



2024:DHC:1030



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 06.02.2024
Judgment pronounced on : 12.02.2024

+ W.P.(C) 7429/2018, CM APPL. 28420/2018, CM APPL. 3773/2023
& CM APPL. 45730/2023

SANJAY SINGH YADAV Petitioner

versus

AIRPORT AUTHORITY OF INDIA AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Pooja Dhar, and Mr. Pratul Pratap Singh, Advocates

For the Respondents : Mr. Digvijay Rai, Mrs. Chetna Rai, Mr. Archit Mishra and Mr. Yatinder Choudhary, Advocates for R-1
Ms. Anjana Gosain and Mr. Nippun Sharma, Advocates for R-2/UOI

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. This is a writ petition under Article 226 of the Constitution of India, 1950 seeking, *inter alia*, the following reliefs:-

“(a) Declare that the refusal of the Respondents to to consider Petitioner's candidature for physical measurement and endurance test

Signature Not Verified

Digitally Signed
By: VINOD KUMAR
Signing Date: 13.02.2024
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for the post of Junior Executive (Fire Services) under 25% Departmental Examination Quota, is arbitrary and violates the fundamental rights of the Petitioner as guaranteed under Articles 14, 19 and 21 of the Constitution of India;

(b) Issue a writ of mandamus or any other appropriate writ order or direction commanding the Respondents to consider the Petitioner's candidature for physical measurement and endurance test for the post of Junior Executive (Fire Services) under 25% Departmental Examination Quota;

(c) Issue a writ of mandamus or any other appropriate writ order or direction commanding the Respondents to appoint the Petitioner at the post of Junior Executive (Fire Services) under 25% Departmental Examination Quota subject to the outcome of physical measurement and endurance test

(d) Issue a writ of certiorari or any other appropriate writ order or direction declaring the emails dated 27.6.2018, 4.7.2018 and 12.7.2018 sent by Respondent No.1 to the Petitioner to be illegal, arbitrary and declare the same null and Void;

(e) Pass such other or further orders as this Hon'ble Court may deem fit."

2. The facts as culled out from the petition, shorn of all unnecessary details and germane and relevant to decide the dispute are as under:-

- (i) In 2002, the Petitioner joined the Respondent Airport Authority of India in the post of Assistant, Fire Service.
- (ii) The Petitioner got a job offer for appointment as Fire Officer in Civil Aviation Authority, State of Qatar on 11.12.2016 and a revised offer on 19.04.2017. This was a Government organization recognized by ICAO, and the Petitioner had applied for the same after duly taking permission from the respondent. Thereafter, on 01.05.2017, the Petitioner



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submitted a letter citing the above appointment and sought to be relieved from the post and requested the respondent/AAI for grant of lien.

- (iii) The Manager, HR, Northern Region on 29.05.2017, wrote a letter to Executive Director, HR for approval of Competent Authority for retention of lien of the Petitioner.
- (iv) On 29.06.2017, the respondent Airport Authority of India invited applications for the post of Junior Executive (Fire Services) under the 25% Departmental Examination Quota. The Petitioner filed his application in terms of the advertisement.
- (v) On 31.07.2017, the Petitioner sent a letter to the respondent Airport Authority seeking grant of 'lien' for a period of three years.
- (vi) On 23.08.2017, the respondent authority conveyed the in principle approval of the Competent Authority for grant of 'lien' for three years to the Petitioner.
- (vii) Further, on 13.11.2017, the respondent authority accepted the Technical Resignation letter of the Petitioner and relieved him from duty w.e.f. 02.11.2017. The letter accepting the resignation also stated that the petitioner shall remain on 'lien' w.e.f. 02.11.2017 for a period of 3 years.
- (viii) The Airport Authority of India, Department of Human Resources, on 11.01.2018, issued the list of eligible candidates



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to appear in the online examination for the post of Junior Executive (Fire Services) under 25% Departmental Examination Quota. The list was issued pursuant to the advertisement dated 29.06.2017. The Petitioner's name was at Serial No.1 of the list of eligible candidates.

- (ix) The Petitioner appeared for the Departmental Examination conducted on 26.03.2018, pursuant to the advertisement dated 29.06.2017.
- (x) On 24.05.2018, the Recruitment Cell, Directorate of HRM, Airports Authority of India declared the results of the Departmental Examination for the post of Junior Executive (Fire Services). The number of vacancies circulated was stated to be 6 and the Petitioner was shown provisionally shortlisted for Physical Measurement and Endurance Test.
- (xi) On 27.06.2018, the Recruitment Cell, Airport Authority of India *vide* an email to the petitioner stated that the petitioner's candidature for the post of Junior Executive (Fire Services) under the Departmental Quota is not being considered for further selection process as he had resigned from the services of the Airport Authority of India and that he was presently not on its payrolls.
- (xii) On 27.06.2018 itself, the Petitioner sent a request letter *vide* email to the Human Resources Cell of the respondent Airport Authority of India marking a copy to the concerned officers, to



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consider him in the Physical Endurance Test, which was to be conducted on 12.07.2018. In the email, the Petitioner stated that he was willing to quit his present job in case he was selected for the said post.

- (xiii) The Petitioner sent another email dated 28.06.2018 to the respondent Airport Authority requesting it to consider him in the Physical Endurance Test. The Petitioner, apart from pointing out that he had qualified in the online written exam, also requested the respondent authority to consider his 17 years working experience with the respondent authority and his other qualifications.
- (xiv) On 04.07.2018, the Recruitment Cell, Airport Authority of India responded to the email dated 28.06.2018 sent by the Petitioner stating, *inter alia*, that “*the lien period shall not be considered for seniority in upcoming promotions/placement*”.
- (xv) On 06.07.2018, the Petitioner sent an email to the respondent authority explaining that he was not claiming any seniority promotions or placements but was requesting to be considered in Departmental Competitive Examination for the post of Junior Executive (Fire Services).
- (xvi) Thereafter, on 10.07.2018, the Petitioner met the Executive Director (HR) and the General Manager, Airport Authority of India and explained his position. Further, on the same day, the Petitioner gave a representation to the Executive Director



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(HR), Airport Authority of India stating that he could rejoin Airport Authority of India in two months' time as he was duty bound to give 60 days' notice period to the Civil Aviation Authority of Qatar State as per the contract. The Petitioner was asked to give the same in writing for being entitled to be considered for the Physical Endurance Test.

(xvii) On 12.07.2018, the Recruitment Cell, Airport Authority of India sent an email to the Petitioner refusing to consider his representation to grant two months' time to re-join Airport Authority of India so that he can appear for the Physical Endurance Test. Impugning the same, the petitioner filed the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

3. Ms. Pooja Dhar appearing on behalf of the petitioner submits that it is the case of the petitioner that the petitioner, while in service of the respondent no.1- Airport Authority of India, by virtue of the advertisement dated 29.06.2017 issued by the respondent authority in respect of the Departmental Examination for the post of Junior Executive (Fire Services) under 25% Departmental Examination Quota, had applied for the same on 11.07.2017. She submits that it was only subsequently that the petitioner had joined the service of another institution for which the technical resignation was accepted in the interregnum.
4. Ms. Dhar submits that alongwith the order accepting the technical resignation on 18.11.2017, the respondent Airport Authority of India also



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agreed to a grant of three years' lien period from the said date. Learned counsel submits that while the petitioner was serving in another institution at the State of Qatar, the respondent no.1/AAI on 11.01.2018 had called the petitioner for participating in the Departmental Examination for the post of Junior Executive (Fire Services).

5. She submits that the petitioner had appeared in the written examination on 26.03.2018 for which an admit card was issued after verifying the credentials of the petitioner, and it is thereafter, when the results for the same were declared on 24.05.2018 as per which the petitioner stood first amongst all the candidates in the said examination, that the respondent no.1 *vide* the impugned emails cancelled the candidature of the petitioner. Learned counsel submits that by virtue of the impugned letter dated 27.06.2018, the respondent authority had rejected the candidature of the petitioner on the ground that the petitioner was not on the payroll of Airport Authority of India.

6. Learned counsel refers to the Recruitment and Promotion Guidelines dated 08.06.2006, specifically to Regulation 2 (j) wherein the term 'Departmental Candidates' has been defined, and submits that the aforesaid provision clearly includes the officials who have been appointed on regular basis as well as those who hold lien on any permanent post of the authority within its meaning. On this, she submits that the petitioner, though had technically resigned, but was still considered a Departmental Candidate, in lieu of the fact that the petitioner was granted a lien for a period of 3 years by the respondent authority. Ms. Dhar strenuously contends that Regulation



2 (j) of the Guidelines suffices the requirement and leaves no room for the respondent to raise an objection as to the eligibility of the petitioner to participate in the Departmental Examination for the post of Junior Executive (Fire Services) under the 25% Departmental Examination Quota.

