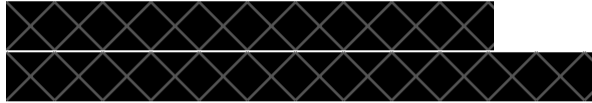


IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CCP(D) No.8/2022

Reserved on: 11.07.2023
Pronounced on: 21.07.2023

Ishfaq Tantray, Aged 35 years S/o



...Petitioner(s)

Through: Mr. M. Ashraf Wani, Advocate.

Vs.

**Khalid Jahangir, Chairman Service
Selection Board, Sehkari Bawan near
Bahu Plaza, Jammu.**

...Respondent(s)

Through: Mr. Mohsin S. Qadri, Sr. Advocate, with
Mr. Taha Khalil, Advocate.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

JUDGMENT

N. Kotiswar Singh, CJ

1. Heard learned counsel for the petitioners and also heard learned counsel for the respondent.
2. The present contempt petition has been filed alleging non compliance and violation of the order dated 10.05.2013 passed by Division Bench in LPA No. 184/2012 and connected matters. It is worth to mention here that on the first page of the order, the date

of decision is mentioned as **01.05.2013** while as at the end of the order, it seems that the order has been pronounced in terms of Rule 138(4) of the J&K High Court Rules, 1999, on **10.05.2023**.

3. The matter pertains to recruitment to the posts of Assistant Information Officer Grade-II for which the advertisement was issued in 2006 where the recruitment process was to be conducted by the J&K Service Selection Board in which the petitioners had applied. However, because of certain disputes arising in the recruitment process leading to litigations which culminated with the passing of the order dated 10.05.2013 in LPA No.184/2012 and connected matters by the Division Bench to proceed with the selection process anew, with the following directions:-

“24. For the reasons stated hereinabove, the impugned judgment is upheld. The respondent Board is directed to proceed with the selection process afresh i.e. first to constitute the committees as required in terms of Rule 6(4) of the Rules of 2010 and to fix the criteria in tune with Rule 14 of the rules of 2010 and finalize the process of selection with promptitude of the eligible candidates who have applied in response to the three aforesaid advertisement notices.”

4. The aforesaid directions of the Division Bench dated 10.05.2013 were unsuccessfully challenged by the Service Selection Board (SSB) before the Hon'ble Supreme Court which came to be dismissed on 20.02.2017. Being not satisfied, the SSB

preferred a review petition, which also came to be dismissed. The end result was that the direction of the Division Bench of this Court for proceeding with the selection afresh as mentioned above, attained finality. Subsequently, the SSB constituted a Committee in 2019 for initiating the selection process afresh in terms of the direction of the Division Bench and accordingly, a notification was issued for holding the written test and interview. Accordingly, in terms of the said notification, written test was held on 20.12.2020 and those who were successful and eligible were called for interview which was conducted from 20.09.2021 to 24.09.2021.

5. However, during the said recruitment process in finalizing the select list, certain doubts arose relating to the eligibility of candidates possessing the qualification of degree in Journalism and Mass Communication, for which the Board referred to the Higher Education Department for clarification as to whether such degree holders in Journalism and Mass Communication were also eligible to take part in the recruitment process to which the Board received the response from the Higher Education Department sometime in March, 2022. In the meantime, before the SSB could finalize the select list by making the necessary recommendation, the Administration took a policy decision on 29.01.2022 after the enactment of the J&K Reorganisation Act, 2019 which was notified in terms of the Administrative Council decision No. 01/01/2022 to

the effect that all posts referred to the JKPSB/JKSSB prior to 31.10.2019 for which the selections have not been finalized till date, as also the posts in which there were litigations and the cases were pending in the Hon'ble Courts, shall be deemed to have been withdrawn with immediate effect. The said decision was notified on 03.02.2022.

