

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

Reserved on 14.02.2024

Pronounced on 12.03.2024

WP(C) No.2223/2023

CM No.5144/2023

Tariq Hussain & others

.....Petitioners

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate.

versus

Bal Krishan & others

.....Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG
Mr. S.K. Anand, Advocate

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Tashi Rabstan - J

1. This petition is directed against the order dated 02.06.2023 passed by the Central Administrative Tribunal, Jammu Bench in TA No.61/3106/2020 and other connected matters, whereby the learned Tribunal, while quashing the selection and consequent appointment of writ petitioners against the post of Constable in J&K Police, has directed the official writ respondents to initiate the selection process afresh as per the J&K Non-Gazetted Recruitment Rules within a period of four weeks.

2. The facts, as gathered from the file, are that pursuant to the on-spot selection of candidates residing in Chilly Bala (Gandoh) and Bimal Nag (Kishtwar) for the post of Constable in J&K Police, the writ petitioners along with other candidates participated in the selection process from Bimal Nag area. Thereafter, 98 candidates were shown to have been selected from Chilly Bala area and 29 candidates from Bimal Nag area, however, the writ petitioners were left out from the select list, though, initially it was declared that 186 candidates were selected from Bimal Nag area including the writ petitioners.

3. The grievance of writ petitioners is that no selection process as prescribed under the Service Law was followed by the official writ respondents for making the selection of Constables. Further, a number of candidates could not appear in the selection process because there was no advertisement nor any sort of selection process was initiated by the official writ respondents as per law. Further, going by the population of Chilly Bala and Bimal Nag areas, proportionately less candidates were selected from Bimal Nag area which is discriminatory. Also, while making selection the Reservation Rules were not followed by the appointing authority.

4. The writ petitioners approached the Central Administrative Tribunal, Jammu Bench through TA No.61/3106/2020 and other connected matters, which came to be decided by the learned Tribunal vide order dated 02.06.2023 holding the selection held on 31.12.2007 to be illegal. Consequently, the learned Tribunal quashed and set aside the appointments made pursuant to the said selection process. Relevant portion of the said order is reproduced hereunder:

“In view of the discussion herein above, the impugned selection held on 31.12.2007 is held to be illegal. The appointment made in pursuance thereof are quashed and set aside. The respondents are directed as under:

- (i) To initiate holding the selection afresh as per the J&K Non-Gazetted Recruitment Rules within a period of four weeks from today.
- (ii) The private respondents, who were appointed on the basis of the said selection and are continuing till date, shall be permitted to continue until fresh selection is made.
- (iii) The selectees whose selection has been set aside, would be entitled to appear at the fresh selection pursuant to the advertisement going to be issued in view of our direction, by relaxation of age.
- (iv) In the matter of selection, the selecting authority would obviously give some preference to the experience gained by these selectees, who have been appointed and are continuing in service.
- (v) Those, who have been selected but not appointed would also be eligible to appear in the selection process going to commence pursuant to the fresh advertisement and their case would also be considered by making relaxation of age, though they cannot claim any preference since they do not possess any experience.
- (vi) The entire process of selection be concluded within six months from today. It is made clear that the selectees, whose appointments have been quashed and have been permitted to continue because of the interim order of this court, would be permitted to continue till the selection process is over pursuant to our aforesaid direction and in the event they fail to get themselves selected they will make way for the fresh selectees.”

5. Against the said order, some of the selectees have filed the present petition seeking quashment of the order on the ground that the on-spot recruitment process was given wide publicity through the medium of SHOs of the concerned police stations, even the revenue staff was put to the task of apprising the youth and that the selection process was conducted in accordance with rules.

6. This Court vide order dated 28.08.2023 stayed the operation and the effect of order/judgment passed by the learned Tribunal.

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

8. Admittedly, the on-spot recruitment drive for selection and appointment against the post of Constables in the Police Department for the candidates residing in Chilly Bala (Gandoh) and Bimal Nag (Kishtwar) areas was conducted on 31.12.2007. When formal appointment orders were not issued by the official writ respondents to the selected candidates, they approached the High Court through the medium of various writ petitions. The High Court vide interim order directed the official writ respondents to allow the selected candidates to join as Constables in J&K Police. Thus, on the strength of interim order, the official writ respondents issued the formal appointment orders in favour of selected candidates in the year 2011. Thereafter, when the Administrative Tribunals Act, 1985 was made applicable in the UT of J&K, these writ petitions were transferred to the Central Administrative Tribunal.

