

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

**Reserved on 28.02.2023  
Pronounced on 10.03.2023**

LPA No.141/2022  
CM Nos.7415/2022, 410/2023,  
7416/2022 & 432/2023  
Caveat No.1629/2022 in  
LPA No.149/2022  
CM Nos.7965/2022, 7966/2022,  
7967/2022 & 7968/2022

J&K Service Selection Board

.....Appellant(s)

Through: Mr. D.C. Raina, AG, with Mr. Amit  
Gupta, AAG, in LPA No.141/2022  
Mr. Abhinav Sharma, Sr. Advocate with  
Ms Saba Atiq, Advocate, and Mr. Sidhant  
Gupta, Advocate, in LPA No.149/2022

**Vs.**

Vinkal Sharma & Ors.

..... Respondent(s)

Through: Mr. Rohit Matoo, Advocate  
Mr. Abhishek Gupta, Advocate  
Mr. Zulkernain Choudhary, Advocate

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

**Tashi Rabstan – Judge**

1. Both these Letters Patent Appeals are directed against the judgment and order dated 08.12.2022 delivered by the learned Single Judge in WP(C) No.2580/2022, whereby the learned Single Judge allowed the writ petition filed by the writ petitioners.
2. Since both these appeals have arisen out of a common judgment, involving common question of facts and law, as such both the appeals are being decided by this common judgment.

3. The facts as projected in the writ petition are that the Jammu and Kashmir Service Selection Board (JKSSB) be directed not to conduct the examination through M/S Aptech Limited being a blacklisted agency. It was averred in the writ petition that earlier also the Jammu & Kashmir Service Selection Board (JKSSB) ignoring the successful bidder, i.e., ND Info Systems Pvt. Ltd. gave the contract to Merit Trac Services Pvt. Ltd., a blacklisted firm. Merit Tract Services Pvt. Ltd. conducted the examinations of Junior Engineer (Civil), Jal Shakti Department, Sub Inspector (Home Department) and also Finance Account Assistants in the year 2022. However, due to various malpractices occurred during the examinations in its various centers and leakage of papers, the said examinations were scrapped by the JKSSB. The matter was investigated by the Central Bureau of Investigation, filed a charge sheet in these matters but despite that the Jammu and Kashmir Service Selection Board did not hold Merit Trac Services Pvt. Ltd. accountable or blacklisted the firm.

4. Now, the grievance of writ petitioners is that the Jammu and Kashmir Service Selection Board overlooking this big scam issued fresh tender and after manipulating certain conditions in the tender gave the tender to M/S Aptech Ltd., which also has a tainted history, has already been accused of malpractices in various examinations and has also been blacklisted previously. Fearing unfair recruitment process, the writ petitioners first approached the Jammu and Kashmir Service Selection Board by filing a representation on 04.11.2022, but all in vain, which forced the writ petitioners to file WP(C) No.2580/2022 seeking to quash e-tender Notice No.19 of 2022 dated 30.09.2022 for conduct of various examinations through Computer Based Test mode in favour of M/s

Aptech Ltd. The learned Single Judge after hearing learned counsel appearing for the parties, allowed the writ petition and passed the following directions:

“74. Keeping in view the aforesaid peculiar facts and circumstances of the case and for the foregoing reasons, I am of the opinion that the process adopted/decision made by the awarding contract to Respondent No.2 (M/s Aptech Limited) is malafide and change of condition in tender was intended to favour Respondent No.2 and these decisions will have an effect on public interest as the Respondent No.2 has been assigned to conduct examinations, wherein the selectees will be appointed to hold public posts, accordingly this writ petition is allowed and the contract awarded by respondent No.1 in favour of respondent No.2 pursuant to e-NIT No.19 of 2022 dated 30.09.2022 for conduct of its various examinations through computer based tests mode is quashed. Consequently, all the exams viz Junior Engineer-Civil (Jal Shakti Department) and Sub Inspector (Home Department) held by respondent No.1 through respondent No.2 in furtherance of the aforementioned “award of contract to conduct examinations” are also set aside/cancelled at whatever stage they are as on date.

75. The Government is hereby directed to constitute a high level Committee headed by not less than a retired High Court Judge to enquire into the conduct of Jammu and Kashmir Service Selection Board for the their brazen irregularities/illegalities in changing the terms/conditions of the tender, also as to what weighed with them to award a contract to conduct an examination by an organization which has previously facilitated malpractices in public examinations and accordingly appropriate action be initiated against those found guilty.

76. Further, I would like to say that the by its own act of omission and commission, the functioning of Jammu and Kashmir Service Selection Board does not inspire confidence in holding public examinations. It has become incumbent on all stake holders to review the functioning of the Board.”

5. Hence, the present two appeals on behalf of the Jammu and Kashmir Service Selection Board as well as M/S Aptech Limited against the said judgment.

