

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU

Pronounced on: This 15th day of April 2021

Hon'ble Mr. Rakesh Sagar Jain, Member – J

Hon'ble Mr. Anand Mathur, Member – A



T.A. No. 62/5463/2020

1. Rayees Ahmad Dar, Age 40 years, S/o Habib Ullah Dar, R/o Jamia Masjid, baramulla.
2. Rumana Gulzar Mattoo, Age 38 years, D/o Ghulam Muhammad Mattoo, R/o House No. 22 Kanitar, Naseem Abad, Saderbal, Hazratbal, Sringar.

By Advocate: Ms. Moksha Kazmi

v/s

1. J&K State Public Service Commission, through its Chairman Allochi Bagh, Solina, Srinagar.
2. Rashpal Singh, Age 39 years, S/o Kulwant Singh, R/o Master Hakim Singh Colony, Talab Tillo, Camp Gole Gujral, Jammu.
3. Javid Gani Dar, Age 40 years, S/o Abdul Gani Dar, R/o Bogund, P.O. Danow Bogund, Tehsil & District Kulgam, Kashmir.

By Advocates: M/s Azhar-ul-Amin/Parag Sharma/Bhat Fayaz Ahmad

O R D E R

Per: Rakesh Sagar Jain Member- J

1. The present T.A. has been filed by applicants Rayees Ahmad Dar and Rumana Gulzar Mattoo seeking the following reliefs:-

“(i) It is accordingly prayed that by an appropriate writ, direction or order including a writ in the nature of certiorari communication Nos. PSC/DR/AP/Statistics/2016 dated 12.05.2018, placed on record as Annexure-A-I, be quashed and by a writ of

prohibition Respondents be restrained from proceeding against the petitioners in respect of the subject matter of the impugned communications.



- (ii) That by an appropriate writ, direction or order, it be declared that unamended Rule 51, as was in vogue at the time of selection of the Petitioners to the extent it provided that “the publication comprises research material of M.Phil (dissertation) and PhD (thesis) shall not count for grant of weightage”, is unconstitutional, irrational, arbitrary and violative of the Article 14 & 16 of the Constitution.
- (iii) Any other appropriate writ, direction or order as the Hon’ble Court may deem fit in the facts and circumstances of the case be also passed in favour of the petitioners and against the respondent.”

2. The case of the applicants is that on conclusion of selection process initiated by the J&K Public Service Commission (Respondent No. 1) through notification dated 29.05.2014, the applicant no. 1 and 2 were appointed as Assistant Professors vide appointment order dated 27.04.2017 and 03.01.2017 respectively. Two notices bearing no. PSC/DR/A/Statistics/2016 dated 12.05.2018 issued by the P.S.C. (respondent No. 1) to the applicants are the subject matter of the present litigation. The impugned notices read as under:-

“JAMMU AND KASHMIR PUBLIC SERVICE COMMISSION  
SOLINA, SRINAGAR

No. PSC/DR/AP/Statistics/2016

Dated: 12.05.2018

Subject: Scrutiny of Publications submitted by the candidates during their interviews held on 19.12.2016 in the discipline of Statistics for the posts of Assistant Professor in Higher Department – regarding complaint.

May please refer to the above mentioned subject and it is to inform that you are require to present yourself along with the requisite Experience/Publications/Ph.D. thesis/M. Phil dissertation presented by you before the Board at the time of interview held on 19.12.2016. The said opportunity is being provided to you to defend your case against the complaint with regard to discrepancies made during the selection of candidates by the Interview Board. These discrepancies have been pointed out by the complainant namely Sh. Rashpal Singh in his representation and have been proved by the Committee constituted by the Commission and further supported by the panel of Experts.

Before any action is taken against you for misleading the Commission/Interview Board by presenting wrong documentation/publications for award of marks, your presence in the Commission on 17.05.2018 at 3.00 P.M. is urgently required for rebutting the findings supported by relevant records. The copies of complaint, report of the committee of the Commission and panel of Experts is enclosed as Annexure 'A', 'B' and 'C'. In case of your failure to attend the Commission's office on the scheduled date and time, it shall be presumed that you have nothing to say in your defence.

(Sunita Anand) KAS  
Secretary,  
J&K Public Service Commission"





3. It is the case of applicants that they attended the office of Secretary, PSC on 17.05.2018 and requested him to defer the proceeding since identical case is pending before the Hon'ble High Court and two parallel proceedings cannot be initiated in respect of identical controversy but the Secretary expressed his inability to do so and informed the applicants that the PSC will be making recommendations to the Government adversely to the interest of the applicants. Applicants have challenged the impugned notices on the following grounds:-

- 1) That in the impugned notices, the applicants are required to defend themselves against the complaint with regard to discrepancies during the selection of the applicants by the Interview Board and therefore, it is apparent that it is the Interview Board which allegedly seems to have made some kind of discrepancy and not the applicants. The P.S.C. has fallen in line with the complainant Rashpal Singh to constitute a Committee and accusing the applicants of misleading the Commission/Interview Board by presenting wrong documents/publications for award of marks and that it was these documents which were evaluated by the P.S.C. and nothing was done by the applicants to mislead the P.S.C.
- 2) Applicants have referred to a Writ Petition filed by Rashpal Singh. It be noted that the Writ Petition being SWP No. 1860/2017 was transferred to this Tribunal and renumbered as T.A. No. 62/5464/2020 and stands dismissed as withdrawn vide order dated 11.01.2021.



