

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW no. 195/2013, CMA No. 246/2013

c/w

LPASW No. 3/2014, CMA No. 3/2014

LPASW No. 6/2014, CMA No. 6/2014

Date of order: 16.09.2014

State of J&K & anr.	v	Khurshid Ahmed & anr.
State of J&K & anr.	V	Abdul Rehman & anr.
State of J&K & anr.	V	Rupali Phull & anr.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

Appearing counsel:

For the Appellant(s): Mr. Gagan Basotra, Sr. AAG.

For the Respondent(s) : Mr. P. N. Raina, Sr. Advocate with
Mr. Sanjay Verma, Advocate.
Mr. H. A. Koul, Advocate.
Mr. Nitin Bhasin, Advocate.

i)	Whether to be reported in Press/Media	Yes/No
ii)	Whether to be reported in Digest/Journal	Yes/No

M. M. Kumar, CJ

1. This order shall dispose of LPASW No. 195 of 2013 and other two connected appeals as all the appeals are directed against the judgment and order dated 08.08.2013 passed by the learned Writ Court. At the instance of State, the Public Service Commission conducts Combined Competitive Examination for appointment of suitable person to various civil posts. In the present case such an examination was conducted for induction into KAS, J&K Accounts (Gazetted Services) and J&K Police (Gazetted)

Services. The petitioner-respondents had approached the Court with a grievance that on account of non-joining, some posts became available and therefore, they being next in merit were deserved to be considered and appointed.

Learned Writ Court issued following directions:-

“In view of the aforesaid discussion, objections filed by respondents are over-ruled. Since petitioner No.1 has been selected in the J&K Combined Competitive Examination 2011-12, the writ petition has been dismissed to that extent. Thus only petitioner no.2 is found entitled to relief claimed in the petition. Respondents 1 and 2 are directed to consider filling up of the vacancy caused on account of non-joining of a selected candidate under Schedule Tribe category and offer appointment to petitioner no.2 in the “left-over” position in any available service.

Same ratio will apply to petitioners in the other two connected writ petitions.

In SWP no. 2269/2011 petitioner stands as “first waiting” under RBA category and, is found entitled to consideration for appointment against the vacancy caused due to non-joining of Mohd. Farooq Shan.

In SWP No. 1067/2012 petitioner is found entitled to consideration for being appointed either against the availability of seven unfilled posts or against one of the two posts which had fallen vacant due to the non-joining of two candidates namely Vijay Kumar and Jatinder Goswami.

Respondents’ no. 1&2 shall accord consideration to the appointment of petitioners accordingly. Let this exercise be completed within a period of one month from the date a copy of this order is made available to the respondents by the petitioners.

These writ petitions are disposed of accordingly.”

2. A perusal of the aforesaid directions would show that the learned Writ Court has asked the appellants to fill up the vacancies caused on account of non-joining of selected candidates by considering the petitioner-respondents.

3. Mr. Basotra, learned Sr. AAG has vehemently argued that there is no rule providing preparation of a waiting list and no waiting list has infact been prepared by the Public Service Commission. According to the learned State counsel, the appointment of a candidate from the waiting list results in numerous difficulties with regard to completion of probation and their adjustment in the Administrative service or Police or Accounts services. However, Mr. D. C. Raina as well as Mr. Nitin Bhasin learned senior counsel for the Public Service Commission and the writ petitioner have argued that Rule 57 of the Jammu & Kashmir Public Service Commission (Business& Procedure) Rules 1980 makes a provision for waiting list of candidates at the instance of Public Service Commission which is required to be communicated to the Government. In other words, the Public Service Commission is authorized to prepare a

waiting list. It would be appropriate to set out Rule 57 *in extenso* which reads thus:

“57. The decisions of the Commission for making appointment by direct recruitment shall subject to the provisions of Rule 9 and 10, be signed by all the members. The recommendations of the Commission shall be communicated to the Government by the Secretary.

The recommendations shall be valid for a period of one year from the date they are communicated to the Government. The validity period of one year can, however, be extended for a further period of six months on specific request of the Government if the request for such extension is made before the expiry of the validity of the panel.

