jr. Engineer (Electrical) and Jr. Engineer (Civil) respectively purely on contractual basis for a specified period. They were initially appointed on contractual basis on a consolidated salary of Rs.20,000/- per month for 59 days. However, their appointments were extended from time to time. The order of their engagement itself makes it clear that their engagement was purely contractual and shall not confer upon them any right or claim on the posts held by them. Their engagement was also provided to be terminable at any time without any advance notice by the respondents. Such being the nature of engagement of the applicants, the argument of Mr. J.H.Reshi, learned counsel, appearing for the applicants, that the applicants are entitled to regularization and that respondent No.2 cannot fill up the posts held by them on regular basis, can only be termed as 'misconceived'.

3. The applicants have not been able to bring to the notice of this Court any Rule, Regulation or policy decision of respondent No.2 with regard to regularization of the services of contractual appointees like the applicants. That apart, the conduct of the applicants exhibited by them before this Court as well as the Civil Court disentitles them to any discretionary relief from this Court.

4. As is elaborately taken note in the judgment below, the first attempt made by the applicants to stall the regular selection process was the filing of WP(C) No. 2602/2021. Having regard to the nature of right a contractual appointee has, this Court while issuing notice to the respondents provided by way of interim arrangement that, if the applicants were in position, they would be allowed to continue till regular selection to

fill up the posts held by them was concluded and fresh appointments were made. Obviously, this did not suit the applicants and they approached the Civil Court by way of a civil suit suppressing the factum of filing the writ petition and its pendency before this Court. They even succeeded in persuading the Civil Court to pass an interim order of status quo on 15.12.2021. The said status quo order became impediment in the way of respondent No.2 to issue the appointment orders in favour of the petitioners herein. Be that as it may, the interim order passed by the Civil Court on 15.12.2021 was stayed by the Appellate Court on 29.01.2022. With a view to avoid serious consequences of suppression made before the Civil Court, the applicants, acting smartly, withdrew the writ petition on 18.05.2022.

5. In the aforesaid circumstances, the conduct of the applicants cannot be appreciated and deserves to be dealt with appropriately. Having regard to their locus to intervene in this writ petition, suffice it to say that the instant writ petition is directed against respondent No.2 seeking, *inter alia*, a Writ of Mandamus to respondent No.2 to issue the appointment orders in favour of the writ petitioners pursuant to the selection made by him. Indisputably, the applicants herein too have participated in the selection process and, therefore, are well within their right to challenge the selection and even the appointments of the writ petitioners, but in the absence of any such challenge thrown to the selection of the writ petitioners, they have no locus to intervene in this petition or seek their impleadment as party-respondents. The applicants cannot be permitted to intervene to play spoilsport.

6. The presence of the applicants is neither necessary, nor otherwise required for adjudication of the instant writ petition. The application is, thus, found to be grossly misconceived. Dismissed, as such.

However, having regard to the conduct of the applicants exploring misconceived remedies to perpetuate their stay at the cost of the petitioners who are duly selected in the selection process, they are saddled with cost of Rs.2.00 lacs to be shared by them equally. The cost shall be deposited by the applicants in the Registry of this Court within a period of four weeks from today. The Registry, on receipt of the said cost, shall deposit the same in the Advocates' Welfare Fund. Should there be any non-compliance of this order, Registry shall prepare Robkar and place the same before the appropriate Bench for orders.

Time has come to stay firm on frivolous litigation lest it will prevent the Courts from taking up good causes involving adjudication of vital constitutional and other statutory rights of the citizens. It would be no exaggeration to say that a major portion of Court time is wasted in hearing and weeding out frivolous litigation. To serve the cause of justice and to keep the stream of justice unsullied, it is imperative for the Courts to act tough and discourage the tendency of some litigants to misuse the process of law. Imposition of exemplary costs on the applicants is to send a clear and loud message to the litigants like the applicants herein that they should refrain from such attempts lest they are most certainly to face the serious consequences.

