

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

...

WP (C) No. 103/2024

Reserved on: 31-05-2025

Pronounced on: 07.07.2025

1. U.T. OF J&K THROUGH COMMISSIONER-CUM-SECRETARY TO GOVT. EDUCATION DEPARTMENT, J&K CIVIL SECRETARIAT SRINAGAR/JAMMU-180001/190001
2. DIRECTOR SCHOOL EDUCATION, SRINAGAR, KASHMIR.
3. INQUIRY COMMITTEE CONSISTUTED REGARDING TO THE CLASS IV, DISTRICT BUDGAM, THOURHG JOINT DIRECTOR (E.E), DIRECTOR OF SCHOOL EDUCATION, KASHMIR, 180001/190001.
4. CHIEF EDUCATION OFFICER, DISTRICT BUDGAM.

...PETITIONER(S)

Through: - **Mr. Faheem Nissar Shah, GA**

Vs.

1. SHAKEEL AHMAD BHAT.
S/O: ABDUL REHMAN BHAT
R/O: DUROO, BUDGAM.
2. ABID HUSSAIN.
S/O: GHULAM HASSAN WAR
R/O: PETH KANIHAMAN, BUDGAM.
3. ULFAT JAN
W/O: QAISAR AHMAD KHAN
R/O: GAMBORE, BUDGAM.
4. AAMIR HUSSINA DAR
S/O: NISAR AHMAD DAR
R/O: NASEEB PORA, BUDGAM.

5. AFAQ AHMAD WANI
S/O: BSHIR AHMAD WANI
R/O: KANIHAMA, BUDGAM.
6. UMER BASHIR
S/O: BASHIR AHMAD MIR
R/O: SOIBUGH, BUDGAM.
7. MASRAT AIJAZ
D/O: AIJAZ AHMAD
R/O: MONCHAWA, BUDGAM.
8. SHAHBAZ AHMAD PAUL
S/O: ABDUL AZIZ PAUL
R/O: NARKOORA, BUDGAM.
9. TANVEER QADIR
S/O: ABDUL QADIR
R/O: PALLA PORA, BUDGAM.
10. MOHAMMAD YOUSIF DAR
S/O: GHULAM QADIR DAR
R/O: GOWHAR PORA, BUDGAM.
11. BASHIR AHMAD ALLAI
S/O: GHULAM RASOOL ALLAI
R/O: LABERTEL, BUDGAM.
12. SUHAIL AHMAD GANAIE
S/O: LATE MOHAMMAD ASHRAF GANAIE
R/O: KANIR, BUDGAM.
13. ASSADULLAH DAR
S/O: ALI MOHAMMAD DAR
R/O: PANZAN, BUDGAM.
14. NIGHAT RASHID
D/O: ABDUL RASHID BABA
R/O: LOLIPORA, BUDGAM.
15. MOHAMMAD IRFAN BHAT
S/O: ABDUL AZIZ BHAT
R/O: GOPALISAIF, BUDGAM.
16. DIL AFROOZA AKHTER
D/O: MOHAMMAD AFAZAL
R/O: TILSARA, BUDGAM.
17. SAIMA PARVEEN
D/O: ABDUL RASHID BHAT

R/O: PORWARA, CHADOORA BUDGAM.

18. MUDASIR MALIK
S/O: BASHIR AHMAD MALIK

R/O: DADINA, BUDGAM.

19. BARKAT ALI MIR
S/O: MOHAMMAD IBRAHIM MIR

R/O: CHAYER GUNE, BUDGAM.

20. IRGAN HUSSAIN
S/O: ABDUL AZIZ KUMAR

R/O: CHRARI SHARIEF, BUDGAM.

...RESPONDENT(S)

Through:- Mr. Shariq J. Reyaz, Advocate.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE.

JUDGMENT

Sanjeev Kumar J:

1. This Writ Petition by Union Territory of Jammu & Kashmir and three others filed under Article 226 of the Constitution of India has arisen from an order and Judgment dated 17th of August, 2023 passed by the Central Administrative Tribunal, Srinagar Bench [“the Tribunal”] in TA No. 5617/2020 titled Shakeel Ahmad Bhat and Ors. v. State of J&K and Ors, whereby the Tribunal has quashed Government Order No. 205-Edu of 2015 dated 24th of April, 2015 withdrawing Notification dated 5th of February, 2014 and declaring a selection process void *ab initio*.