Provided that waiting list of candidates may be drawn up by the Commission and communicated to the Government along with the original recommendations to the extent to be determined by the Commission in each case.

After the recommendations for direct recruitment as communicated to the Government the Secretary shall intimate individually to the candidates selected/recommended against clear vacancies the fact of their names having been recommended to the Government for appointment. This shall be in Form No.6.

Secretary shall, thereafter, make public the select list and the waiting list by affixing a copy of the same on the Notice Board of the Commission and also by publishing in the Government Gazetted. This shall be in form No.7.”

4. A perusal of the aforesaid Rule would show that the recommendations made by the Public Service Commission would remain valid for a period of one year from the date

such recommendations are communicated to the Government and the same is extendable for a further period of six months. It has also been provided that the waiting list of candidates may be drawn up by the Commission and communicated to the Government along with the original recommendations to the extent to be determined by the Commission in each case. The nomenclature 'waiting list' does not mean anything else but is a list of candidates with names in order of merit. The purpose of such a list is that in case any meritorious candidate fails to join for any reason then the next meritorious candidate may be offered vacant post as it is an existing vacancy. It is also appropriate to notice that there is no rule to the contrary prohibiting preparation of waiting list. In that regard reliance may be placed on the Rule known as J&K Combined Competitive Examination Rules 2008 (SRO 387 dated 01.12.2008). Thus, there is no room to accept the contention advanced by Mr. Basotra, learned State counsel.

5. Another submission made by Mr. Basotra is that the learned writ Court could have issued directions for consideration and not for appointment of the petitioner-

respondents. On a close scrutiny of the direction issued by the learned Writ Court, we find that the learned Writ Court has not issued direction for appointment in respect of any of the writ petitioner-respondents. We find that Writ Court has been conscious while issuing direction that the petitioner-respondents be considered for appointment. Even this argument would not survive for consideration.

6. As a sequel to the above discussion, these appeals do not merit admission, which are hereby dismissed.

(Dhiraj Singh Thakur)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
16.09.2014
Vijay

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW no. 195/2013, CMA No. 246/2013

c/w

LPASW No. 3/2014, CMA No. 3/2014

LPASW No. 6/2014, CMA No. 6/2014

Date of order: 16.09.2014

State of J&K & anr.	v	Khurshid Ahmed & anr.
State of J&K & anr.	V	Abdul Rehman & anr.
State of J&K & anr.	V	Rupali Phull & anr.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

Appearing counsel:

For the Appellant(s): Mr. Gagan Basotra, Sr. AAG.

For the Respondent(s) : Mr. P. N. Raina, Sr. Advocate with
Mr. Sanjay Verma, Advocate.
Mr. H. A. Koul, Advocate.
Mr. Nitin Bhasin, Advocate.

i)	Whether to be reported in Press/Media	Yes/No
ii)	Whether to be reported in Digest/Journal	Yes/No

M. M. Kumar, CJ

1. This order shall dispose of LPASW No. 195 of 2013 and other two connected appeals as all the appeals are directed against the judgment and order dated 08.08.2013 passed by the learned Writ Court. At the instance of State, the Public Service Commission conducts Combined Competitive Examination for appointment of suitable person to various civil posts. In the present case such an examination was conducted for induction into KAS, J&K Accounts (Gazetted Services) and J&K Police (Gazetted)

Services. The petitioner-respondents had approached the Court with a grievance that on account of non-joining, some posts became available and therefore, they being next in merit were deserved to be considered and appointed.

Learned Writ Court issued following directions:-

“In view of the aforesaid discussion, objections filed by respondents are over-ruled. Since petitioner No.1 has been selected in the J&K Combined Competitive Examination 2011-12, the writ petition has been dismissed to that extent. Thus only petitioner no.2 is found entitled to relief claimed in the petition. Respondents 1 and 2 are directed to consider filling up of the vacancy caused on account of non-joining of a selected candidate under Schedule Tribe category and offer appointment to petitioner no.2 in the “left-over” position in any available service.

Same ratio will apply to petitioners in the other two connected writ petitions.