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7. National Institute of Technology, Hazratbal Srinagar ['NIT'] vide its Adv. Notice No. NIT/Non-teaching Recruitment/2020/6(NT) dt. 14.10.2020 invited online applications for recruitment, amongst others, for two posts of Jr. Engineer (01 for civil and 01 for electrical) under unreserved category. This was followed by another Advertisement Notification issued by the NIT on 22.10.2020. Petitioner No.1 responded to

the Advertisement Notification by submitting his application for the post of Jr. Engineer (Civil), whereas petitioner No.2 applied for the post of Jr. Engineer (Electrical). The petitioners, having been found eligible for the respective posts, were allowed to participate in the selection process. The NIT, in terms of its notice dated 17.12.2021 notified the selection of candidates after getting the approval of the select list from the Board of Governors. In the said select list which was approved by the Board of Governors in its 111th meeting held on 08.12.2021 and which was notified on 17.12.2021, there was no mention with regard to the selection for the posts of Jr. Engineer (Civil) and Jr. Engineer (Electrical). Although, the select list qua the posts of Jr. Engineer (Civil) and Jr. Engineer (Electrical) too had been approved by the Board of Governors of NIT, yet the same was not notified for the information of the selected candidates and others, who had participated in the selection for the aforesaid posts. Notwithstanding the above, two persons namely Mohsin Farooq Kawa and Manzoor Shafi Bhat, who were already working in the NIT on contractual basis, approached this Court by way of WP(C) No. 2602/2021 in which, they, *inter alia*, prayed for the following reliefs:

- (i) Writ in the nature of certiorari quashing the impugned selection process and proposed selection list likely to be issued by the respondents for the post of Jr. Engineers advertised vide advertisement notice No.5/2020 dated 22.10.2020 being illegal, untenable and void ab initio along with the subsequent process of recruitment in terms of subsequent advertisement dated 22.10.2020 which has been perceived in fraud and by misuse of the powers by the institution to deny the regularization to the petitioners for the occupied posts of Jr. Engineers, Civil and Electrical in NIT, Srinagar;
- (ii) Writ in the nature of Mandamus commanding respondents to allow the petitioners to continue against the posts of Jr. Engineers in the respondents-institute to which the petitioners have been appointed pursuant to an advertisement notice issued in the year 2015;

(iii) Writ in the nature of mandamus commanding the respondents to regularize the services of the petitioners against the posts of Junior Engineers held by them pursuant to selection faced by the petitioners in response to the advertisement notice No. 5/2015 dated 23.04.2015; and,

(iv) Writ in the nature of mandamus commanding the respondents to produce the record of selection process pursuant to second advertisement notice No. 05 NT dated 20.10.2020 and respondents be directed not to disengage the petitioners pursuant to the developments taken place after the issuance of the subsequent advertisement notice dated 22.10.2020 and not to give any credence to this false selection process perceived by way of fraud.

8. On 14.12.2021, when the aforesaid writ petition came up for consideration before this Court, this Court while issuing notice to the respondents to file their objections, also issued the interim directions which read thus:

“In the meanwhile, subject to objections and till next date of hearing, it is provided that the petitioners, if in position as on date, shall be allowed to continue till the regular selection to fill up these posts is concluded and fresh appointments are made”

9 It appears that the petitioners of the aforesaid writ petition i.e WP(C) No. 2602/2021 were not satisfied with the directions, which in the facts and circumstances of the case, were granted by this Court on 14.12.2021. Notwithstanding the pendency of the said writ petition, the aforesaid persons approached the Court of 3rd Additional Munsiff, Srinagar [‘Civil Court’] by way of a civil suit filed on 15.12.2021 i.e a day after this Court had entertained their petition and granted interim directions. Obviously, the Civil Court was not apprised about the pendency of the writ petition before this Court. Be that as it may, the petitioners of the said writ petition succeeded in persuading the Civil Court to pass the interim directions to the respondent-Institute to maintain status quo. This way, the

petitioners of the aforesaid writ petition, who were holding the posts of Jr. Engineers, succeeded in stalling the finalization of selection process initiated by the NIT by issuing a public notice and conducting an elaborate exercise. This is just the beginning, not the end of the manipulations of the petitioners Mohsin Farooq Kawa and another of WP(C) No. 2602/2021. They, acting smartly and with a view to avoid any future trouble, surreptitiously moved an application seeking withdrawal of the writ petition filed by them with a liberty to file fresh in case the need arises. Without seeing through the game plan of the petitioners, this Court allowed the application and dismissed WP(C) 2602/2021 as withdrawn with liberty to file fresh only if there was a fresh cause of action.

10. Be that as it may, as noticed above, the petitioners Mohsin Farooq Kawa and another succeeded in getting the selection process in question stalled with the intervention of the Civil Court. However, the petitioners herein, who had come up in the select list for the posts of Jr. Engineers, Civil and Electrical respectively challenged the order of status quo passed by the Civil Court before the Principal District Judge [the Appellate Court']. The appeal preferred by them was entertained by the Appellate Court, who, vide its interim order dated 29.01.2022 stayed the impugned order of status quo and called for the record from the Civil Court. This happened on 29.01.2022. The NIT, which was supposed to finalize the selection process and appoint the selected candidates, did not act in the matter for the reasons best known to the authorities at the helm of affairs in the NIT. The petitioners having failed to persuade the respondents-NIT to finalize the selection process and issue orders of appointment in their favour whose selection as Jr. Engineers, Civil and Electrical respectively stood approved, they filed the instant writ petition

seeking a direction to the respondents to issue orders of appointment in their favour.

11 On this petition coming up for consideration on 02.03.2022, this Court, while issuing notice to the respondents and which notice was waived by T.M.Shami, learned ASGI on behalf of Union of India, directed the learned ASGI to seek special instructions as to why the appointment orders in favour of the selected candidates in terms of order No. 036-BOG/111 dated 08.12.2021 have not been issued so far. The writ petition was ordered to be listed on 18.04.2022. However, the matter could not be taken up on the said date and the next date came to be fixed on 01.08.2022. The petitioners, who were anxious to seek their appointment, that too, when they had succeeded in getting the order of status quo passed by the Civil Court kept in abeyance by the Appellate Court, filed an application for preponment of date already fixed, which was listed before this Court on 23.05.2022. This Court allowed the request of the petitioners and preponed the date fixed in the petition to 27.05.2022 calling upon the Registrar NIT Srinagar to appear in person to explain why the petitioners have not been appointed so far.

12 It has been brought to my notice by leaned counsel appearing for the NIT that the Registrar NIT, feeling aggrieved of the aforesaid direction, filed a Letters Patent Appeal before the Division Bench of this Court and the order passed by this Court calling upon the Registrar NIT to explain as to why the petitioners have not been appointed so far despite their selection, was set aside by the Division Bench. The matter, therefore, came up for consideration on 27.06.2022. It may be apposite to note that in the meanwhile, the writ petitioners of SWP No. 2602/2021 filed an application through their counsel Mr. J.H. Reshi for their impleadment as

party-respondents. The said application filed by Mr. Reshi has already been dealt with hereinbefore. Mr. J.I.Ganai, learned Senior Counsel appearing for the NIT, who was supposed to report instructions in terms of order of this Court dated 02.03.2022 submitted that the appointment to the petitioners could not be offered because of pendency of litigation before the Civil Court as well as this Court. He was fair enough to submit that the petitioners are the candidates duly selected for the posts of Jr. Engineers, Civil and Electrical respectively notified vide Advertisement Notice dated 14.10.2022 read with Advertisement Notification dated 22.10.2022 and that there was no legal impediment in offering them appointment. Mr. Reshi, who has filed application on behalf of the applicants, namely Mohsin Farooq Kawa and another for their impleadment as party-respondents, would submit that the selection process undertaken by the NIT which has culminated in selection of the petitioners as Jr. Engineers, Civil and Electrical respectively, was conceived in deceit, in that, all norms of transparency and fairness were thrown to wind. He would submit that the applicants, who are seeking to be impleadment as party respondents, have acquired the right of regularization against the said posts by working in contractual capacity for a long period.