6. Amongst other grounds, the preliminary ground raised by the appellants is that the learned Single Judge on the very first date of hearing proceeded to decide the writ petition finally without granting any opportunity to the appellants to file objections to the writ petition. Learned counsel appearing for appellants argued that they were under the impression that the arguments were

being heard for the purposes of deciding the application for interim relief, as the appellants were appearing before the Writ Court in the capacity of caveators. Further, at no point of time learned counsel for appellants-writ respondents had made a statement that the appellants-writ respondents did not want to file reply or that the matter be decided on the basis of record only, as the matters having huge repercussions and involving public interest cannot be decided on the basis of record only or without seeking formal objections of the parties. Therefore, the judgment impugned is contrary to the settled position of law as also in conflict with the Writ Proceedings Rule, 1997.

7. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal files.

8. Since it was vehemently argued by the learned counsel for appellants that the writ petition was heard only for the limited purpose of granting interim relief as well as for the purpose of consideration of admission of the writ petition, and that the appellants had never understood that the matter was being heard for the purpose of final consideration, also in view of the provisions of Rules 14 and 15 of the Jammu & Kashmir Writ Proceedings Rules, 1997 it was not open for the learned Single Judge to decide the petition finally unless initially the Court had issued Rule Nisi, we deem it proper to refer to the provisions of Rules 14 & 15 (supra) hereunder:

“14. (1) Every writ petition after it has been admitted to register shall be placed for preliminary hearing before a Division Bench to be constituted by the Chief Justice, and after its admission shall ordinarily be heard by a judge sitting alone unless the bench admitting the petition directs otherwise.

(2) Notwithstanding anything here in before contained the Chief Justice may, if he deems necessary, authorize a Judge sitting alone to hear such petition for admission.

(3) Every petition or application shall be listed in the next regular cause list. However, in case of urgency, the party may approach the court for relaxation of this period. In such case the petition shall be listed as per the direction of the Chief Justice or any other judge specifically authorized in this behalf by him.

15. (1) Upon being satisfied, the court may either issue rule nisi or notice for rule nisi or dismiss the petition. In case the court decides to adopt either of the two former courses, the opposite side shall file complete reply on the merits of the case within the time fixed by the court. In case no time is fixed by the court, the reply shall be filed within four weeks from the date of the order. The registry may, however, grant such further extension in time as he may deem fit upon being satisfied as to the genuineness of the request made for the purpose by the party concerned.

Provided further that court may allow further extension as it may deem fit in the circumstances of the case and on being satisfied by the party, subject to conditions it may like to impose.

(2) Every notice issued by the court shall be sent through registered post with acknowledgement due at the expenses of the petitioner or in any other manner as may be directed by the court.

(3) Before filing the reply in the Registry, copy(s) of the same shall be served upon opposite party(s) personally or upon his counsel and signatures obtained on the original copy in token of the same being received.

(4) No rejoinder to the petition shall be filed except with the leave of the court.

(5) Upon making the order for rule nisi, the court may, upon application made, grant ex parte ad-interim relief to the petitioner as the justice of the case may require, upon such terms, if any, as it may, consider just and proper. Provided that an application for rule nisi involving laws relating to public revenue including taxation laws shall not be moved, unless the court otherwise directs, without serving three days prior to notice along with a copy of the application under Article 226 of the Constitution of India and Section 103 of the Constitution of Jammu and Kashmir.

(6) Notice of every such ex parte order shall be given to the party affected thereby and, unless the court has appointed a day for the return of the said notice, or otherwise directs, the Registrar shall fix a day for the return of the said notice and the application for interim relief shall be posted before the court for final orders on the date so fixed.”

9. Rule 14 is regarding admission and listing of the writ petition. However, if Rule 15 is carefully read, then it would be quite clear that when the petition

is placed before the Court, the Court upon being satisfied is having two options, i.e., the Court may either summarily dismiss the petition or order to issue rule nisi to the opposite side, as it thinks fit and proper. If the Court is of the opinion that a prima facie case is made out for granting the relief sought in the writ petition, rule nisi is issued calling upon the person or persons against whom the relief is sought to show cause as to why such relief should not be granted.

**10.** In the instant case, according to the appellants-writ respondents, on the very first date of the listing of writ petition, they being caveators-writ respondents were under this impression that in terms of Rule 15 (supra) they were arguing the matter before the Writ Court only against the granting of interim relief and admission of the petition. Learned counsel appearing for appellants-writ respondents submitted that it is not permissible under the rule to dispose of a writ petition in favour of writ petitioners without allowing the contesting writ respondents to file reply to the writ petition. Further, though the learned Single Judge in paragraph-15 of the impugned judgment has stated that with the consent of learned counsel for the parties, the writ petition was admitted to final hearing and taken up for final disposal, yet, the fact of the matter is that at no point of time learned counsel for appellants-writ respondents had made a statement that the appellants-writ respondents did not want to file reply or that the matter be decided on the basis of record only, that too on the very first date of the listing of the writ petition.

**11.** We have considered in detail this technical aspect. We have gone through the order when the writ petition came to be reserved on 30.11.2022 by the

learned Single Judge and we deem it proper to reproduce the said order hereunder:

“Heard.  
Reserved”

**12.** A perusal of the order itself shows that when the matter was listed before the learned Single Judge for the first time on 30.11.2022, no notice was issued by the learned Single Judge to the opposite party. The writ respondents through their counsel were appearing in the capacity of caveators and the learned Single Judge without recording the statements of learned counsel for writ respondents-caveators that the writ respondents-caveators do not intend to file reply to the writ petition, reserved the matter. The order does not show whether the matter had been reserved for passing order on interim relief or for finally disposing of the writ petition. As such, we are of the view that the Writ Court had no jurisdiction to finally dispose of the petition without first issuing notice and affording an opportunity to the opposite side for filing reply on merits of the case.

**13.** What is held by the Apex Court in paragraphs 5, 6 & 7 of the case, titled as, *Union of India vs Daya Ram*, in Civil Appeal No.7409/1996, decided on 18.04.1996, is reproduced hereunder:

“5. It will be noted that both the orders, of the learned Single and of the Division Bench, give the respondent some relief “without admitting the petition to hearing”. It is difficult to see how enforceable orders directing the respondent to a writ petition to do certain things can be passed upon a proceeding which, in express terms, is stated to have been not admitted. We appreciate that the writ petition itself was disposed of at the admission stage by consent of parties. At that stage rule should have been issued to the present appellants and the judgment and order should have noted that service thereof was accepted on behalf of the present appellants by learned counsel who was present on their behalf. The final order would have made the rule absolute. The order passed by the learned Single Judge would thus

have been passed upon a petition which was admitted and was on the file of the High Court. The order would have been enforceable.

6. The Division Bench, when it modified the order of the learned Single Judge in appeal, made no modification in this behalf. The order of the Division Bench directing the present appellants to consider the respondent's case was also, in express terms, passed upon a writ petition that was not admitted.

7. It is unfortunate that the lapse will have some adverse effect upon the respondent both in terms of time and in terms of costs, but the present order, in our view, requires to be passed because the courts have to observe the procedural proprieties if their orders are to be enforceable.

8. We make it clear that we do not express any opinion whatsoever in regard to the merits of the case of either the appellants or the respondent.”

**14.** Similarly, a Division Bench of this Court in a case, titled as, Jammu Dev. Authority vs Bhag Din, in LPA(OW) No.3/2003 along with connected matters, decided on 02.12.2003, held on the same lines, relevant portion of paragraph-15 whereof is reproduced hereunder:

“When a writ petition comes up before the Court on first date of hearing on admission and after hearing counsel for the petitioner, Rule 15(1) of the Writ Proceedings Rules envisages only three eventualities, depending upon the satisfaction of the court: first, issuance of rule nisi; second issuance of notice for rule nisi and third dismissal of the writ petition. When a writ petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir comes up for hearing on admission for the first time, the Rules do not envisage dispensing with the requirement of issuance of rule nisi or notice for rule nisi and instead issuing a warrant of arrest. Since we have framed these Rules, insofar as they are meant for our observance, we are obliged to obey and observe the same in their letter and spirit. Issuance of notice to the other party is sine qua non to the administration of justice. Since that course has not been adopted, with respect, we feel that grave irregularity has crept in, prejudicing the respondents in the writ petition to the hilt. Any proceedings conduct or orders passed without notice cannot be sustained in law.”

**15.** Therefore, in view of what has been discussed above, we, without discussing the merits of the case, deem it proper to dispose of the appeals and remit the writ petition back to the Writ Court for deciding the matter afresh.



Ordered accordingly. Accordingly, the order and judgment impugned is hereby set aside, the writ petition is restored to its original number and the writ petition is remitted back to the learned Single Judge with a request to decide the matter afresh. Writ respondents through their learned counsel are directed to file objections/counter to the writ petition within two weeks from today, thereafter, rejoinder, if any, to be filed within next one week. Registry is directed to list the writ petition before the learned Single Judge on 5<sup>th</sup> of April, 2023, when the learned Single Judge is requested to finally decide the writ petition. Till then interim direction dated 09.12.2022 shall remain in force.

**16.** Appeals stand disposed of along with connected miscellaneous CMs.

**Jammu**  
**10.03.2023**  
(Anil Sanhotra)

**(M.A. Chowdhary)**  
**Judge**

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

Whether the order is reportable ?  
Whether the order is speaking ?

Yes/No  
Yes/No