7. Learned counsel also submits that the Airport Authority of India (General Conditions of Service & Remuneration of Employees) Regulations, 2003 also nowhere bar any person from taking part in Departmental Examination while being on lien.

8. Ms. Dhar next submits that on 04.10.2018, when the respondent no.1 declared results of the said Departmental Examination for the concerned post, it kept one seat vacant. However, subsequently on its own volition filled the seat and did not even inform the petitioner or the Court. It was only much later on 02.02.2023 that the respondent no.1 filed a reply affidavit informing that no vacancy is available for the said post. She submits that in such circumstances, it is an established law that the department must create supernumerary post for the petitioner.

9. Ms. Dhar relies upon the judgement of the High Court of Patna in *Ashwani Kumar Vs. Airport Authority of India & Ors.* reported in 2008 SCC OnLine Pat 719.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 1:-

10. *Per contra*, Mr. Digvijay Rai, learned counsel appearing for respondent no.1- Airport Authority of India submits that the impugned letter is clear in its purport, in that, the petitioner, admittedly not being on the payroll of the Airport Authority of India during the period after the



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respondent no.1 had accepted his technical resignation, could not be considered as a Departmental Candidate and as such, was neither entitled nor was eligible to give the Departmental Examination for the post of Junior Executive (Fire Services) under the 25% Departmental Quota.

11. Learned counsel submits that a person who is on lien cannot be treated as a Departmental Candidate for the purposes of appearing in the Departmental Examination, though the person may have a right of repatriation, etc. as contained in the regulations, particularly, the Regulations which are placed on record by Ms. Dhar. Other than that, according to Mr. Rai, the petitioner cannot be considered as a Departmental Candidate for the purposes of Departmental Examination for the post of Junior Executive (Fire Services).

12. Mr. Rai invites attention of this Court to the email of the petitioner dated 04.07.2018, placed at Page 44, wherein the petitioner had given an undertaking that if he is selected for the post of Junior Executive (Fire Services), he will break the job contract with CAA State of Qatar.

13. Learned counsel submits that when the matter was listed before this Court on 23.07.2018, the counsel for the Petitioner was directed to seek instructions as to whether the petitioner was willing to join on his post with respondent/AAI within a week and for this purpose alone, the matter had been adjourned for 02.08.2018. Mr. Rai submits that one post was kept unfilled in view of the pendency of the present writ petition. It is further submitted that when the matter was next listed on 02.08.2018, the counsel



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for the Petitioner sought an adjournment on the ground that she could not get instructions from her client as the Petitioner was in Qatar.

14. Mr. Rai submits that a perusal of the subsequent order sheets would show that the Petitioner chose not to come back to India to join the Respondent authority during the relevant period, despite the liberty granted *vide* order dated 23.07.2018.

15. Learned counsel submits that the petitioner had ample time to approach the respondent no.1/AAI for rejoining but the same was not done. He submits that since there was no interim directions by this Court to keep one post vacant, and in view of the fact that the petitioner had not rejoined the respondent no.1/AAI and also that the vacant posts could not be kept pending any further, the next candidate in merit was given offer of appointment and hence, the panel was finally closed on 05.09.2019.

16. Mr. Rai submits that an affidavit has already been placed on record by virtue of order dated 16.08.2023 that one vacancy which was available then, has already been filled up by another candidate and as such as, on 05.09.2019, all the posts are filled up and there is no post vacant and available for Junior Executive (Fire Services).

REBUTTAL OF THE PETITIONER:-

17. Learned counsel refers to the employment contract between the petitioner and Civil Aviation Authority, Qatar, specifically to Article 2 to submit that the petitioner had to give a 60 days' notice period prior to the date of intended termination and it was for this reason that the petitioner could not immediately rejoin the services of the respondent no.1/AAI.



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18. Ms. Dhar concludes her arguments by submitting that the petitioner had clear intentions of rejoining the service of respondent no.1 and was diligently pursuing the same by making requests to the respondent authority through emails to let him participate in the selection process of the Departmental Examination. It is submitted that in any case, the petitioner being on lien was eligible as a Departmental Candidate to participate in the Departmental Examination for the post of Junior Executive (Fire Services) under the 25% Departmental quota.

19. She prays that the petition be allowed and the candidature of the petitioner be considered for the Physical Measurement and Endurance Test for the post of Junior Executive (Fire Services).