9. Further, though it is a fact that the on-spot recruitment drive was carried out on the verbal direction of the Government and no prior written approval from the competent authority was taken in this regard, which fact has also been admitted by the official writ respondents in letter dated 25.10.2010 addressed to the Senior Superintendent of Police, yet it is also a fact that the selected candidates have been serving the Police Department for the last more than twelve years. Further, the official writ respondents have also placed on record the statements of Mohd. Ayoob, the then Chowkidar of Chilly; Bashir Ahmed, the then Chowkidar Halqa Tendla; Mohd. Mussa, Chowkidar and Shams-ud-

Din, the then Lambardar Halqa Chinyas deposing that they were informed by the police officials regarding the on-spot recruitment drive on 31.12.2007 and on their direction they visited the area and informed the unemployed youth and asked them to participate in the special on-spot recruitment drive. Official writ respondents have also placed on record a photocopy of Signal No.OASI/07/70623-26 dated 24.12.2007 from SSP Doda to Addl. SP Kishtwar/Bhaderwah and SHO Kishtwar/Gandoh informing them to give wide publicity in their respective areas regarding special recruitment drive in J&K Police at Bimal Nag and Chilli Gandoh areas on 31.12.2007. Even, the writ petitioners before the learned Tribunal have specifically averred in paragraphs- 4 and 5 of the writ petition that the inhabitants of the area were informed through Village Chowkidars that Inspector General of Police, Senior Superintendent of Police, Doda and Superintendent of Police, Kishtwar were visiting in their areas for making on-spot selection of candidates for the post of Constables in J&K Police and on coming to know the petitioners also participated in the selection process. Therefore, one can easily infer that though the selection process was on the verbal directions of the Government, yet, as per their own version of writ petitioners before the learned Tribunal, the on-spot selection process was given wide publicity and the same was carried out in presence of senior officers of the Police Department.

10. Further, it is not the case of writ petitioners before the learned Tribunal that they were not aware of the on-spot recruitment drive, rather they have specifically admitted that they had participated in the selection process. However, when they could not make the grade, they approached the Court. Law is well settled that a candidate, who participates in the selection process, cannot question the same later on when the process is over. It is settled law that

a person who consciously takes part in the process of selection knowing fully well the procedure laid down therein, cannot, thereafter, turn around and question the method of selection and its outcome. The Apex Court also in a number of judgments has reiterated that a candidate once participated in the selection process cannot question the same after having failed to make the grade. Here also, the writ petitioners before the learned Tribunal along with other candidates voluntarily participated in the selection process and did not raise any finger before the selection process was concluded. They had taken a calculated chance in the selection process. They challenged the selection only when they failed to get favourable results. Thus, they cannot be allowed to make a U-turn at this stage when the selection has already been concluded and aver that the selection was not properly made. Therefore, as regards writ petitioners before the learned Tribunal no question arises for violation of Articles 14 and 16 of the Constitution of India.

11. Further as regards the case, titled as, Suresh Kumar vs State of Haryana, (2003) 10 SCC 276, in that case the petitioners therein had alleged malafide and fraud during the selection process and also that the selection was made without giving any due publicity either in the newspapers or without notifying the vacancies. However, in the present case, the on-spot selection of candidates residing in the particular areas was made after the local youth of those areas were apprised by the Chowkidar and Lambardar of the areas. Therefore, the said judgment is not applicable to the facts of the present case.

12. Viewed thus, we deem it proper to set aside the order dated 02.06.2023 (supra) passed by the Central Administrative Tribunal, Jammu Bench. Ordered accordingly. Connected CM, accordingly, stands disposed of.

Jammu 12.03.2024 (Anil Sanhotra)	(Puneet Gupta) Judge	(Tashi Rabstan) Judge
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Whether the order is reportable ?	Yes/No
Whether the order is speaking ?	Yes/No