13 Having heard learned counsel for the parties and perused the material on record, I am of the view that the respondent-NIT has, without any justifiable reason or cause, delayed the appointment of the petitioners. It is not in dispute that in the selection process that was initiated by the NIT in terms of Advertisement Notification dated 14.10.2022 read with Notification dated 22.10.2022, both the petitioners emerged as selected candidates for the posts of Jr. Engineers, Civil and Electrical respectively. The selection process as well as the resultant selection made pursuant

thereto got the approval of the Board of Directors in its 111th meeting held on 08.12.2021. Pursuant to the resolution passed by the Board of Directors approving the selection, amongst others, of the petitioners, the respondent No.2 vide its office order No.3-BOG/111 dated 08.12.2021 notified the decision of the Board of Directors with regard to the selection of various candidates including the petitioners herein, providing further that the appointment letters shall be issued to the selected candidates. Nothing prevented the NIT to issue the letters of appointment to the petitioners without any further waste of time. However, as the sequence of events would reveal, the NIT with a view to accommodate the clients of Mr. Reshi, who were holding the posts in contractual capacity, withheld the offer of appointment to enable them to play spoilsport by indulging in frivolous litigation. This is exactly what was done by the applicants, namely Mohsin Farooq Kama and another by way of filing WP (C) 2602/2021. The interim order passed by this Court on 14.12.2021 has been reproduced hereinabove. This Court clearly provided that the petitioners of the said writ petition shall be allowed to continue till the regular selection to fill up the posts held by them is concluded and fresh appointments are made. Obviously, this did not serve the purpose of the said petitioners. They, without withdrawing the writ petition, approached the Civil Court suppressing the factum of pendency of the writ petition before this Court, filed a civil suit on 15.12.2021 and even succeeded in persuading the Civil Court to pass the order of status quo. This order of status quo remained in force till it was stayed by the Appellate Court on 29.01.2022. From 29.01.2022 and thereafter, there is no intervention made by any competent Court of law, but, interestingly, the NIT has maintained its silence and probably to enable Mohsin Farooq Kama and another to succeed in the

appeal filed by the petitioners herein before the Appellate Court against the interim order obtained by Mohsin Farooq Kawa and another in a civil suit filed before the Civil Court.

14 We are in the month of July, 2022. Respondent No.2 is yet to issue the appointment letters to the petitioners. Even if the Court were to believe the explanation tendered by the respondents that they could not issue the appointment letters in favour of the petitioners because of the intervention made by the Civil Court by granting order of status quo, yet with keeping the status quo order in abeyance by the Appellate Court on 29.01.2022, there was no impediment in issuing offers of appointment to the petitioners. Why the orders of appointment in favour of the petitioners were not issued even after 29.01.2020 is quite intriguing and, in any case, without any cogent and justifiable explanation tendered herein by the respondents. It is a case where the things speak for themselves. The delay in offering the appointment letters to the petitioners after 29.01.2022 is, thus, *mala fide* and for ulterior considerations. This Court is constrained to observe this only for the reason that respondent No.2 has not been able to explain the delay in offering the appointment letters to the petitioners from 29.01.2022 till date despite this Court having directed him on the very first date in this writ petition to report instructions as to why the petitioners had not been issued the appointment orders in terms of the selection approved and made vide order dated 08.12.2021 (*supra*). This Court would have appreciated, had respondent No.2 appeared before the Court along with appointment orders issued in favour of the petitioners and perhaps that could have mitigated his dubious role in the instant matter.

15. Having said that, I find sufficient merit in this petition and the same is, accordingly, allowed. The petitioners are held entitled to

appointment orders in terms of order dated 08.12.2021 (supra). Since the respondents have not disputed the selection of the petitioners as Jr. Engineers, Civil and Electrical respectively nor have they denied their right to appointment, as such, the writ of mandamus is issued to respondent No.2 to issue the requisite offers of appointment to the petitioners and after scrutiny of their documents, appoint them against the posts they have been selected in terms of order dated 08.12.2021 (supra) within a period of four weeks from today. The petitioners are also held entitled to compensation to the tune of Rs.5.00 lacs (2.50 lac each), to be paid by respondent No.2 within the aforesaid period. It is made clear that respondent No.2 on payment of compensation to the petitioners shall be entitled to recover the same from the officer on whose account the appointment of the petitioners has been delayed. Should there be any non-compliance of this order, the Registry shall frame Robkar and place it before the appropriate Bench for orders.

(SANJEEV KUMAR)
JUDGE

Srinagar
07.07.2022
Sanjeev

Whether the order is speaking : Yes
Whether the order is reportable : Yes