ANALYSIS AND CONCLUSION:-

20. This Court has heard the arguments addressed by learned counsel for the parties, scrutinized the documents on record and also considered the judgments relied upon by them.

21. Having heard arguments of Ms. Pooja Dhar, learned counsel for the petitioner as also Mr. Digvijay Rai, learned counsel for the respondents, this Court is of the considered opinion that the entire issue is in respect of as to whether the petitioner, who had tendered a Technical Resignation which was accepted by Airport Authority of India, could be considered as Departmental Candidate for the purpose of being eligible to appear for Departmental Examination under the 25% Departmental Quota for the post of Junior Executive (Fire Services), while actually being in regular service of another institution.



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22. To the above issue, Ms. Dhar had handed over the Bench the letter dated 08.06.2006 of the Airports Authority of India forwarding the Recruitment and Promotion Regulations of the respondents called as the Airports Authority of India (Recruitment and Promotions) Guidelines, 2005 (hereinafter referred to as the “Guidelines”). She submits that Clause (j) of Regulation 2 defines “*Departmental Candidates*” to mean officials, who have been appointed on regular basis and who hold posts or hold liens on any permanent post of the authority. She submits that it is not disputed that the petitioner was on a three year lien, as granted by the respondent *vide* the letter dated 18.11.2017. She submits that the petitioner was also called for participating in the Junior Executive (Fire Services) Examination on 11.01.2018; petitioner appeared for such examinations on 26.03.2018; results were declared on 24.05.2018 and petitioner topped the list. It was only by the letter dated 27.06.2018 that the respondent no.1 had rejected the candidature of the petitioner on the ground that he was not in the payroll of the respondent authority.

23. Learned counsel submits that the issue as framed by this Court stands satisfied by the definition of “*Departmental Candidates*” as appearing in the aforesaid Guidelines. Learned counsel had also referred to letter dated 18.11.2017 whereby the petitioner was granted lien for a period of three years w.e.f. 02.11.2017, subject to the respondent not being liable for payment toward leave encashment, provident fund, pension contribution etc., and the petitioner not being considered for seniority in his



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upcoming promotions/ placements. She submits that the same is in consonance with Clause 13.2 of the Regulations.

24. In support of her aforesaid arguments, Ms. Dhar relies upon the judgment of *Ashwani Kumar (supra)* in which the High Court of Judicature in Patna in similar circumstances held that the petitioner in that case was entitled to come back and re-join the post which he left and cannot be relegated to the bottom of the list on his re-joining. As a consequence, the High Court directed the respondent to restore his original seniority. She also relies upon the judgment of the Supreme Court in *Union of India and others vs. E. Krishna Rao and Others* reported in (2018) 18 SCC 107 and submits that in the aforesaid case too, the Supreme Court considered the definition of Departmental Candidates as appearing in the Rules pertaining to the case before it and had held that the respondents therein were indeed Departmental Candidates and granted all the subsequent benefits. Learned counsel submits that the word “lien” is common to the definition of Departmental Candidates appearing in the case before the Supreme Court as also in the Regulations of the respondent herein. As such, the petitioner squarely falls within the definition of Departmental Candidates and his candidature could not have been cancelled on untenable grounds that the petitioner was on payroll of another institution at the relevant period.

25. In answer to the aforesaid submissions on the basis of definition of Departmental Candidates in the Guidelines of the respondents, Mr. Rai, learned counsel for the respondent draws attention of this Court to the



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Circular inviting employees for Departmental Examination, to submit that the upper age limit of 50 years as on 28.07.2017 was stipulated. On that, he submits that the petitioner would be over age as on today. That apart, he brings attention of this Court to the additional affidavit filed by the respondent on 05.09.2023 to submit that since the petitioner did not avail of the opportunity granted by this Court *vide* order dated 23.07.2018 to rejoin the service of the respondent and participate in the PET, the Department was constrained to proceed with filling up of the said vacant post. He submits that no such vacancy is available now in respect of the Departmental Examination Quota in terms of the Circular dated 29.06.2017. According to Mr. Rai, even if this Court would agree with the submissions of the petitioner, keeping in view his conduct, no discretionary relief as sought, can be granted, particularly in view of no such vacancy being available.

26. He further submitted that post the order dated 23.07.2018, the counsel for the respondent had sent emails to the Department apprising it of the directions in the order dated 23.07.2018 as also 02.08.2018. Despite the fact that the petitioner was aware of the last date of PET being 12.08.2018, no steps were taken by the petitioner to rejoin the services of the respondent, despite assurances given to the contrary by the petitioner. Mr. Rai submits that apart from the aforesaid orders, no steps to rejoin the respondent authority were taken by the petitioner, either on 09.08.2018 or on 27.09.2018 when the matter was listed before this Court. In spite of this, the respondent waited till September, 2019 to fill up the posts since the



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select list could be maintained only for a period of one year from the date it is drawn up. Failing which, the respondent would have had to unnecessarily undertake re-initiation of the entire process, which would have not only consumed time but colossal public funds which would not be justified. He also brings attention of this Court to the fact that this Court had not granted any stay on the recruitment process during the pendency of the present petition. On that basis, Mr. Rai submits that the petitioner is not entitled to any relief sought in the writ petition.

27. The issue which was framed by this Court in respect of whether the petitioner could be considered as a Departmental Candidate despite being in regular service in another institution while holding lien on his post with the respondent authority is concerned, the Guidelines categorically stipulate that an official who holds lien on any permanent post of the authority would fall within the definition of a Departmental Candidate. It would be apposite to extract the definition of “*Departmental Candidates*” as contained in the Guidelines, which is as under:-

“Departmental Candidates” means the officials who have been appointed on regular basis and who hold posts or hold liens on any permanent post of the Authority.”

It is trite that words in a statute have to be read in their plain and simple language. The definition contained in Regulation 2(j) clearly stipulates that any person holding lien on any permanent post of the respondent would be considered as a Departmental Candidate. It brooks no



ambiguity. Nothing to the contrary was shown to this Court nor is any document rescinding or overriding the Guidelines placed on record. To the mind of this Court, the Guidelines have to be read in conjunction and harmoniously with the Airport Authority of India (General Conditions of Service & Remuneration of Employees) Regulations, 2003. When so read, it can be safely inferred that the petitioner would fall within the definition of “*Departmental Candidate*”. On that count, the impugned rejection dated 27.06.2018 cancelling the candidature on the ground that the petitioner was at the relevant time not on the payroll of the respondent, cannot withstand judicial scrutiny and has to be, consequentially, set aside.

28. That having been said, it is necessary for this Court to see in the facts arising in the present case, as to whether the petitioner is entitled for the relief as sought.

29. It is pertinent to observe that neither was there any stay of the impugned order, nor any restraint in the selection process conducted in pursuance of the Departmental Examination. Also, no seat was directed to be kept unfilled for the petitioner by this Court at anytime during the pendency of the present writ petition. In this context, the order dated 23.07.2018 passed by this Court gathers relevance, the same is extracted hereunder :-

“Notice.

Notice accepted by counsel for the respondents.

Counter affidavit be filed within four weeks and rejoinder thereto, if any, be filed within two weeks thereafter. Advance copies be supplied to the other side.

List on 16th October, 2018 for arguments.



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At this stage, counsel for the petitioner submits that the petitioner is ready and willing to join the respondent department and wishes to seek instructions from the petitioner. Let her do so. Let the matter be fixed on 2nd August, 2018 for this limited purpose only.”

It would also be relevant to extract the orders dated 02.08.2018, 09.08.2018 and 27.09.2018, which are as under:-

Order dated 02.08.2018

“On the request of the petitioner, list on 09.08.2018.”

Order dated 09.08.2018

“Adjournment slip has been moved on behalf of Petitioner. List on 27th September, 2018.”

Order dated 27.09.2018

“Mr. Anand Dag, appearing for the petitioner, seeks and is granted four weeks to file rejoinder. List before the Registrar (Writ) for completion of pleadings on 19th December, 2018.”

30. It is apparent from the perusal of the aforesaid orders that this Court had granted an opportunity to the petitioner to rejoin the services of the respondent on 23.07.2018. The counsel for the petitioner was only to inform the Court as to when the petitioner would join the respondent. Despite the direction, the petitioner neither joined nor passed any instructions to his counsel, as is clear from the subsequent orders passed by this Court. The submission of Ms. Dhar that since the petitioner was under a contract with the institution at Qatar, he could not have left the same without giving sixty days notice to the employer as per the terms of the contract does not appeal to this Court. This is for the reason that on no



occasion after 23.07.2018, did the petitioner ever file any application to seek extension of time for rejoining the services of the respondent nor even made an oral mention of the same, which is intriguing to say the least. In case the petitioner was earnest in his efforts to rejoin the services of the respondent, he would have undertaken remedial steps to protect his interests. There is nothing on record, nor could Ms. Dhar point out to any steps taken by the petitioner in that regard.

