

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

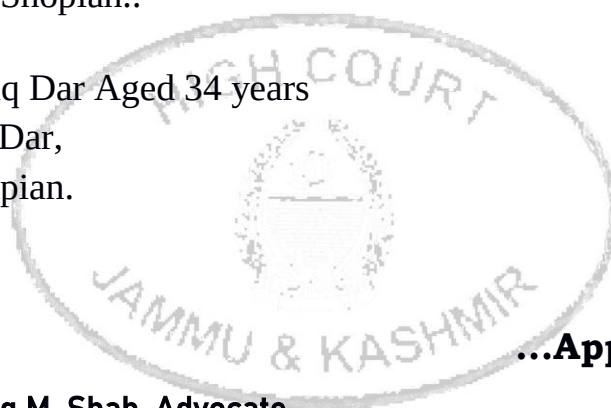
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LPA No. 223/2023

Reserved on: 01-07-2025

Pronounced on: 07.07.2025

1. Altaf Hussain Lone Aged 38 years
S/O Abdul Rehman Lone,
R/O Ratnipora, Shopian.
2. Mudasir Ahmad Naikoo Aged 32 years,
S/O Gh. Mohammad Naikoo
R/O Losedenow Shopian..
3. Mohammad Rafiq Dar Aged 34 years
S/O Gh. Ahmad Dar,
R/O Panjura Shopian.



...Appellant(S)

Through: - **Mr. Tariq M. Shah, Advocate.**

Vs.

1. Union Territory of J&K through
Financial Commissioner Health & Medical Education Department,
J&K, Civil Secretariat Jammu/ Srinagar.
2. Mission Director, National Health Mission,
J&K, Jammu/ Srinagar.
3. District Development Commissioner
(Chairman District Health Society), Shopian.
4. Chief Medical Officer (Vice Chairman, District health Society)
Shopian.

...RESPONDENT(S)

Through:- **Mr. Waseem Gul, GA.**

CORAM:

**HON’BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON’BLE MR JUSTICE SANJAY PARIHAR, JUDGE.**

JUDGMENT

Sanjeev Kumar J:

1. This Letters Patent Appeal has been filed by the appellants challenging an order and judgment dated 24-08-2023 passed by the learned Single Judge [‘the Writ Court’] whereby the writ petition, WP (C) No. 768/2020 titled Altaf Hussain Lone and ors v. UT of J&K and ors, has been dismissed.

Factual Matrix:

2. Vide notification No. CMO/Spn/NCD/19/56-58 dated 12th of June, 2019 read with No. NHRM/DMU/Spn/19/132-134, issued by the Chief Medical Officer, Shopian, (respondent No. 4 herein) applications were invited for filling up various posts on contractual hiring basis, which included the post of Programme Manager, Psychiatric Nurse and Clinical Psychologist. Following was the eligibility criteria prescribed in the advertisement notification:

Category	Requisite Qualification
Clinical Psychologist	M. Phill in Clinical Psychology or MA/MSc in Psychology/ Clinical Psychology with three months training in clinical Psychology.
Psychiatric Nurse	General Nurse + Diploma in Psychiatric Nursing Or General Nurse with 1 month training in Psychiatric Nursing.
Programme manager	MPH/MBA-HCa/ Master of Health Administration or Graduate with Public Health Certificate eg. Pg Diploma in Health Care Administration

3. After receiving application forms from the eligible candidates, including the appellants, who claimed to be eligible for the aforesaid posts, the respondent No.4 issued notice dated 03-07-2019 calling upon all the candidates, who had applied in terms of advertisement notification dated 12-06-2019, to appear in the screening test which was notified to be held on 16-07-2019. It seems that the screening test was conducted on 16-07-2019 and the select list was issued by the respondent No.4 on 31-07-2019 wherein the names of the appellants figured as selected candidates against the posts of Programme Manager, Psychiatric Nurse and Clinical Psychologist respectively.

5. The selection process was resented to by various aggrieved candidates on the ground that the selected candidates were not qualified and were not holding the qualifications as were required for the posts under the advertisement notification. The respondents started receiving complaints from different quarters with regard to the illegalities displayed during the selection process. The complaints were received by the Chairman DHS Shopian, which, subsequently, were referred to the Additional Deputy Commissioner, Shopian for conducting enquiry/preliminary enquiry into the matter. On submission of preliminary enquiry report by the Additional Deputy Commissioner, Shopian, the Chairman DHS, Shopian, constituted a Committee vide its order dated 13-09-2019 to be headed by the Additional District Development Commissioner, Shopian to conduct a fact finding enquiry into the matter. The enquiry report prepared by the Committee was

submitted to the Chairman DHS, Shopian, who accepted the report insofar as the posts of Programme Manager, Psychiatric Nurse, Clinical Psychologist and Psychiatric Social Worker were concerned and, accordingly the selection against the aforesaid posts was declared as null and void and, as a result thereof, the select list quashed.

