

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

LPASW No.49/2008  
CMP Nos.153/2008 & 53/2008

Date of order: 30.07.2009

State & ors. v Adil Akhter Shah & ors.

**Coram:**

**Hon'ble Mr. Justice Barin Ghosh, Chief Justice**

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge**

**Appearing counsel:**

For appellant(s) : Mrs. Neeru Goswami, Dy. A. G.

For respondent(s) : Mr. S. S. Lehar, Sr. Adv., with Mr.  
Akshay Anand, Adv.  
Mr. K. S. Johal, Adv.  
Mr. T. K. Raina, Adv.  
Mr. Ravi Dogra, Adv.  
Mr. S. H. Shah Ashrafi, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No.

ii) Whether approved for publication in press: Optional

In 1998, the Education Department of the Government published an advertisement seeking applications from aspirants to supply vacancies of Class-

IV employees. The said advertisement was responded by number of people. The Chief Education Officers, though were not entitled to give appointments, and were only to make recommendation, gave appointments on district-wise basis. A total of 417 such appointments were given. When the matter was noticed by the Director School Education, by an order dated 28.6.1999, he declared that those appointments are illegal, for, those have been given by authority not competent to appoint. This order of the Director School Education dated 28.6.1999 was stayed by the Government by an order dated 5.7.1999. Thereafter, on 24.7.2000, the Government vacated its earlier order dated 5.7.1999 and upheld the order of Director School Education dated 28.6.1999.

The aforementioned appointments, the order of Director School Education, stay thereof by the Government and ultimate vacation of the said order by the Government were the subject matter of a large number of writ petitions. The same were decided on

23.5.2000, when the Court did not interfere with the order of Director School Education as well as the last order of the Government upholding the same and directed the Government to re-examine the whole case and to redraw the merit list. The Court, at the same time, left the matter whether to continue or to discontinue the persons, who had been working, to the Government for determination. The State Government did not re-draw the merit list in terms of the direction given in the said order, instead, published an advertisement in 2000, holding out that the same is being issued in compliance with the directions contained in the said order of this Court and thereby invited fresh applications for supplying the vacancies, which became vacant by reason of the order of Director School Education, confirmed by the Government and re-confirmed and upheld by this Court, which has reached finality, for, no one has preferred any appeal against the said order of this Court. However, despite issuing such advertisement, which had been once again responded by a large number of people, no

step was taken to appoint any one pursuant to the said advertisement. This resulted in a spate of litigations again by filing many writ petitions, one of them, having been decided by the common judgment and order under appeal, is before us in the present appeal.

In the writ petition, it had been disclosed by the State that since the matter pertaining to discontinuation or continuation of the persons, who were already working, had been left with the State Government and since the State Government felt that the posts in which those persons were working, cannot be kept vacant for a long period of time, it decided on 11.4.2002 to keep those persons engaged on consolidated pay in those posts and, later on, as a policy decision, on 4.4.2003 decided to regularize them in the time scale applicable to Clause-IV employees. It was contended that by reason of such steps having been taken, there is now no post available which can be supplied by the persons who responded to the said advertisement. By the judgment and order under appeal, the Court has held that such

action of the State was improper. In the circumstances, the Court instead of upsetting those people, who were benefited by the order of Government dated 11.4.2002 followed by the order dated 4.4.2003, directed to consider the case of appointment of the petitioners in the light of decision taken by the State in connection with Basharat Hussain & others, who were writ petitioners in SWP No.1476/2003. The Court made it clear that in case the Government does not take any decision in the matter or if the Government decides not to accord same treatment to the petitioners as was given to Basharat Hussain & others in SWP No.1476/2003, then the order of Government dated 11.4.2002 followed by the order dated 4.4.2003 shall stand quashed.

We have heard learned counsel for the appellants, counsel for petitioners as well as counsel for some of the beneficiaries of the order dated 11.4.2002 followed by the order dated 4.4.2003 of the Government.

The advertisement of 1998, response thereto, selection in pursuance therewith as well as appointment

of the selectees, were declared null and void by the Director School Education on 28.6.1999. Inasmuch as the said order was stayed by the Government on 5.7.1999, everything done prior to 28.6.1999 stood revived. On 24.4.2002, the Government vacated the stay dated 5.7.1999 and confirmed the order of Director School Education dated 28.6.1999. As a result whereof, things done pursuant to that advertisement came to an end. The order dated 24.4.2000 of the Government was also the subject matter of the writ petition decided by this Court on 23.5.2000. The Court upheld the said order of the Government dated 24.4.2000. By reason thereof, in normal circumstances, everything done pursuant to the 1998 advertisement must be deemed to have come to an end. However, the Court kept everything, except the appointments, alive by directing re-drawing of merit list and, accordingly, the 1998 advertisement, response thereto and selection pursuant thereto, remained intact, on the basis whereof a merit list had to be re-drawn. The persons, who were appointed prior to 28.6.1999,

however lost their appointment and, accordingly, the posts in which they were appointed stood vacant. The Government, however, was permitted to decide whether to continue them or not to continue them. It was open to the Government to continue those persons in those 417 posts until such time the merit list was re-drawn. The Government could not, even under a policy decision, give back those 417 posts to those 417 persons by regularizing their appointments by refusing to re-draw the merit list without challenging the order of this Court, which reached finality and, accordingly, declared the final status of the parties to the list including those who were thus working, those who were to be in the re-drawn merit list and the State Government, who was to redraw the merit list.

As aforesaid, instead of re-drawing the merit list, the Government re-advertised the posts, but thereupon did nothing on the plea that those posts are not available, for, those had been filled up by those persons whose appointments had been declared to be illegal and

re-affirmed by the Court in a final pronouncement accepting reasons given by the State.

Later on, when Basharat Hussain & others approached this Court in SWP No.1476/2003 and withdrew that writ petition, their case was considered by the State and they were appointed, but the State had not disclosed in which posts they had so been appointed and when those posts were created. The learned counsel for the State has submitted that Basharat Hussain & others were appointed at Doda District, which contention is being disputed by Mr. K. M. Bhatti. According to him, some of them were also appointed in Rajouri and Poonch Districts.

Be that as it may, such appointment is of no consequence, insofar as the merit of the matter is concerned. Once it was declared by the Court that the appointment of those 417 persons were illegal, which the Court did by upholding the order of Director School Education dated 28.6.1999 and reaffirmation thereof by the Government by its order dated 24.4.2000, those 417



persons could not be appointed in those 417 posts, even though the Court left the matter of continuing or discontinuing those 417 persons to the State Government, inasmuch as the order directed re-drawing of merit list for the purpose of supplying such vacancies. By no policy decision, a judgment binding on the State can be rendered infructuous. A judgment of the Court can be avoided only by a legislation.

In the circumstances, for all practical purposes, it must be deemed that by way of a policy decision, the State Government created 417 more posts and in those posts, by the order dated 4.4.2003 those 417 persons, who were permitted to work in the earlier 417 posts on temporary basis by the order dated 11.4.2002, were regularized. In consequence thereof, it must be deemed that there are still 417 posts available, which are to be supplied by the people who responded to the advertisement, which was published in 2000, making it clear that the same is being published in terms of the Court order rendered on 23.5.2000.

In view of the discussion made above, it must be deemed that the said advertisement was for supplying 417 posts, which fell vacant by reason of the pronouncement of the Court. The number of writ petitioners is less than 417. Accordingly, all of them can be accommodated. There will, therefore, be no occasion to take recourse to upsetting the orders of the Government dated 11.4.2002 and 4.4.2003.

In the circumstances, the exercise to be undertaken in terms of the judgment and order under appeal be completed within a period of six months from today and to the extent as above the judgment and order under appeal is modified with clarifications.

**(Mohammad Yaqoob Mir)**  
**Judge**

**(Barin Ghosh)**  
**Chief Justice**

**Jammu,**  
**30.07.2009**  
Tilak, Secy.