In SWP no. 2269/2011 petitioner stands as “first waiting” under RBA category and, is found entitled to consideration for appointment against the vacancy caused due to non-joining of Mohd. Farooq Shan.

In SWP No. 1067/2012 petitioner is found entitled to consideration for being appointed either against the availability of seven unfilled posts or against one of the two posts which had fallen vacant due to the non-joining of two candidates namely Vijay Kumar and Jatinder Goswami.

Respondents’ no. 1&2 shall accord consideration to the appointment of petitioners accordingly. Let this exercise be completed within a period of one month from the date a copy of this order is made available to the respondents by the petitioners.

These writ petitions are disposed of accordingly.”

2. A perusal of the aforesaid directions would show that the learned Writ Court has asked the appellants to fill up the vacancies caused on account of non-joining of selected candidates by considering the petitioner-respondents.

3. Mr. Basotra, learned Sr. AAG has vehemently argued that there is no rule providing preparation of a waiting list and no waiting list has infact been prepared by the Public Service Commission. According to the learned State counsel, the appointment of a candidate from the waiting list results in numerous difficulties with regard to completion of probation and their adjustment in the Administrative service or Police or Accounts services. However, Mr. D. C. Raina as well as Mr. Nitin Bhasin learned senior counsel for the Public Service Commission and the writ petitioner have argued that Rule 57 of the Jammu & Kashmir Public Service Commission (Business& Procedure) Rules 1980 makes a provision for waiting list of candidates at the instance of Public Service Commission which is required to be communicated to the Government. In other words, the Public Service Commission is authorized to prepare a

waiting list. It would be appropriate to set out Rule 57 *in extenso* which reads thus:

“57. The decisions of the Commission for making appointment by direct recruitment shall subject to the provisions of Rule 9 and 10, be signed by all the members. The recommendations of the Commission shall be communicated to the Government by the Secretary.

The recommendations shall be valid for a period of one year from the date they are communicated to the Government. The validity period of one year can, however, be extended for a further period of six months on specific request of the Government if the request for such extension is made before the expiry of the validity of the panel.

Provided that waiting list of candidates may be drawn up by the Commission and communicated to the Government along with the original recommendations to the extent to be determined by the Commission in each case.

After the recommendations for direct recruitment as communicated to the Government the Secretary shall intimate individually to the candidates selected/recommended against clear vacancies the fact of their names having been recommended to the Government for appointment. This shall be in Form No.6.

Secretary shall, thereafter, make public the select list and the waiting list by affixing a copy of the same on the Notice Board of the Commission and also by publishing in the Government Gazetted. This shall be in form No.7.”

4. A perusal of the aforesaid Rule would show that the recommendations made by the Public Service Commission would remain valid for a period of one year from the date

such recommendations are communicated to the Government and the same is extendable for a further period of six months. It has also been provided that the waiting list of candidates may be drawn up by the Commission and communicated to the Government along with the original recommendations to the extent to be determined by the Commission in each case. The nomenclature 'waiting list' does not mean anything else but is a list of candidates with names in order of merit. The purpose of such a list is that in case any meritorious candidate fails to join for any reason then the next meritorious candidate may be offered vacant post as it is an existing vacancy. It is also appropriate to notice that there is no rule to the contrary prohibiting preparation of waiting list. In that regard reliance may be placed on the Rule known as J&K Combined Competitive Examination Rules 2008 (SRO 387 dated 01.12.2008). Thus, there is no room to accept the contention advanced by Mr. Basotra, learned State counsel.

5. Another submission made by Mr. Basotra is that the learned writ Court could have issued directions for consideration and not for appointment of the petitioner-

respondents. On a close scrutiny of the direction issued by the learned Writ Court, we find that the learned Writ Court has not issued direction for appointment in respect of any of the writ petitioner-respondents. We find that Writ Court has been conscious while issuing direction that the petitioner-respondents be considered for appointment. Even this argument would not survive for consideration.

6. As a sequel to the above discussion, these appeals do not merit admission, which are hereby dismissed.

(Dhiraj Singh Thakur)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
16.09.2014
Vijay