6. Feeling aggrieved, the appellants, who had found place in the select list, challenged the scrapping of selection process in **WP(C) No.768/2020** which has been dismissed by the Writ Court in terms of the order and judgment impugned in this appeal.

7. The appellants are aggrieved of and have assailed the impugned judgment of the writ Court *inter alia* on the ground that the writ Court has failed to appreciate that the impugned order was passed without hearing the appellants, for a right had vested in the appellants with their placement in the select list, and that passing the order impugned without giving opportunity of hearing to the appellants was violative of the principles of natural justice. That the respondents, while passing the order of treating the selection process as null and void, had not assigned any valid and cogent reasons, inasmuch as, the appellants, who had participated in the selection process and made the grade for their selection, could not have been deprived of their right of appointment against the advertised posts.

8. *Per contra*, the learned counsel appearing for the respondents would submit that the writ Court has taken note of all the contentions raised by the

appellants before it and has rightly arrived at a conclusion that the decision to quash the selection with respect to four category of posts, was legally perfect.

9. Having heard learned counsel for the parties and perused the material on record, we are of the considered view that the judgment passed by the writ Court does not suffer from any legal infirmity calling for interference by us in this appeal.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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, the resort to scrapping the entire selection process 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.

15. It is submitted that the decision of the respondents 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 Chairman, DHS, Shopian. 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.

16. When we examine the case on hand in the light of legal position adumbrated hereinabove, we find that the decision of the respondents impugned before the writ Court 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:

“1. The selection committee violated all the norms of advertisement notification, notified qualification and selection criteria issued by the Health and Medical Education Department with regard to the posts of Programme Manager, Clinical Psychologists, Psychiatric Social Worker, Psychiatric Nurse, wherein all the candidates were found not eligible in the merit list and subsequently declaring them eligible and selecting them in the final selection list, is not justified and needs quashment.

2. Ignoring meritorious candidates having requisite qualification for the post of Jr. Staff Nurse, as out of the fifteen applications only two applications were submitted

with all requisite documents, thus all other thirteen applications should have been either rejected or should have been provisionally allowed. But unfortunately, only two applications out of thirteen incomplete applications, were found rejected, which poses serious doubts on the selection process and the yardstick put in place for the selection. As such the meritorious candidates namely Rifat Jan D/o Farooq Aamd Dat and Junaid Yaqoob S/o Mohd Yaqoob were left out intentionally, as like other candidates in the merit list they should have been provisionally selected like other candidates.

3. In case of FMPHW selected candidates shall be categorized as provisionally selected subject to the condition of submission of their deficient documents within a prescribed period, otherwise her candidature shall be cancelled.

4. The selection of the candidate, of MMPHW and Audiologist the candidates continue to be in the selection zone as per their eligibility criteria and qualification.”

17. From reading of the recommendations made by the enquiry Committee, it clearly transpires that the basis for cancellation of the selection process for the aforesaid four category of posts initiated vide Advertisement Notification dated 12-06-2019, were the irregularities pointed out in the enquiry report. The enquiry Committee found the following irregularities in the selection process, namely:

- (i) That the selection committee has violated all the norms of advertisement notification, notified qualification and*

selection criteria issued by the Health and Medical Education Department with regard to the posts of Programme Manager, Clinical Psychologists, Psychiatric Social Worker, Psychiatric Nurse, wherein all the candidates were found not eligible in the merit list but subsequently they were declared eligible and were selected in the final select list;

- (ii) *That while ignoring meritorious candidates having requisite qualification for the post of Jr. Staff Nurse, two candidates were intentionally left out and their application forms were rejected despite the fact that they were having the requisite qualification. On the other hand, thirteen incomplete applications were accepted which poses serious doubts on the selection process and the yardstick put in place for the selection.*

18. From the reading of the report of the enquiry Committee, pointing out various irregularities in the selection process, it is abundantly clear that there were irregularities and illegalities committed by the selection Committee by selecting the candidates who were not qualified as per the advertisement notification, which illegality goes to the root of the selection process.

19. Viewed from any angle, the material before the respondents was sufficient to take a *bona fide* decision to scrape the 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.

20. 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 selection process. The respondents 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 the recommendations made by the Enquiry Committee and taking over all view of the matter, an informed decision was taken by the respondents to scrape the selection process.

21. For the foregoing reasons, we find no merit in this appeal and the same is, accordingly, dismissed.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

07.07.2025

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes