

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

Reserved on: 21.10.2024
Pronounced on: 17.12.2024

**LPA No.167/2021
c/w
LPA No.137/2021**

LPA No.167/2021:

1. Imran Nazir Malik, age:32 years
S/o Nazir Ahmad Malik R/o Panzi Nara District
Srinagar.
2. Lobzang Yangzes, age: 29 years
D/o Tsering Angchok R/o Manzil Zangsti Road,
District Leh.

...APPELLANT(S)

Through: - Mr. M. S. Reshi, Advocate.

Vs.

1. Union Territory of J&K, through Principal
Secretary to Government, Industries & Commerce
Department, Civil Secretariat, Srinagar/Jammu.
2. J&K Khadi & Village Industries Board, through its
Secretary/CEO, Srinagar/Jammu.

...RESPONDENT(S)

Through:- Mr. Ilyas Laway, GA.

LPA No.137/2021:

1. Nisha Musharaf, age 40 years
W/o Muhammad Zubair Bandy
R/o Bilal Colony, Soura Srinagar.
2. Imran Assadullah Dar, age: 33 years
S/o Mohammad Assadullah Dar
R/o Watergam Wagoora, District Baramulla.
3. Amir Nazir, age: 31 years
S/o Nazir Ahmad Padder
R/o Bamzua, Mattan, Anantnag.
4. Khalid Rashid Malla, age: 31 years
S/o Abdul Rashid Malla
R/o Dandoosa, Rafiabab Baramulla.

5. Villayat Ali, age: 32 years
S/o Mohammad Jawad
R/o Baroo Yukmastrawg District Kargil.
6. Hadiya Farooq, age: 28 years
D/o M. Farooq Ahmad
R/o Tahab Pulwama.

...APPELLANT(S)

Through: - Mr. Z. A. Shah, Sr. Advocate, with
Mr. A. Hanan, Advocate.

Vs.

1. Union Territory of J&K, through Principal Secretary to Government, Industries & Commerce Department, Civil Secretariat, Srinagar/Jammu.
2. J&K Khadi & Village Industries Board, through its Secretary, 3rd Floor, Sanat Ghar, Bemina Srinagar.

...RESPONDENT(S)

Through:- Mr. Ilyas Laway, GA.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

Per Sanjeev Kumar 'J'

1) In LPA No.167/2021, appellants Imran Nazir Malik and Lobzang Yangzes, were selected and appointed as Executive Officers in the J&K Khalid & Village Industries Board [“the Board” for short], in the year 2018 and were put on probation for a period of two years. The appellants in LPA No.137/2021 were selected and appointed as Executive Officer, Assistant Executive Officer and Junior Statistical Officers.

2) It seems that immediately upon appointment of the appellants in different capacities in the Board, complaints from different quarters with regard to illegalities committed in the selection started pouring in. With a view to look into the allegations made in the complaints, the General Administration Department vide order No.462-GAD of 2018 dated 19th of March, 2018, constituted a three-member High Level Enquiry Committee under the Chairmanship of the then Principal Secretary to Government, Home Department. The Committee conducted its enquiry and submitted report to the Government. Without sharing with the appellants, the Government relied upon the report and vide Government Order No.127-IND of 2018 dated 28.06.2019, ordered as under:

- (I) All the selections made in the KVIB pursuant to advertisement Notice No.KVIB/01 of 2016 dated 08.10.2016, are quashed/cancelled.
- (II) The KVIB will provide opportunity of being heard to all the candidates appointed to different categories of posts pursuant to advertisement notice dated 08.10.2016 and fulfill all other formalities required under law before cancelling the appointments of these candidates.

3) In consequence of the aforesaid Government Order, the Secretary, who is also Chief Executive Officer of the Board, issued communication dated 24th July, 2019, quoting therein Government Order dated 28th June, 2019, to the

appellants seeking their explanation as to why their services be not terminated. Thereafter there was some intervention made by this Court, as a result whereof, fresh show cause notices dated 1st October, 2019 were issued to the appellants and others. After considering the replies submitted by the appellants to the show cause notices issued, the Board terminated their services vide order No.KVIB/168 of 2019 dated 14th October, 2019. Feeling aggrieved, the appellants challenged both the orders i.e. Government Order dated 28.06.2019 and KVIB order dated 14th October, 2019, by filing writ petitions which have been disposed of by a common order and judgment dated 28th September, 2021. It is this judgment passed by the learned Single Judge [“the Writ Court”], the appellants are aggrieved of and have challenged the same only to the extent that the Writ Court though allowed their writ petitions and quashed the impugned orders yet did not pass any direction to put the appellants back in service.

4) Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the operative portion of the judgment impugned is not in tune with what is held by the Writ Court elsewhere in the judgment. Indisputably, the Writ Court has accepted

the challenge of the appellant to both the orders impugned before it; one passed by the Government dated 28.06.2019, and other passed by the Board dated 14th October, 2019, and has held both these orders bad in the eye of law. As a necessary corollary, the selection as well as appointment of the appellants have been held to be valid. In such circumstances, ordinarily, the Writ Court ought to have directed the respondents to take back the appellants in service and then leave it open to them to hold a fresh enquiry in accordance with law. Unfortunately, this has not happened in the case. The Writ Court has come to a definite conclusion that the orders impugned in the writ petitions were bad in the eye of law being passed in violation of principles of natural justice, yet stopped short of quashing the same. No good reason is forthcoming from the impugned judgment as to why such course was adopted by the Writ Court. Before we proceed further, we would like to reproduce paras 24, 30 and 31 of the impugned judgment:

24. Furthermore, a bare perusal of the plain language used and contained in the operative part of the order makes it manifest that the Government did not only quash and cancel the selections made in the Board pursuant to advertisement notice in question, but in clause (ii) thereof, by use of the words 'before cancelling the appointments of these candidates', in unambiguous terms, ordered the Board to cancel the appointments of the candidates. Given the

fact that the Government disclosed its mind and intention vide the clause (i) of the operative part of the order and reading it conjointly with what was said in clause (ii) thereof, as quoted above, it becomes manifest that the Government conveyed its decision and direction to the Board to, in any case, cancel the appointments of the petitioners. Thereby also, the direction contained in clause (ii) of the operative part to provide opportunity of being heard to all the candidates is rendered false, farce and sham, violating the right to hearing of the petitioners, recognized by the Government/respondents themselves in the order. In consequence of the above, the show cause notices issued by the Board to the petitioners suffer from the same vices of unfairness and arbitrariness.

30. I may hasten to add that the court does not in any manner or by any standards hold that the selection process has been fair or that the select list was fairly drawn, instead, the Court is only holding the manner adopted by the respondents in dealing with the matter as unfair.

31. For all what has been said above, it is left open to the respondents to conduct a *denovo* enquiry into the selection process, having recourse to due process of law they have time and again talked of throughout, associating the petitioners therein, and proceed in the matter as the outcome of any such enquiry may result in withdrawal/continuation of orders of cancellation of selection and appointment of petitioners. Such enquiry may be initiated within three months from the date of this judgment and completed within a period of six months thereafter.

5) In para 24, the Writ Court has, on the basis of the discussion made in the preceding paras, concluded that the cancellation of selection and appointment of the appellants was not sustainable in law. In para 30, the Writ Court has clarified that it has not expressed any opinion on the merits of the selection and appointments but has only held the

manner adopted by the respondents in dealing with the matter as unfair. Para 31 reproduced above is the operative portion of the judgment where the Writ Court, without formally quashing the orders challenged before it, left it open to the respondents to conduct de-novo enquiry into the selection process by having recourse to due process of law by associating the appellants therein, providing further that outcome of such enquiry may result in withdrawal/continuation of orders of cancellation of selection/appointment of the appellants. The liberty to initiate the enquiry was to be exercised by the respondents within a period of three months from the date of the judgment and to be completed within a period of six months thereafter.

6) Mr. Z. A. Shah, learned senior counsel appearing for the appellants, restricts his arguments only to what is provided by the Writ Court in para 31 of the judgment and submits that once the Writ Court has come to the conclusion that cancellation of selection and appointment of the appellants is in violation of principles of natural justice and bad in the eye of law, as a necessary consequence thereof, there ought to have been further direction to put the appellants back in service. He further submits that even if

we are to accept what is provided by the Writ Court in the operative portion of the impugned judgment as it is, the Government, having failed to initiate the enquiry within the time frame fixed, is otherwise bound to put the appellants back in service.

7) We couldn't agree more with Mr. Shah. Obviously, once the Writ Court came to the conclusion that the cancellation of selection and appointment of the appellants was in violation of the principles of natural justice and bad in the eye of law, the Writ Court ought to have put them back in service and then allowed the Board to conduct de-novo enquiry associating the appellants therein and pass fresh orders. The Writ Court has also not given any reason as to why it adopted a course which was, in a manner, unique in the facts and circumstances of the case and deprived the appellants of the fruits of their litigation in which they had succeeded. We are also of the considered opinion that the respondents, after having failed to initiate and complete fresh enquiry into the selection and appointment of the appellants within the period stipulated by the Writ Court, had no other option but to take back the appellants in service.

8) Mr. Laway, learned counsel appearing for the respondents, states at bar that the respondents have now initiated an enquiry in terms of the judgment of the Writ Court and, therefore, the period granted by the Writ Court to complete the enquiry may be extended. This submission of learned counsel for the respondents cannot be accepted at this stage.

9) For the reasons stated hereinabove, these appeals are **disposed** of by providing as under:

(I) The cancellation of selection vide Government Order No.127-IND of 2019 dated 28.06.2019 and cancellation of appointment of the appellants vide order No.KVIB/168 of 2019 dated 14.10.2019, which are already declared bad by the Writ Court against which there is no appeal by the State, are quashed.

(II) The respondents are directed to take back the appellants in service on the positions they were holding on the date of passing of the orders impugned in the writ petition, within a period of one month from the date copy of this judgment is served upon the respondents.

- (III) The respondents shall be free to conduct a fresh enquiry in the matter in accordance with law associating the appellants therein and thereafter to pass appropriate orders.
- (IV) The decision with regard to period between the termination of appellants and their reinstate pursuant to this order shall depend upon the result of fresh inquiry and action, if any, taken in pursuance thereof.
- (V) It needs no clarification that fresh order, if any passed by the respondents after conducting enquiry in the manner aforesaid, shall be open to challenge by the appellants if the same goes against them.
- 10) The judgment of the Writ Court is modified to the aforesaid extent and consequently both the appeals are disposed of in the manner as aforesaid.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
17.12.2024
"Bhat Altaf-Secy"

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