

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**WP (C) No. 3276/2019**

**Reserved on: 26.08.2022**  
**Pronounced on: 22.09.2022**

Sajad Tariq And Ors.

.... Appellant(s)

Through: Mr R. A. Jan, Sr. Advocate with  
Mr Aswad Attar, Advocate  
Mr Zaffar Mehdi, Advocate Vice  
Mr Gulzar Ahmad Bhat, Advocate

v

Commissioner/ Secretary to Govt.Youth Services & Sports and others.

... Respondent(s)

Through: Mr.Sajad Ashraf, GA.

**CORAM:**

**Hon'ble Ms.Justice Moksha Khajuria Kazmi, Judge.**

**JUDGMENT**

**01/-** The petitioners have challenged the orders bearing Nos.DG-YSS/Estt/CAMP/60-68; DG/YSS/Estt/CAMP/69-80; DG/YSS/Estt/CAMP/16-22dated 29.10.2019 and DG/YSS/Estt/CAMP/158-73 dated 30.10.2019, hereinafter to be referred as impugned orders, whereby the engagement of the petitioners as *Rehbar-e-Khel*, made in terms of office Order Nos.DG-YSS/Estt/2346-51 dated 01.07.2019; DG-YSS/Estt/2446-49 dated 02.07.2019; DG-YSS/ESTT/5203-07 dated 18.10.2019and DG-YSS/Estt/2966-71 dated 15.07.2019in District Baramulla, Kupwara and Shopian under wait list/panel, has been cancelled void ab-initio and the respective Zonal Physical Education Officer/headmaster(s)have been directed, by order dated 30.10.2019, to struck off the names of the petitioners from the attendance register, on the grounds taken in the memo of writ petition.

**BRIEF FACTS**

**02/-** The Government of J&K in terms of Govt Order No. 141-Edu (YSS) of 2017 dated 27.10.2017, accorded sanction to the adoption of policy formulated by

the department of Youth Services and Sports regarding engagement of *Rehbar-e-Khel* in reference to the Cabinet decision No. 196/12/2017 dated 23.10.2017. Earlier the Government, in terms of Order No. 68-Edu (Tech) of 2005 dated 16.05.2005, had accorded sanction for adopting the State Policy declaring Sports, Games and Physical Education, compulsory in all Middle, High and Higher Secondary Schools in the State from the academic session 2005-06.

**03/-** *Rehbar-e-Khel* is a person, to be provided to make up for the deficiency of the physical education staff at the Middle, High School level, the engagement of candidates as Rehbr-e-Khel is to be made at the Zone level within a District given the fact that it is not possible to have candidates possessing qualification in physical education available in Villages/Halqas.

**04/-** In terms of Government order No. 141-Edu (YSS) of 2017 dated 27.10.2017, sanction was accorded for creation of 3000 positions of *Rehbar-e-Khel* and in pursuance thereof, amongst others, respondents issued different advertisement notices for engagement of *Rehbar-e-Khel* for District Kupwara, Baramulla and Shopian. Petitioners participated in the selection process and found their place in the wait list prepared by the respondents in this behalf.

**05/-** Few selected candidates, opted not to join in terms of the select list and submitted their duly sown affidavits before the respondents expressing their unwillingness to join their duties as *Rehbar-e-Khel*. Accordingly, the petitioners who were figuring in the wait list were engaged as *Rehbar-e-Khel* in place of the candidates who chose not to join and of those whose selection was cancelled for having produced the fake degree certificates.

**06/-** The petitioners joined their duties as *Rehbar-e-Khel* and while discharging their duties as such, a show-cause notice was issued to them by the respondents vide no. DG-YSS/Estt/5995-6002 dated 24.10.2019 asking them to explain as to

why their engagement made by operating the wait list, in contravention to the Policy that governs the services conditions of the petitioners, be not cancelled.

07/- The said notice was responded to by the petitioners stating therein *inter-alia* that their selection has been made in accordance with the procedure and they have not committed any misrepresentation or fraud. The petitioners have stated in the writ petition that these show-cause notices were challenged by the medium of a writ petition, however, since the show-cause notices were followed by the disengagement order, therefore, the petitioners filed the instant petition assailing the orders of disengagement.

08/- Upon notice, the respondents appeared and filed their reply.

09/- The petitioners have challenged impugned orders *inter alia* on the ground that the petitioners, being fully eligible, were selected after the operation of the waiting list by the competent authority i.e., respondent no. 3 against the vacancies which remained unfilled due to non-joining of the selected candidates.

10/- The stand taken by the respondents is that the waiting list was issued by the Chairman of the Selection Committee inadvertently, against the Govt. Order as also in violation to Chapter XIII of the Policy governing the service of the petitioners.

11/- Heard Learned counsel for the parties at length.

12/- Learned counsel for respondents in support of his stand, that inadvertence on the part of the respondent department cannot confer right upon the petitioners, has referred to a Judgment of Hon'ble Supreme Court delivered in case titled *State of Haryana vs. Ram Kumar Mann (1997)3 SCC 321* wherein their Lordships' have held as under: -

*“A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.”*

13/- On the other hand, in support of his case, learned counsel for the petitioners has referred to the judgement of the Hon'ble Apex Court delivered in case titled **R. K. Sabharwal vs State of Punjab reported in SCC (1995) 2 page 751**. Paragraph no. 6 of the judgement is taken note of as under:-

*“The expressions ‘posts’ and ‘vacancies’ often used in the executive instructions providing for reservations, are rather problematical. The word ‘post’ means an appointment, job, office or employment. A position to which a person is appointed. ‘Vacancy’ means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a ‘post’ in existence to enable the ‘vacancy’ to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence, the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of ‘vacancy’ has no relevance in operating the percentage of reservation.”*

14/- Considered the submissions made.

15/- On the basis of rival submissions and the contentions of the learned counsel for the parties, the questions that arise for consideration are:-

(A) Whether the candidate empaneled in the waiting list is entitled to be engaged as *Rehbar-e-Khel* against the vacancy caused due to the non-joining of the selected candidates?

(B) Whether the respondents are justified in cancelling the engagement of the petitioners in violation of clause XIII after being engaged by the competent authority that too when fault is attributable to the petitioner?

### **Question A**

16/- To find answers to the questions framed above, one needs to understand the status of the petitioners, as wait list candidates, in the first instance, as their status

only would determine their entitlement vis-à-vis the relief prayed for in the writ petition.

17/- The Hon'ble Supreme Court in the case of ***Gujrat State Dy. Executive Engineers Association Vs State of Gujrat and others***, reported in ***JT 1994(3) SC 559***, has held as under:

*“A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected list candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.*

*A waiting list is operative only for the contingency that if any of the selected candidates does not join estoppels’, then the person from the waiting list may be pushed up and be appointed in the vacancy so caused.”*

18/- A similar view has been expressed by the Hon'ble Apex Court in ***Manoj Manu and Anr. Vs. Union of India and Others (2013) 12 SCC 171***. In the said case, the court observed that there are two situations 'A' where the candidate who had initially joined but subsequently resigned/quit thus resulting in creation of vacancy again and situation 'B' where, out of the recommended candidates, some candidates do not join at all. In situation 'A' when the selected candidate joins and subsequently resigns, the vacancy notified gets exhausted and the vacancies arising thereafter has to be filled up by fresh examination. In another case titled ***Surinder Singh & Ors Vs State of Punjab and Others AIR 1998 SC page 18***, Hon'ble Supreme Court has held that a waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment, it is operative only for

the contingent that if any of the selected candidates does not join, then the person from the waiting list may be pushed up and appointed.

**19/-** A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who, in order of merit, are placed below the last selected candidates. It is normally framed by taking into account not only the number of vacancies existing on the date of advertisement or when applications are invited but it includes those which are likely to arise in future within one year or so. Such lists are prepared by the functionaries mainly to ensure that working of the office does not suffer in the event the selected candidate, for any reason, opts not to join. A waiting list candidate has no vested right to claim appointment except when a selected candidate does not join.

**20/-** In yet another decision of the Hon'ble Supreme Court delivered in case titled *Gujrat State Executive Vs State of Gujrat and others reported in JT 1994(3) SC 559*, has laid down the same principle:

*“A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected list candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.*

*A waiting list is operative only for the contingency that if any of the selected candidates does not join estoppels', then the person from the waiting list may be pushed up and be appointed in the vacancy so caused.”*

**21/-** Thus from the aforesaid enunciation of law by Hon'ble Apex Court, it is now clear that for a waiting list is formulated for the purpose of meeting out the emergent situation arising on account of non-joining of candidates of the select list.

The persons placed below in the merit of the aforesaid select list though otherwise found fit for selection and appointment, their names be placed in the waiting list. The candidates of such waiting list may be pushed up for appointment only against those vacancies which may have arisen due to non-joining of the candidates of select list. Therefore, the contention of the respondents that the petitioners who figured in waiting list are not entitled to be engaged as *Rehbar-e-Khel* against the vacancies caused due to the non-joining of the selected candidates and the Chairman of the Selection Committee, had wrongly engaged the petitioners by operating the wait list, is not sustainable in the eyes of law.

22/- Having regard to the above discussion, the question 'A' is answered in affirmative.

**Question-B**

23/- Admittedly, the advertisement notice was issued by the respondents and the petitioner who participated in the selection process were found eligible in all respects; the waiting list was prepared by the competent authority; and the petitioners were engaged from the waiting list by the competent authority.

24/- The only ground raised by the respondents in their reply, in opposition to the claim of the petitioners, is that as per the Policy for engagement of *Rehbar-e-Khel*, issued vide Government order No. DG/YSS/Estt/2446-49 dated 02.07.2019, more particularly clause XIII, there was no scope for framing a wait list and operating the same in the selection process in question. The Clause XIII of the Policy is reproduced herein, thus:-

*“if a vacancy of Rehbar-e-Khel is caused due to any reason, the District Youth Services & Sports Officer, shall advertise the said vacancy within one month from the date such vacancy arises on the recommendation of Zonal Physical Education Officer.”*

**25/-** It can be clearly inferred from the reading of the aforesaid provision that if a vacancy is caused due to any reason that has to be advertised within one month. However, the expression ‘vacancy caused due to any reason’ used in the clause, in light of the judgements *supra* actually means the vacancies which were initially filled up and became available later on because of any subsequent development, but it will exclude the vacancies which have been caused due to non-joining of the selected candidates especially when the waiting list was duly prepared and operated by the competent authority.

**26/-** There is a sound logic predicated in the interest of the candidates figuring in the waiting list. The intention is not to hold further the selection for the post already advertised so as to save the public exchequer from the unnecessary expenditure. Additionally, it is subservient to the object of the Policy that provides for availability of a teacher in the school in the morning and evening hours. The petitioners have been engaged after facing the selection process and by operating the waiting list as approved by the competent authority and were discharging their duties when the impugned orders were issued against them.

**27/-** It needs to be noticed here that waiting list was made in terms of the policy for engagement for the post of *Rehbar-e-Khel*. It was operated by respondent no. 3 who was admittedly a competent authority to do so, therefore, no fault of whatsoever nature is attributable to the petitioners, as such, they cannot be made to suffer for the inactions, if any, on the part of the respondents.

**28/-** The court is conscious of the legal position that on the basis of law laid by Hon’ble Supreme Court in *Ragbir Chand Sharma’s* case (*supra*) that “after the selected candidate joins the post on his appointment, the selection panel gets exhausted” but it also needs no reiteration that if a selected candidate does not join, then the wait list becomes operational.

**29/-** The only ground taken by the respondents in support of the impugned orders is that the orders of engagement were issued inadvertently. The respondents cannot act as per their whims and caprice in a selection matter that involves the career of hundreds of youths. The respondents cannot frustrate the intention behind and purpose of preparation of select list/ waiting list. It is not a case where the respondents have stopped at framing the wait list saying that it has been framed inadvertently and shall be deemed to have been cancelled, they have gone beyond and made it effective and issued the orders of engagement also. The respondents cannot act arbitrarily in the matter and unsettle the settled things that too without offering any justifiable reasons.

**30/-** In view of above, the question 'B' is answered in negative.

**31/-** Having regard to what has been said hereinbefore, the writ petition succeeds and is allowed as such. The impugned order Nos. DG-YSS/Estt/CAMP/60-68; DG/YSS/Estt/CAMP/69-80; DG/YSS/Estt/CAMP/16-22 dated 29.10.2019 and DG/YSS/Estt/CAMP/158-73 dated 30.10.2019, are quashed. Since it is admitted by the counsel for the respondents that the petitioners are continuing on the basis of the interim order dated 07.11.2019, whereby the impugned orders have been stayed, therefore, the petitioners are directed to be allowed to continue as *Rehbar-e-Khel* in terms of engagement Order Nos. DG-YSS/Estt/2346-51 dated 01.07.2019; DG-YSS/Estt/2446-49 dated 02.07.2019; DG-YSS/Estt/5203-07 dated 18.10.2019 and DG-YSS/Estt/2966-71 dated 15.07.2019 in District Baramulla, Kupwara and Shopian, and they shall be paid the remuneration accrued due to them under rules.

**32/-** The writ petition, along with all CMs, is disposed of on the above lines.

Srinagar  
22.09.2022  
Amjad lone, Secretary

(Moksha Khajuria Kazmi)  
Judge

Whether approved for reporting: Yes