6. Another decision was taken by the Administrative Council on 15.03.2022 to the effect that the posts referred prior to 31.10.2019 to the JKPSB/JKSSB by different intending agencies in respect of which recommendations were received from the recruiting agencies and which were free from all encumbrances, shall be acted upon and the orders of the appointment shall be issued subject to fulfillment of all other formalities and the process was to be completed within a period of one month.

7. Mr. Mohsin S. Qadri, learned senior counsel for the respondent submits that though the SSB authorities were proceeding to comply with the direction issued by the Division Bench on 10.05.2013, because of the policy decision taken by the Administration on 29.01.2022, the SSB could not proceed with the recruitment process as directed by the Division Bench of this Court. It has been submitted that had the policy decision not been taken by the Administration withdrawing the posts for which the selections have not been finalized, the Board would have continued with the process to give effect to the directions of the

Hon'ble Division Bench of this Court and finalized the process. In fact, from the subsequent decision of the Administrative Council, it appears that where the selection process had been completed and there was no controversy either by way of litigation or otherwise, the policy decision taken was to bring the selection process to its logical conclusion by issuing the appointment orders. It has been accordingly submitted that in the present case though the Board had taken necessary steps to comply with the direction of the Division Bench of this Court, in view of the decision taken by the Administration on 29.01.2022, in the midst of the selection process, the Board could not continue with the process, and thus, it is not the case that the Board had deliberately violated or disobeyed the direction of the Division Bench of this Court. It was submitted that the inability of the Board to continue with and complete the selection process was because of the policy decision taken, and hence there was no willful disobedience of the order of this Court passed by the Division Bench. As such, it cannot be said that the respondents will be liable under the Contempt of Courts Act, 1971.

8. Learned counsel for the petitioner on the other hand submits that it cannot be denied that the Division Bench had passed an order on 10.05.2013 and ought to have complied soon thereafter and the respondents cannot take shelter behind the proceeding before the Hon'ble Supreme Court inasmuch as it was

merely an attempt to delay the implementation of the Court order. In fact soon after the review petition preferred by the SSB was dismissed, the petitioner filed a contempt petition bearing CPLPA No. 20/2017 in which the respondents had made a categorical statement by giving an undertaking that they would ensure that the selection process is taken to its logical conclusion as early as possible, and on the basis of such undertaking being given, the Contempt Court closed the said contempt petition on 13.12.2021 with the direction to the respondents to take the selection process to its logical conclusion at the earliest preferably within one month. However, in spite of such a categorical statement and undertaking made before the Contempt Court, and also direction of the contempt Court, the authorities did not take any prompt action. It has been submitted that there was no reasonable ground to delay the process of implementing the Court's order, and if they had unsuccessfully approached the Supreme Court, they had to blame themselves for the delay caused.

9. It has been submitted that once the SLP preferred before the Supreme Court in 2017 and the review petition were dismissed, the right of the petitioners to be considered in recruitment process and have the recruitment process completed got crystallized and such a right accrued by virtue of order of the Division Bench could be unsettled but not certainly by an executive act. In other words even if the basis of the judgment can

be unsettled by the Legislative enactment on certain conditions, the implementation of the Division Bench cannot be nullified by an executive act. It has been submitted that since the petitioners have accrued a right, the said right cannot be defeated by a decision taken by the Administrative Committee as sought to be done in the present case.

10. Learned counsel for the petitioners has drawn attention of this Court to the decision rendered by the Division Bench in SWP No. 3004/2018 relating to the ReT scheme which was discontinued by the authorities vide Government Order No. 919 EDU of 2018 dated 16.11.2018 because of which the recruitment processes initiated for engagement of ReT were disturbed, which was questioned by the concerned candidates before the Court and this Court after considering the rival contentions in that regard passed the following directions:-

“31. We have heard both the sides at some length on the impact of the Government order on the pending litigation and we cull out our conclusion as under:

(i) That the impugned Government order will not affect the select panels prepared by the respondents which have been acted upon and formal orders of engagement have been issued;

(ii) That the impugned Government Order will not override or effect the judgments passed or to be passed by this Court holding a candidate/candidates entitled to engagement in the selection process which was/is under challenge before the Court;

(iii) Where the select panels are approved and the aggrieved party has approached the Court before it could be acted upon, shall also be not affected by the impugned Government order, in that, but for litigation in the Court, the approved panel/panels could have been acted upon and formal letters of engagement in favour of the selected candidates issued prior to the issuance of the impugned Government order; and,

(iv) Notwithstanding issuance of the impugned Government order, the respondents shall abide by the judgments passed by any competent Court of law which have attained finality. However, the writ petitions involving adjudication of disputes in respect of tentative merit lists or tentative select panels shall be liable to be dismissed in view of the impugned Government order, in that, it would not be permissible for a Court of law to direct the respondents to finalize the tentative merit lists or tentative select panels and issue engagement orders in view of closure of the scheme and a clear stipulation contained in paragraph 2nd of the impugned Government order.”

11. According to the Ld. Counsel for the petitioners, from the reading of the aforesaid decision, it is clearly discernible that if any recruitment process has been initiated, any subsequent decision by the Government to do away with the scheme of appointment cannot come in the way of the recruitment process initiated and almost concluded. It has been submitted that in the present case since the selection process had already been initiated and selection was almost complete by holding written test as well

as interview, and that too in terms of the specific direction passed by this Court on 10.05.2013, the right accrued in favour of the candidate cannot be scuttled by the executive decision taken on 29.01.2022. Thus, it cannot be the reason for not complying with the direction of this Court and it can be certainly said that the respondent has willfully disobeyed the Courts order and has committed contempt of the Court.

12. Learned counsel for the petitioners further submits that after the dismissal of the review petition by the Supreme Court, instead of proceeding with the recruitment process expeditiously, and contrary to the submission made before the Contempt Court in CPLPA No. 20/2017, the respondents had unduly delayed the process by completing the recruitment process and instead dragged on the process and now they have taken refuge behind the Administrative decision taken on 29.01.2022 for not complying with the order of the Division Bench of this Court. In fact, the respondents had given an undertaking before this Court on 09.09.2021 to complete the recruitment process within three months and accordingly three months' time was granted by the Court. However, instead of completing the process they delayed the process and thus, deliberately frustrated the implementation of the Court order.

13. In the light of the submission advanced by the learned counsel for the parties and the materials available on record, we

have to examine the nature and scope of the order passed by the Division Bench of which alleged disobedience is the subject matter of consideration before the Contempt Court. Certainly a judicial order which has attained finality has to be given effect to unless interfered or nullified by a higher judicial forum. Apart from judicial intervention, the effect of a judgment cannot be nullified by a legislative act except under certain circumstances. Otherwise, a judicial order has to be given effect to. Thus, as we proceed to examine that aspect of the matter, it would be necessary to understand the scope of the order passed by the Division Bench.

14. It is the case of the petitioners that the order passed by the Division Bench has attained finality and by virtue of it, certain rights have accrued in favour of the petitioners and such accrued rights cannot be curtailed or deprived by an executive act.

15. On a careful consideration of the nature of the order passed by the Division Bench, we can say that evidentially what the Division Bench had decided was to issue a direction to the authorities to proceed with the selection process afresh by constituting the committees as required under the rules and by fixing the criteria for selection process and finalise the process of selection with promptitude. Thus, the essence of the direction is to reinitiate the selection process and finalize the same. Perusal of the said direction would reveal that the direction is confined to reinitiating the selection process and finalizing the same but it

does not relate to the subsequent stage of recruitment process i.e., the acceptance and approval of the said select list by the appointing authority and issuing appointment orders on the basis of such approved select list.

16. As per service jurisprudence, in recruitment process, selection and appointment processes are two different and distinct processes. It is now well settled that merely a person has been recommended for appointment by virtue of being included in the select list he does not have a vested right to get appointed. The appointing authority for germane and valid reasons can opt not to appoint any person even if the said person has been recommended for appointment. In this regard, reference can be made to the decision of the Hon'ble Supreme Court in ***Mohd. Rashid v. The Director, Local Bodies, New Secretariat & Ors, : (2020) 2 SCC 582***, wherein it was held that a candidate does not have any vested right to seek appointment only for the reason that his name appears in the merit list. The same view was taken in ***Shankarsan Dash v. Union of India : (1991) 3 SCC 47***, wherein the Constitution Bench of the Supreme Court held that a candidate seeking appointment to a civil post cannot be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list.

17. In the present case, no direction was issued by the Division Bench to issue appointment orders on the basis of the selection

made by the concerned selection authority. The direction of the Division Bench as is evident is confined only to reinitiate and finalize the selection process. Thus, the vested right of any candidate in terms of the direction of the Division Bench is confined to the participation and consideration for being included in the select list. Thereafter, the right of a person in a select list to be considered for appointment is another independent process not connected with the selection process as discussed above and not covered by the decision of the Division Bench.

18. Selection and appointment are two different and distinct parts of a recruitment process which do not necessarily have to go together. There is no inevitability of appointment merely because a person has been selected for appointment by being included in the select list. Since, in the present case, there was no direction of the Division Bench to appoint the selected candidates, it cannot be said that petitioners have a vested right of appointment. If we keep in mind the aforesaid difference in two processes of recruitment i.e., selection process and subsequent actual appointment process in terms of the recommendations made on completion of the selection process, we will be able to understand properly as to whether contempt has been committed by the respondent in the present case or not.

19. The policy decision taken by the Administration, vide Decision No.1/1/2022 dated 29.01.2022 is to the effect that all

posts referred to JKPSC/ JKSSB prior to 31.10.2019 for which selections have not been finalized till date, as also the posts in which there are litigations and the cases are pending in the Hon'ble Courts, shall be deemed to have been withdrawn with immediate effect. Another decision taken by the Administration on 15.03.2022 was that all posts referred prior to 31.10.2019 to the JKPSC/JKSSB in respect of which recommendations were received and which were free from all encumbrances shall be acted upon and orders of appointment shall be issued subject to fulfillment of all codal formalities.

20. In the present case, though the direction of the Court was to finalize the process of selection, yet the fact remains that selection was not finalized when the said policy decision was taken by the Administration on 29.01.2022. Therefore, in the present case, even if, by virtue of the order dated 10.05.2013 passed by the Division Bench, the selection authority is under legal obligation to finalize the process of selection, yet since the finalization could not be accomplished before 29.01.2022 and even if the petitioners have a vested right to claim that process of selection be finalized in terms of the direction of the Division Bench dated 10.05.2013, they could not claim more than that. Further, since court cases were still pending, the bar imposed by the Administrative Council vide their decision dated 29.01.2022 will come into operation. The position would have been otherwise

if the Division Bench had issued the direction to proceed with the appointment on the basis of the recommendations made by the selection body in which event the aforesaid decision of the Administrative Council taken on 29.01.2022 could not have come in the way of the petitioners.

21. We would also like to address another issue raised by the petitioners that the authorities could not have taken any executive decision which would come in the way of implementation of the judicial order and such an executive act could amount to violation of the judicial order. If the said administrative decision was taken specifically to nullify the effect of a judicial order in a particular case, certainly it will amount to violation of the court order. However, in the present case, what is worth considering is that the administrative decision taken on 29.01.2022 was not with regard to a particular case or with specific reference to the order dated 10.05.2013 but was of a general nature which was applicable to all those cases where the selection had not been finalized till the taking of the policy decision and in respect of those posts which were referred to JKPS/JKSSB prior to 31.10.2019 and where there was litigation and cases were pending in the Court(s). Thus, the said policy decision taken by the Administration does not appear to be attributed only to the case of the petitioners but is of general nature where selection processes could not be finalized and which were involved in litigation and where court cases were

pending. Thus, we are of the view that said policy decision taken was certainly not keeping in mind specifically the present case and, as such, we are of the view that it was not done intentionally or deliberately to nullify the effect of the order of the court.

22. It is true as submitted by the Ld. counsel for the petitioners that by way of legislative measure, much less an executive act, the judgment of a court cannot be overruled and it is not permissible for the legislature to make a decision of the Court ineffective by removing the material basis of the decision in the manner that the Court would not have arrived at the same conclusion had the corrected/ modified position prevailed at the time of rendering the said earlier decision. [See: ***G. Mohan Rao v. State of Tamil Nadu, (2022) 12 SCC 696***]. However, in the present case, it cannot be said that there was nullification of the order of the Division Bench for the reason that the order of the Division Bench did not traverse beyond the direction of reinitiation of the selection process and finalizing the process of selection. There was no further direction to make appointments on the basis of the selection process. Certainly, to the extent, the respondent SSB did not finalise the selection process, one may say that the order of the Division Bench was not complied with. However, in the present case, it would not make much difference for the reason that even if the selection process was finalized, the petitioners could not have been given appointment as there was no such direction from the

Court. And before, any appointment could be considered the said policy decision was taken by the Administration on 29.01.2022 notified on 03.02.2022 withdrawing the posts referred to the Board.

23. In this regard we would like to refer to the decision of the Hon'ble Supreme Court in ***Ram Kishan v. Tarun Bajaj and others : (2014) 16 SCC 204*** wherein it has been observed by the Hon'ble Supreme Court that in order to hold a person guilty of contempt of court, it has to be proved that the disobedience of the order was willful and such disobedience was not as a result of some compelling circumstances under which it was not possible for the contemnor to comply with the order. In such circumstances, the contemnor cannot be punished. Relevant paragraphs of the said decision reads as under:

"9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither

fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi- criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the

order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct".

24. We can also say that if the contemnor has not contributed anything personally to the act of dis-obedience but was as a result of circumstance which is beyond his control or to which he had not at all contributed, it cannot be a case of willful disobedience to attract the provisions of the Contempt of Court Act, 1971.

25. We have also examined the order of the Division Bench of this Court in SWP No.3004/2018 & connected matters, relating to formal closure of the ReT Scheme vide order No.919-Edu of 2018 dated 16.11.2018 which has been relied upon by the Ld. counsel for the petitioners. The relevant portion of the said order reads as follows:

"31. We have heard both the sides at some length on the impact of the Government order on the pending litigation and we cull out our conclusion as under:

(i). That the impugned Government order will not affect the select panels prepared by the respondents which have been acted upon and formal orders of engagement have been issued;

(ii) That the impugned Government Order will not override or effect the judgments passed or to be passed by this Court holding a candidate/candidates entitled to engagement in the selection process which was/is under challenge before the Court;

(iii) Where the select panels are approved and the aggrieved party has approached the Court before it could be acted upon, shall also be not affected by the impugned Government order, in that, but for litigation in the Court, the approved panel/panels could have been acted upon and formal letters of engagement in favour of the selected candidates issued prior to the issuance of the impugned Government order; and,

(iv) Notwithstanding issuance of the impugned Government order, the respondents shall abide by the judgments passed by any competent Court of law which have attained finality. However, the writ petitions involving adjudication of disputes in respect of tentative merit lists or tentative select panels shall be liable to be dismissed in view of the impugned Government order, in that, it would not be permissible for a Court of law to direct the respondents to finalize the tentative merit lists or tentative select panels and issue engagement orders in view of closure of the scheme and a clear stipulation contained in paragraph 2nd of the impugned Government order.

32. In view of the discussion made and the reasons given above, challenge to the constitutionality of the impugned Government Order fails and consequently, all the petitions are disposed of by providing that the impugned Government order shall be understood and made applicable in the manner explained hereinabove in the judgment.

33. Pending Writ Petitions shall be considered by the Single Bench in the light of observations made and law laid down in this judgment.”

26. Relevant portions of the closure order of the ReT Scheme read as follows:

“Subject: Formal closure of Rehbare-e-Taleem Scheme and cancellation/ withdrawal of all advertisement notices issued for engagement of ReTs or panels prepared where no engagement orders have been issued under Rehbar-e-Taleem Scheme.

Ref: State Administrative Council Decision No.128/19/2018 dated 14.11.2018.

*Government Order No: 919-Edu of 2018
D a t e d : 16-11-2018*

Sanction is hereby accorded that-

- i) Formal closure of the ReT Scheme and the ReT recruitment/ engagement process notified vide Government order No. 396-Edu of 2000 dated 28.04.2000 alongwith subsequent modifications/ amendments. However, the existing ReTs already appointed under the scheme or on ReT pattern shall continue to be governed under the erstwhile scheme till their regularization or otherwise;*
- ii) All advertisement notices for engagement of Rehbar-e-Taleem Teachers or panels prepared where no engagement orders have been issued shall and shall always be deemed to have been cancelled/ withdrawn as ab-initio;*

iii) No fresh advertisement for recruitment/ engagement under any ReT Scheme(s) shall henceforth be issued.

By order of the Governemtn of Jammu and Kashmir.

*Sd/-
(Ajeet Kumar Sahu) IAS
Secretary to the
Government
School Education Department."*

27. On careful perusal of the directions issued by the Division Bench in the aforesaid writ petition, as quoted above, it will be clear that direction in para 31(i) would show that closure of the ReT Scheme will not affect the select panels which have been acted upon and formal orders of engagement have been issued, which is not in conflict with any of the provisions of the said closure order dated 16.11.2018.

Para 31(ii) mentions about candidates who are entitled to engagement in the selection process though under challenge before the court. In the present case, as discussed above, the direction of the Division Bench was confined only to finalization of the selection process and not extending it to the engagement. Thus, the petitioners are not entitled to engagement on the basis of the selection process.

Further, para 31(iii) also mentions all such cases where formal letters of engagement had already been issued prior to the closure order dated 16.11.2018. This is also not the position in

the present case as no formal letters of engagement have been issued to the petitioners.

As regards para 31(iv), it was made clear that writ petitions involving adjudication of disputes in respect of tentative merit lists or tentative select panels shall be liable to be dismissed in view of the closure order dated 16.11.2018 as it would be impermissible for the court of law to direct the authorities to finalize the tentative merit lists or tentative select panels and issue engagements orders in view of closure of the scheme. Thus, direction issued in para 31(iv) would rather go against the plea of the petitioners in the present case.

Thus, we are of the view that the directions issued by the Court in the aforesaid SWP No. 3004/2018 cannot come to the aid of the petitioners in the present case.

28. Having considered the nature of the order passed by the Division Bench on 10.05.2013 in LPA No.184/2012 and also the law relating to the rights of a selected candidate to the effect that such selected candidate does not have an indefeasible right to be appointed and since a policy decision was taken by the Administration at the higher level before such a right has accrued to the petitioners for getting appointed, we are of the view that failure to appoint the petitioners on the basis of the selection process which has been directed to be completed by the Division Bench, cannot be said to amounting to commission of contempt of

the Court under the Contempt of Courts Act, 1971, as the act of the respondents cannot be said to be willful dis-obedience of the order of the Division Bench dated 10.05.2013 passed in LPA No.184/2012.

29. In view of the above, we are of the opinion that no contempt is made out against the respondent and the contempt proceeding is, accordingly, closed and contempt notice stands discharged.

(JAVED IQBAL WANI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
21.07.2023
Aadil

Whether the order is reportable? Yes.