

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

SWP No. 2474/2018  
IA No. 01/2018

*Reserved on : 24.12.2019*  
*Pronounced on: 31.12.2019*

Nishant Gupta

.....Petitioner (s)

Through :- Mr. Sudershan Sharma, Advocate

**V/s**

State of J&K and others

.....Respondent(s)

Through :- Mr. H.A.Siddiqui, Sr. AAG for R-  
1&3.

Mr. Amit Gupta, AAG for R-2.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**

**JUDGMENT**

**1.** Through the medium of instant petition, petitioner seeks the following reliefs:-

- i. For issuance of an appropriate writ, order or direction in the nature of writ of certiorari for quashing Order No.126-DFO of 2018 dated 09.11.2018 issued by respondent No.3, vide which, appointment of the petitioner to the post of Lab. Technician has been cancelled, which is patently illegal, arbitrary, unjustified and also against the principles of natural justice.
- ii. For issuance of an appropriate writ, order or direction in the nature of writ of mandamus

whereby directing the respondents to allow the petitioner to join as Lab. Technician in terms of appointment order bearing No.40-DFO of 2018 dated 09.07.2018 issued by respondent No.3, in the given facts and circumstances of the case.

- iii. Any other relief in the form of appropriate writ, order or direction befitting the occasion may please be allowed in favour of the petitioner and against the respondents.

**2.** The case set up by the petitioner is that petitioner, having qualification of M.Sc. (Bio Technology) and being fully eligible, had responded to Advertisement Notice No.03 of 2012 dated 28.12.2012, vide which various posts including the posts of Lab. Technicians were advertised. The petitioner had participated in the selection process, viz. written as well as interview, and on the basis of his merit, he was placed at serial No.1 in the selection list issued by respondent No.2, which was followed by appointment Order No.40-DFO of 2018 dated 09.07.2018 in his favour.

**3.** It is further contended in the petition that due to some domestic problems, petitioner was unable to join his services within stipulated period of 21 days and thus, on 28.07.2018 he approached respondent No.3 with a written request seeking extension of time for joining his services. He had also sent an e-mail to the official e-mail address of respondent No.3. It is also contended that

instead of granting extension of time for joining the service, respondent No. 3 issued a Show Cause Notice upon the petitioner asking the petitioner to join his services within seven days from the issuance of the said Notice. It is maintained that Show Cause Notice was shown issued on 17.10.2018 whereby petitioner was asked to join his service within seven days, but, the said Show Cause Notice was dispatched by respondent No.3 on 27.10.2018, i.e. after stipulated period of seven days, and the said notice was received by the petitioner on 06.11.2018, which is clear from the postal receipt.

**4.** Further case of the petitioner is that respondent No.3, without waiting for the expiry of stipulated period of seven days as per the show cause notice, issued an order No.126-DFO of 2018 dated 09.11.2018, by virtue of which, the appointment of the petitioner was cancelled, which is impugned in this petition. With these submissions, learned counsel for the petitioner has prayed for allowing the instant petition with the aforementioned reliefs.

**5.** Objections stand filed on behalf of respondents 1 & 3, wherein it is specifically pleaded that at the time of submission of his application for the post in question, the petitioner was gainful employed in Food Corporation of

India. Thereafter, he also applied for the post of Accounts Assistant in the Finance Department and he was selected in the Finance Department as Accounts Assistant and was simultaneously selected as Lab. Technician in the department of answering respondent No.3. It is further contended that the petitioner is continuing as Accounts Assistant and has not tendered his resignation in the Finance Department so as to make a way for himself to submit his joining report in the department of respondent No.3. Besides, petitioner was undergoing training in Northern Zonal Accountancy and Training Institute, and after completion of the said training, he submitted his joining report in the Finance Department on 22.06.2019, which fact is evident from communication No. DATJ/Adm/2019-20/3484 dated 11.10.2019, addressed by Accounts Officer, Directorate of Accounts & Treasuries Jammu, to State Drug Controller, Drug & Food Control Organization, J&K, Srinagar. This factual aspect has been concealed by the petitioner in his writ petition just to mislead the Court. It is also stated that on account of his being gainfully employed as Accounts Assistant, petitioner is not interested to join the department of respondent No.3 and is unnecessarily seeking extension of joining time which

was granted even beyond his prayer but, despite that, petitioner failed to submit his joining report in the extended time and thus has lost his right of appointment as Lab. Technician in the department of respondent No.3.

- 6.** Further stand taken by respondents in their objections is that the petitioner cannot maintain his writ petition inasmuch as after his selection, he was given 21 days to submit his joining report and submit his papers for verification in terms of Order No.40-DFO of 2018 dated 09.07.2018. The period of 21 days expired on 30.07.2018 and petitioner did not submit his joining report. The petitioner sought extension of joining time in terms of his representation dated 28.07.2018. No reason/justification is given as to why extension should be granted. Petitioner, therefore, was issued with another notice after period of 02 months 17 days on 17.10.2018 to submit his joining report within a period of seven days. The period of seven days expired on 25.10.2018 and petitioner did not submit his joining report. Again after waiting for fifteen days, the appointment order of petitioner was cancelled vide order No.126-DFO of 2018 dated 02.11.2018. The law is well settled that once time period is set for joining and the selected candidate does not join within the said period,

he loses his right to seek appointment under law. It is a case of voluntarily relinquishing of his right to appointment thereby compelling the department to cancel the order of appointment. With the aforementioned submissions, it is prayed by the respondents that the instant petition may be dismissed.

**7.** Heard learned counsel for the parties and perused the record.

**8.** Appointment Order No.40-DFO of 2018 dated 09.07.2018, issued in favour of petitioner, had made it clear upon the appointee/petitioner to join his services within 21 days and in the event appointee/petitioner failed to join within 21 days, the offer of appointment would be treated as cancelled. Respondents could not have been expected to wait for petitioner indefinitely. As is discernible from the pleadings of the parties, the petitioner was working in the Food Corporation of India. He had also applied for the post of Accounts Assistant in the Finance Department and was, as such, selected in the Finance Department as Accounts Assistant. Petitioner was also simultaneously selected as Lab. Technician in the respondent department. Petitioner is stated to be continuing as Accounts Assistant and has not tendered his resignation in the Finance Department

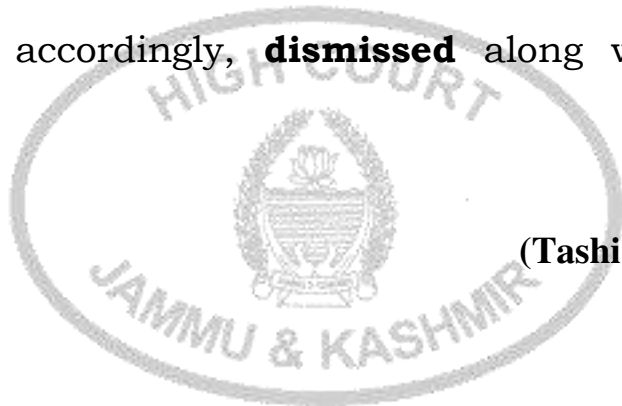
so as to make a way for himself to submit his joining report in the department of respondent No.3. Petitioner had undergone the training in Northern Zonal Accountancy and Training Institute. On completion of aforesaid training, he submitted his joining report in the Finance Department on 22.06.2019, which is evident from letter No.DATJ/Adm/2019-20/3484 dated 11.10.2019, addressed by Accounts Officer, Directorate of Accounts & Treasuries Jammu, to the State Drug Controller, Drug & Food Control Organization, J&K, Srinagar. This important fact has not been brought by petitioner in his writ petition. Had the petitioner been interested in joining his services, he would have approached the department and submitted his joining report, which he did not. Failure on the part of the petitioner in joining the services within stipulated period, cannot be attributed to the respondent department. In such circumstances, it cannot be expected from respondent department to wait petitioner for indefinitely and resultantly writ petition is without any merit.

9. My views are fortified by the judgments rendered by the Supreme Court in the cases of **Haryana Vidyut Prasaran Nigam and another vs. Mukesh Kumar reported in**

**2004(13) SCC 596, and Shyamalendu Nag Vs. State of Manipur and ors. reported in 1992(2) SCC 196.**

**10.** Mr. Sharma, learned counsel for the petitioner has relied upon judgment dated 27.03.2019 passed in O.A.No. 524 of 2018 by the Central Administrative Tribunal, Cuttak Bench, Cuttak in case titled **Dr. Ramachandra Barik Vs. Union of India and others.** I have gone through the said judgment and the same is not applicable to the case in hand.

**11.** In view of above, writ petition is without any merit and is, accordingly, **dismissed** along with connected CM(s).



**(Tashi Rabstan)**  
**Judge**

Jammu  
31.12.2019  
'MADAN-PS'

Whether the order is speaking : Yes/No  
Whether the order is reportable: Yes/No