31. In this context, it would be relevant to also consider the averments in the additional affidavit filed by the respondent no.1 on 05.09.2023. The relevant paragraphs are extracted hereunder :-

“5.I state that when the matter was listed before the Hon'ble Court on 23.07.2018, the counsel for the Respondent No.1 informed the Department that this Hon'ble Court directed the Counsel for the Petitioner to seek instructions whether he is willing to join on his post in AAI within a week and for this purpose alone, the matter has been adjourned for 02.08.2018. When the matter was listed on 02.08.2018, the counsel for the Respondent No.1 informed AAI that the counsel for the Petitioner sought an adjournment on the ground that she could not get instructions from her client as Petitioner was presently in Qatar. Copies of the emails dated 23.07.2018 and 02.08.2018 are annexed herewith and marked as ANNEXURE - R- 1/1 (Colly).

6. I state that, pursuant to Order dated 23.07.2018, when the counsel for the Petitioner sought time to seek instructions as to whether the Petitioner is willing to come back and join organization of Respondent No. 1, one post was kept pending. However, a perusal of the order sheets show that the Petitioner chose not to come back to India and not to join Respondent organization during the relevant period.

7. I state that on 04.10.2018, the roll numbers of 05 candidates who qualified Physical Measurement and Endurance Test



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results of the examination for JE (Fire Service) was declared and one post was unfilled in view of the pendency of the present Writ Petition.

8. I state that since there was no interim directions by this Hon'ble Court to keep one post vacant, and in view of the fact that the Petitioner had not rejoined the Respondent No .1 / AAI and further that the vacant posts could not be kept vacant any further, the next candidate in merit was given offer of appointment and hence the panel was closed on 05.09.2019 and there is no vacancy available for the post of JE (Fire Service) in furtherance of the Circular No. A12026/01/2016-Rectt.Cell(Pt.IV) dated 29.06.2017.”

Apart from the aforesaid statement that the panel was closed way back on 05.09.2019 and that there is no vacancy available for the post of JE (Fire Service), the submission of learned counsel for the respondent no.1 that the respondent could not have waited till eternity for the petitioner to rejoin the services of the respondent coupled with the fact that the final select list would have expired in the month of September, 2019, appeals to this Court. In that, it cannot be expected of the respondent to wait for the final select panel to lapse in the month of September, 2019 and re-initiate the entire process involving further time and colossal amounts of public money. A litigant, who is lethargic and not vigilant to avail the benefit of the directions passed by this Court cannot be granted any discretionary relief. More so, when the petitioner let the selection procedure reach its logical conclusion without a demur.

32. Apart from drawing attention of this Court to Article 2 of the Contract executed between the petitioner and the institution at Qatar regarding sixty days notice period for termination of such contract, Ms.



Dhar had no answer in respect of the aforesaid facts, which obtain from the record of this Court.

33. This appears to be a classic case of what one would call “*operation successful, patient dead*”.

34. In a last ditch effort, Ms. Dhar submits that this Court can issue Mandamus directing the respondent to create a supernumerary post in view of no vacancy being available against the Departmental Examination under the circular dated 29.06.2017. This submission is noted to be rejected. This is for the reason that it is only under exceptional and compelling circumstances, that the Constitutional Courts may direct issuance of such Mandamus. The present case is not one where such discretion is to be exercised, particularly, in view of the conduct of the petitioner, as noted above. This Court is fortified in its view by the judgement of the Supreme Court in ***Himachal Road Transport corporation v. Dinesh Kumar and Another*** reported in (1996) SCC 4 560. The relevant para of the same is extracted hereunder:

“10. We are of the view that the Himachal Pradesh Administrative Tribunal acted illegally and without jurisdiction in passing the orders dated 27-3-1995 and 6-3-1995 and in directing that the respondents be appointed in the regular clerical posts forthwith. In the absence of a vacancy, it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the



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availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post. We are of the view that directions given by the Administrative Tribunal, in these two appeals, are totally unauthorised and illegal. We are, therefore, constrained to set aside the orders appealed against. We hereby do so and allow the appeals. There shall be no order as to costs."

35. In that view of the matter, though the impugned letters dated 27.06.2018, 04.07.2018 and 12.07.2018 is found to be untenable in law, however, on facts, no relief can be directed in favor of the petitioner.

36. The petition along with pending application(s) is disposed of in the above terms with no order as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 12, 2024

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