Factual Matrix:

2. Vide notification dated 5th of February, 2014 published on 8th of February, 2014, the Chief Education Officer, Budgam invited applications to fill up Class IV vacancies in the School Education Department in District Budgam. Following was the eligibility criteria prescribed in the advertisement notification:

“(i) Qualification Minimum = 10th Pass

Maximum = 10+2

(No additional weightage will be given to any candidate for higher qualification in terms of SRO 99 of 2008)

(ii) Age as on 01/01/2014 Minimum= 18 years

Maximum= 37 years

(Candidates belonging to categories will be given relaxation as per rules in vogue)”

The advertisement notification also laid down the following criteria for selection:

“(iii) Criteria for selection:

Total Points= 100

(A)Points for Matric= 60

(B)Points for 10+2= 20

(C)Points for Viva voce= 20”

3. With a view to conducting the selection process, the Director School Education, Kashmir vide Order No. 2472-DSEK of 2013 dated 31st of December, 2013 constituted a District level committee consisting of the following:

“i. Chief Education Officer (concerned) (Chairman)

ii. Personal Officer Directorate of School Education Kashmir: (Member)

iii. District Social Welfare Officer (concerned): (Member)

- iv. Principal Higher Secondary School Magam (Member)
- v. OSD/IMW Directorate of School Education: (Member)”

4. As it has come on record, the Selection Committee did not conduct the selection process as per the conditions notified in the advertisement notification and on the contrary the Selection Committee altered the notified criteria and made the selection on the basis of following criteria:

“Total Points= 100

Points for marks obtained in matric= 50

Points for 10+2 Qualification= 10

Points for interview/viva voce= 40”

5. The selection process was resented to by various aggrieved candidates. The petitioners herein started receiving complaints from different quarters with regard to the illegalities in the selection process, misuse of authority and favouritism, etc. displayed during the selection process. The complaints were addressed to the Deputy Commissioner, Budgam and the then Vigilance Organization, Kashmir. The matter with regard to irregularities in the selection process and the complaints made by the aggrieved candidates also surfaced in print media. The then Deputy Commissioner, Budgam, taking cognizance of the large scale complaints made by the aggrieved candidates, appointed Additional District Development Commissioner, Budgam to enquire into the matter. Simultaneously, the Director School Education, Kashmir also constituted an enquiry committee comprising of Joint Director, Deputy Director (Planning) and OSD in the Directorate of School Education, Kashmir. The enquiry report prepared by the Additional District

Development Commissioner, Budgam on the directions of Deputy Commissioner, Budgam and the enquiry report submitted by the enquiry committee constituted by the Director School Education, Kashmir were submitted to the Administrative Department of the School Education. It seems that the matter was examined and the Administrative Department being *prima facie* of the view that the selection process was vitiated by many irregularities, decided to quash the entire selection process. Accordingly, vide Government Order No. 205-EDU of 2015 dated 24th of April, 2015, the advertisement notification dated 5th of February, 2014 was withdrawn and the entire selection process was declared void *ab initio*. Since, the select list also stood prepared by the Chief Education Officer, Budgam, as such, same was also quashed by the said Government Order.

6. Feeling aggrieved, the candidates who had found place in the select list filed several writ petitions including SWP No. 1074/2015 which were later transferred to the Tribunal. The Writ petition filed by the Respondents herein was registered by the Tribunal as TA No. 5617/2020 and was disposed of in terms of the judgment impugned in this writ petition.

SUBMISSIONS OF LEARNED COUNSEL

7. The petitioners are aggrieved of and have assailed the impugned judgment of the Tribunal *inter alia* on the ground that the Tribunal has decided the Writ Petition without considering the objections filed by the Respondents and, also that, the Tribunal has failed to appreciate that mere placing a candidate in the select list does not confer upon such candidate a

right to appointment. It is contended that the Government or the employer is well within its right to withdraw a selection process at any time before the select list has been acted upon and the appointment orders have been issued on the basis thereof. It is argued by the learned counsel for the petitioners that the decision to rescind the entire selection process was taken in good faith and with a view to allaying the suspicious circumstances surrounding the selection process. It is submitted that the decision of the Government was not arbitrary but was based upon the proper exercise conducted by it to find out the veracity of the allegations made in the complaints received by the Deputy Commissioner, Budgam and the Vigilance Organization, Kashmir. With a view to dig out the truth, a proper enquiry Committee was constituted and it was only on the basis of the recommendations of the Committee a *bona fide* decision was taken to cancel the selection process so that a fresh selection process is set in motion which is just, fair and transparent.

8. *Per contra*, the learned counsel appearing for the Respondents would submit that the Tribunal has taken note of the contentions raised by the petitioners before this Court and has rightly arrived at a conclusion that the decision to quash the advertisement notification and the entire selection process including the select list issued by the Chief Education Officer, Budgam was totally illegal, irrational and arbitrary. It is argued that, relying upon the plethora of case law the Tribunal has rightly concluded that there was no rationale or justification to quash the entire selection process and embark upon a fresh exercise involving both the waste of time and money.

ANALYSIS

9. Having heard learned counsel for the parties and perused the material on record, we have no manner of doubt that it is trite law that mere participation of a candidate in the selection process does not give him an indefeasible right to be appointed. The appointing authority as also the selection body is well within its power to abandon the selection process at any stage even if the select list has been issued, however, the same can only be done for good reasons. The reasons for abandoning the selection process ought not to be arbitrary and must be justified on the touch stone of Articles 14 and 16 of the Constitution of India. [see **Shankarsan Dash v. Union of India, (1991) 3 SCC 47**].

10. The Hon'ble Supreme Court has examined the question when the entire selection process should be struck down in case of irregularity in umpteen number of cases. In **Sachin Kumar v. Delhi Subordinate Service Selection Board, 2021(4) SCC 631** it has been laid down that for determining as to whether the examination process is vitiated by irregularities, it is necessary to hold an indepth fact-finding enquiry. The fact-finding enquiry must examine with regard to the irregularities alleged were systematic enough to undermine the sanctity of the process. In the cases where the selection process is vitiated by fraud or large scale irregularities challenging severally the credibility and the legitimacy of the process, the employer is left with no option but to cancel the entire process. There may be situations where it is possible to separate the chuff from the grain and in such

situations there is hardly any justification to cancel the entire selection process impacting adversely upon the legitimate candidates. The idea to save the selection process by separating the tainted from the untainted participants is to ensure that the innocent should not suffer for the acts of some wrongdoers.

11. In the case of **Inderpreet Singh Kahlon v. State of Punjab, 2006 (11) SCC 356**, the Hon'ble Supreme Court laid down three principles to be adhered to while taking a decision to cancel the selection process. Firstly, there must be satisfaction regarding the sufficiency of the material collected so as to enable the employer to conclude that the selection process was tainted. Secondly, to determine whether the illegalities committed go to the root of the matter and vitiate the selection process, such situations are to be based on a reasoned and thorough investigation conducted in a fair and transparent manner and, thirdly, there must be sufficient material to support the conclusion that the majority of the appointments were part of the fraudulent purpose or that the system itself was corrupt.

12. In the case of **Chairman of Indian Railway Recruitment Board v. K Shyam Kumar, 2010 (6) SCC 614**, the decision of the Railway Recruitment Board to cancel the examination and conduct the re-test on the grounds of malpractices involving mass copying, leakage of question paper and impersonation, etc. was struck down by the High Court. The Hon'ble Supreme Court reversed the judgment of the High Court and upheld the decision of the Railway Recruitment Board to cancel the examination on the

ground that the material on record proved widespread illegalities and malpractices in the written test. It was held that the ultimate object of fair selection was eluded by mass copying, impersonation and question paper leakage, etc.

13. From the case law on the subject, following principles can be culled out:-

- (i) A candidate has no legal right to appointment merely by being selected. The State may decide not to fill up vacancies or scrape the selection process provided the decision is *bona fide*.
- (ii) The selection process can be scrapped if it is tainted by fraud and malpractices going to the root of selection.
- (iii) The selection process can also be scrapped if it is vitiated by large scale illegalities rendering the entire selection process stillborn viz., application of criteria which is illegal, arbitrary or unconstitutional.
- (iv) The decision to scrape selection process must be *bona fide* and not arbitrary, discriminatory and based on no adverse material.
- (v) Where it is possible to sift the grain from chaff, the tainted candidates must be segregated from the untainted ones, and the resort to scrapping the entire selection process should be avoided.
- (vi) The process can also be scraped if it is required for *bona fide* public interest or if the administrative agencies so require. So long as power to cancel is exercised fairly, rationally and in good faith, the courts would be loath to interfere.
- (vii) The decision to scrape the selection process shall be bonafide only if the same is based upon established relevant material sufficient enough to ward off arbitrariness.

14. When we examine the case on hand in the light of legal position adumbrated hereinabove, we find that the decision of the Government

impugned before the Tribunal was taken on the basis of illegalities in the selection process pointed out by the enquiry Committee. To examine the issue in right perspective, it is necessary to set out the recommendations of the enquiry Committee herein below:

"8. RECOMMENDATIONS

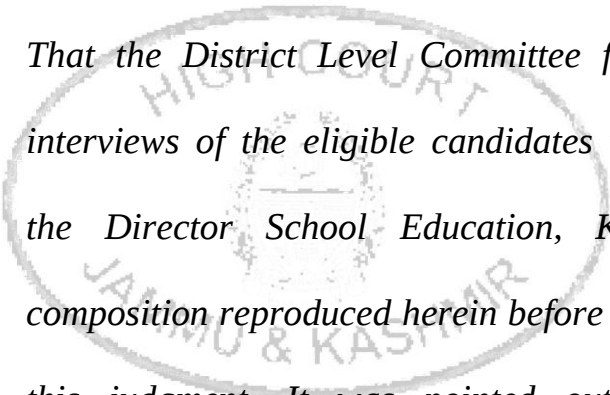
In view of the all that has been discussed above the committee has deduced that during the process of selection gross transgression of the standing Government orders and the norms have been made. In order to meet the ends of justice the committee recommends as under.

- i. The selection list prepared and issued by the CEO Budgam be scrapped [Annexure-M 05 pages]. In order to restore the faith of the aspirant candidates in the system.
- ii. The short list [Annexure-N Pages 39] be scrapped and a fresh short listing of the candidates as per 1:5 ratio be prepared out of the applications received by CEO in response to his notification number CEOB/NT/ADVRT/14/22349 dated 05/02/2014 [Annexure-A] by giving the weightage of 100 points to the academics as 10th =90 & 12th = 10.
- iii. The district level committee for selection of the class IV is to be constituted as per the Government Order No. 735 GAD of 2008 dated 30-05-2008 as amended by Government Order no. 731 GAD of 2010 dated 24-06-2010 as in the instant case the above referred Government Orders have not been followed [Annexure-O two pages].
- iv. The revised short-listed candidates be called for interview before the district level committee so that the interviews are conducted and weightage is given as per the notification No. CEOB/NT/Advert/14/22349 dated 05-02-2014 [Annexure=A] issued by CEO.
- v. The members who have been the part of process in this selection of the candidates for class 4 posts in Budgam district have not applied their mind in order to be felt fair and transparent in the process of selection nor there is any record which would indicate that the committee has met before the commencement of the interviews to deliberate upon the shortcomings that have erupted in the process of selection viz. weightage

of points to be awarded for academics and the viva keeping in view the basic notification issued by CEO no. 05/02/2014 [Annexure-X].

vi. The committee felt not to go for individual grievances and instead a general overview has been taken which in itself has taken the care of the aggrieved candidates as well.”

15. From reading of the recommendations made by the enquiry Committee, which became the basis for cancellation of the entire selection process initiated vide Advertisement Notification dated 05-02-2014, it transpires that the recommendations of enquiry committee were founded on the following irregularities found in the selection process, namely:

- 
- (i) *That the District Level Committee for conducting the interviews of the eligible candidates was constituted by the Director School Education, Kashmir with the composition reproduced herein before in the beginning of this judgment. It was pointed out by the Enquiry Committee that the District Level Committee was consisting of six members, five appointed by the Director School Education, Kashmir and one Mr. Gulzar Ahmad, nominated by the Deputy Commissioner, Budgam, but during the process of selection only five members remained active;*
- (ii) *That the short listing was done in the ratio of 1:20 which created scope for the low merit candidates to be short listed for the interview. The Chief Education Officer*

deviated from the reasonable ratio of 1:5 adopted in all selections and instead resorted to ratio of 1:20;

- (iii) That the selection criteria, which was indicated in the beginning of the selection process, was changed midway and the interview/viva voce points were raised from 20 to 40 without same having been notified prior to conduct of such interviews. The adoption of an un-notified criteria, ignoring the notified one, has put a question mark on the transparency of the entire selection process;*
- (iv) The composition of the District Level Selection Committee was not in consonance with the Government Orders laying down composition of such committees;*
- (v) That higher points in interview i.e. 40 points have actually resulted in converting the merit into de-merit. The candidates who were having lesser marks in the academics have made it to the selection because of higher points up to 35.80 out of 40, awarded to them in the viva voce;*
- (vi) That the enquiry Committee randomly picked up several such candidates and noticed a trend that many a candidates, who had no chances of selection, have made it to the select list because of excessive higher points awarded in the interview;*

(vii) That non-availability of the record of application forms in the office of the Chief Education officer, Budgam, has raised serious doubts about the manner in which the selection process has been conducted. The Committee has opined that in the absence of the record, it is difficult to ascertain whether the candidates who were interviewed and have made to the select list, had actually applied within the prescribed period;

16. From the reading of the report of the enquiry Committee, pointing out various irregularities in the selection process, it is abundantly clear that it is not a case where the petitioners could have separated the tainted candidates from untainted ones. The irregularities and illegalities committed by the selection Committee by altering the selection criteria and raising the points for interview from 20% to 40%, that too, for Class IV recruitment, goes to the root of the selection process. Any selection process made on the basis of such selection criteria is stillborn and cannot sustain in law.

17. Without going into the legal question as to whether the selection criteria, once notified, can be changed midway without prejudice to the candidates aggrieved, suffice it to say that in the instant case there was sufficient material with the petitioners to arrive at a satisfaction that the selection process conducted was neither fair nor transparent. Although there may not be *per se* illegality in short listing the candidates in the ratio of 1:20, yet in the given circumstances when there was enormous response to the

advertisement notification, short listing the candidates in the ratio of 1:20 was undoubtedly irrational and aimed at bringing within the zone of consideration candidates with inferior merit. This had the effect of burdening the selection Committee to interview thousands of candidates and, thus, compromising the efficacy of process of viva voce. The enquiry Committee has also found the constitution of the Selection Committee not in consonance with the Government Orders issued on the subject. The enquiry Committee has also found that even all the members of the Selection Committee did not participate in the selection process.

18. Viewed from any angle, the material before the Government was sufficient to take a bona fide decision to scrape the entire selection process, more particularly, when the select list prepared was yet to be acted upon and no right had vested in the candidates by merely figuring in the select list.

19. Learned counsel appearing for the respondents would want us to go into the legal tenability of the observations made by the enquiry Committee. We are afraid, we cannot go into the sufficiency of the reasons or the legal tenability of the observations made by the enquiry Committee. We find that the entire exercise undertaken by the petitioners was *bona fide* and to ensure fairness and transparency in the selection process.

20. A feeble argument was raised by the learned counsel appearing for the respondents that similar selections undertaken in other Districts were not scrapped by the Government. There is no material placed before us with regard to other Districts. Besides, it was also brought to our notice that in

other Districts, not only the selection process stood concluded but the candidates selected too had been appointed.

21. Be that as it may, two wrongs cannot make one right. On facts and on examination of the record we have found that the decision to rescind the selection process in question was bona fide and aimed at ensuring fair and legally tenable selection process. The petitioners have not acted arbitrarily and have based their decision on an exercise undertaken by them through a duly constituted fact finding enquiry Committee. It is on the basis of finding of facts and the recommendations made by the Enquiry Committee and taking over all view of the matter, an informed decision was taken by the Government to scrape the selection process. The Tribunal, however, has not appreciated this aspect of the matter and has unnecessarily gone into determining the legal tenability of the observations made by the Enquiry Committee in its report submitted to the Government. The Tribunal has laboured too much on the question as to whether the eligibility criteria can be changed midway the selection process or not.

22. Be that as it is, for the reasons stated above, this petition is allowed and the judgment of the Tribunal dated 28-11-2023 passed in TA No. 5617/2020 is set aside. The petitioners are left free to initiate fresh selection process for making the selection for Class IV/MTS vacancies. We, however, clarify that in case fresh selection process is undertaken by the petitioners and fresh applications are invited, the candidates who had participated in the

selection process scrapped by the Government and who were within age, shall not be treated as over-aged for the fresh selection process.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

07.07.2025

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes

