

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.1766/2017

Date of order : **07 . 6 .2018 .**

Kunal Sharma Vs State of J&K and others

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

Appearing counsel:

For Petitioner/appellant(s) : Mr. G.S. Thakur , Advocate
For Respondent(s) : Mr. Sanjeev Padha, GA

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

1. Respondent No. 2 vide his Notification No. 01 of 2015 dated 31.3.2015, invited applications for filling up of Class-IV posts in various districts of the State which included four posts of Class-IV in district Samba. The breakup of the posts in so far as district Samba is concerned, was indicted in the following manner :

Open Merit	:	2
RBA	:	1
SC	:	1

Total	:	4

2. The petitioner being eligible, also applied for the aforesaid post in Open Merit Category along with other eligible candidates. The selection was conducted by the selection committee headed by the

Chief Medical Officer, Samba. In the select list issued by the respondents, the petitioner was placed at Serial No. 1 in the waiting list of Open Merit Category. Ujaala Sharma and Sahil Jamwal were placed at Serial No. 1 and 2 in the select list. It is claimed by the petitioner that the candidate namely Ujaala Sharma who was figuring at Serial No. 1 in the Open Merit Category, did not join the service and consequently her selection/appointment was cancelled. Petitioner submits that he being the candidate figuring at Serial No.1 of the wait list, became entitled to be appointed on the post in the Open Merit Category that fell vacant due to cancellation of appointment of Ujaala Sharma on account of her failure to join her service. The petitioner also claims that immediately after the post against which Ujaala Sharma was appointed became available, he submitted representation to respondent No.2 for operating the waiting list which had not yet expired.

3. On being notified, respondent Nos. 1 to 3 appeared in the matter and filed their objections. In the objections, it is pleaded that pursuant to Advertisement Notice No. 01 of 2015 dated 31.3.2015, process for filling up of four posts of Class-IV in district Samba was set in motion. The selection committee entrusted with the job, issued provisional selection list in which the name of the petitioner figured at Serial No.1 in the waiting list of the Open Merit Category. The provisional selection list was subsequently made final and all the four selected candidates were appointed. It is submitted that pursuant to her appointment order dated 2.10.2016, the candidate namely Ujaala Sharma who was figuring at Serial No.1 of the select list of the Open Merit Category, submitted her joining on 05.11.2016 in the department along with all requisite documents. It is next contended that with a view to utilize the services of the appointed candidates, the respondent No. 3 vide his Order No. 02

NG of 2016 dated 29.12.2016, issued order of adjustment of the candidates against the vacant posts in different Health Institutions. Ujaala Sharma was, accordingly, adjusted in Sub Centre, Nonath Block, Nud. The candidate namely Ujaala Sharma, however, did not join and report in this regard was submitted by the Block Medical Officer, Samba vide his communication No. BMO/S/1410-11 dated 09.1.2017. It is stated that the candidate namely Ujaala Sharma was treated to be unauthorisedly absent and notices were issued to her to rejoin her duties. She did not join despite repeated notices, as such respondent No. 3 vide his No. CMO/S/5212-15 dated 30.3.2017 cancelled her appointment. Lastly, it was pleaded that the vacancy caused due to cancellation of appointment of Ujaala Sharma on account of her unauthorized absence, is future vacancy which is required to be advertised for fresh selection.

4. Having heard learned counsel for the parties and perused the record, it is abundantly clear that pursuant to her selection, Ujaala Sharma submitted her joining report to respondent No. 3 on 05.11.2016 and was subsequently adjusted in Sub Centre, Nonath Block, Nud by respondent No. 3 on 29.12.2016. It is true that Ujaala Sharma did not join in Sub Centre, Nonath and remained on unauthorized absence. She was put on several notices for resumption of her duties but she failed. Consequently, her appointment was cancelled *ab initio*.
5. In the backdrop of aforesaid factual scenario, the question that falls for determination in this court is, as to whether the post which fell vacant due to the cancellation of order of appointment of Ujaala Sharma, is future vacancy to be filled up by fresh appointment and selection or is the vacancy arisen due to non-joining of Ujaala Sharma against which the petitioner being at Serial No.1 in the wait list, is entitled to be appointed.

6. It is true that pursuant to the recommendation of selection committee, respondent No.3 vide his order No. 01-NG of 2016 dated 20.10.2016 appointed all the selected candidates including Ujaala Sharma as Class-IV with a direction to report to the office of respondent No.3 within 21 days from the date of issuance of appointment order alongwith requisite certificates in original. In the aforesaid order, it was further provided that in case the selected candidates failed to report within the stipulated period, their appointments would be deemed to have been cancelled *ab initio* without further notice. Clause -5 of the order of appointment aforesaid which is relevant, is reproduced hereunder :

“ The appointee shall report to this office within 21 days from the date of issuance of this appointment order alongwith the requisite certificates in original. In case they fail to report within the stipulated period, their appointment shall be deemed to have been cancelled *ab initio* without any further notice.

As directed, amongst others, Ujaala Sharma submitted her joining report in the office of respondent No.3 on 05.11.2016. There is nothing on record to show that the joining report though submitted by Ujaala Sharma on 05.11.2016, was actually accepted by respondent No.3. Respondent No.3 vide his another order bearing No. 02-NG of 2016 dated 29.12.2016, ordered adjustments of appointed candidates in different Sub Centers of Block Nud . Ujaala Sharma was accordingly, posted in Sub Centre, Nonath and alongwith others was given 21 days to join providing further that in case of failure to join within the stipulated period, appointment shall be deemed to have been

cancelled *ab initio* without any further notice. It is not in dispute that Ujaala Sharma did not join at Sub Centre, Nonath. Accordingly, Ujaala Sharma was served with several notices by respondent No.3 to resume duties but she failed. Consequently, respondent No.3 cancelled the appointment of Ujaala Sharma for her failure to join her service within 21 days from the date of issuance of appointment order.

7. Ordinarily, with the joining of Ujaala Sharma in the office of Chief Medical Officer, Samba, the post ought to be taken as filled up but the fact remains that joining of Ujaala Sharma in the office of Chief Medical Officer, Samba was only for the purpose of verification of the documents and nothing more. I am saying so because there was no post in the office of Chief Medical Officer, Samba where Ujaala Sharma could have joined. It is only the place of her adjustment i.e. Sub Centre, Nonath where substantive vacant post was available and Ujaala Sharma was supposed to join. She did not join within the stipulated period and, therefore, entailed cancellation of her order of appointment.
8. Viewed thus, it cannot be said that the post that fell vacant due to failure of Ujaala Sharma to join at Sub Centre, Nonath, is future vacancy which is required to be filled up by fresh Advertisement Notification.
9. In these peculiar facts and circumstances, I am inclined to hold that the post which fell vacant on account of failure of Ujaala Sharma to join at Sub Centre, Nonath Block, Nud, is required to be filled up by operating the wait list.
10. In view of the aforesaid, this petition alongwith connected MP is allowed. Respondent No.3 is directed to issue order of appointment in favour of the petitioner as Class-IV against the post which has fallen vacant due to the cancellation of order of appointment of

Ujaala Sharma within a period of four weeks from the date
certified copy of this order is made available to the respondent No.
3.

(Sanjeev Kumar)
Judge

JAMMU 07.6.2018.
RSB, Secy.