- 3) The applicants were appointed in the year 2017 and therefore, their appointment cannot under any circumstances be questioned and that their selection was made according to rules and procedures. That the evaluation was done by the Committee and the experts and with which evaluation, applicants had no role to play since the evaluation was done solely by the Interview Committee aided by Experts.
- 4) That the inquiry being conducted by the P.S.C. is without jurisdiction since after the appointment of the applicants, the Commission has become functus officio and therefore, the Commission has no jurisdiction or power to hold any inquiry with regard selection process which stands concluded. The power to deal with the appointments exclusively vests in the appointing authority and not in the recommending authority. Whether the appointment of the applicants is right or wrong can no longer can be an issue before the Commission.

4. In the counter affidavit filed by the P.S.C. it has been averred that one Rashpal Singh had represented to the Commission that the applicants had submitted publications for award of marks under special attributes before the Interview Board but these were part of their research papers during their Ph.D course and therefore, they have been wrongly awarded points. To examine the veracity of this representation, the concerned experts on being summoned gave the opinion that the requisite documents filed by applicants could not be counted for marks under special attributes. In these circumstances, P.S.C. before taking further action issued notices to the

applicants to provide them an opportunity of being heard by way of impugned notice.



5. It is the specific stand of respondent – P.S.C. in para 9 of their counter affidavit that “the matter is under consideration of the authorities and no final decision of the case has been taken as yet. In view of interim direction passed by this Hon’ble Court in MP No. 1/2018. In order to accomplish the findings of the experts/committee and for taking final decision in this regard by the Public Service Commission, the writ petition requires to be dismissed and interim order needs be vacated.”

6. Objections were filed by respondent no. 2 and 3 prior to the amended petition. Mr. Parag Sharma, advocate for said respondents had submitted that the said objections be treated as counter affidavit to the amended petition. In their counter affidavit, respondent No. 2 and 3 aver that applicants have no right to challenge the impugned notices since the notices inform the applicants that before any action is taken against them for misleading the Commission/Interview Board by presenting wrong documentation/publications for award of marks, their presence in the Commission on 17.05.2018 at 3.00 P.M. is required for rebutting the findings supported by relevant records.

7. We have heard and considered the arguments of the learned counsel for the parties and gone through the material on record.



8. Applicants have also challenged the constitutionality of Rule 51 J&K PSC (Business and Procedure) Rules 1980, as it stood during the selection process of the applicants. Rule 51 reads as: “The publication comprises research material of M.Phil (dissertation) and PhD (thesis) shall not count for grant of weightage.” Applicants have challenged Rule 51 on the ground below:

“7. That apart from this, the Petitioners state that after few months, the Commission vide notification no. PSC-DR-S/2017 dated 24.04.2017 again amended Rule 51, the non-consideration of research material used for publication during the course of M. Phil/PhD has been deleted, meaning thereby that in the selection process after 24.04.2017, no candidate can suffer disqualification in the matter of assessment of his merit on account of publication, should such publication constitute research material of M. Phil or PhD. Copy of the notification dated 24.04.2017 is placed on record as Annexure X. Having regard to above, the Petitioners submit that consideration or non-consideration of the published material depending upon its correction during M.Phil or PhD is a norm which the Commission itself has not considered maintainable. The very fact Commission has deleted and amended Rule 51 in April, 2017 is indicative of the fact that the Commission has considered publication of the research material as significant and important for purposes of assessment of a candidate for the post of Assistant Professor.

The Petitioners further submit that the experts who had an occasion to examine the material which were produced by the Petitioners, upon assessment of the produced material awarded marks



to the Petitioners. On the basis of the marks so awarded and upon determination of overall merit, the Petitions were subsequently appointed by the Government. Prior to the appointment, as also submitted, Petitioners were already working as 10+2 Lecturers (confirmed by PSC) and they upon their appointment had to resign from the post. By this time, the Petitioners have putted more than two (02) years. Against the same, experts have differently opined which has an effect of downgrading the assessment of the Petitioners. In these circumstances, the Petitioners submit that the Respondents are stopped under law and the conduct of Respondents is violative of the legitimate expectations of the Petitioners.

The Petitioners further submit that the norm prescribed by the Commission for not considering the research material gathered by a candidate during his M. Phill or PhD course is patently arbitrary and unreasonable. The same Commission after few months accepts that such material needs to be considered while assessing the material of a candidate. The Petitioners, therefore, question the constitutional validity of the norm prescribed in the un-amended Rule 51 relating to non consideration of research material, if obtained during research, for purposes of assessment of material by a candidate. The Petitioners submit that this occasion had not arisen before. The issue has cropped up only from the stand now taken by the Respondents before the Hon'ble Court. The issue directly affects the Petitioners and therefore they are entitled under law to question rationality and arbitrariness of the said norm as was contained in un-amended Rule 51 in vogue at the time of selection of the Petitioners. In actuality also, the said norm has

not been observed by the experts not only in the subject of Petitioners but also in other subjects. The Petitioners, therefore, submit that their appointment cannot be questioned on the basis of unconstitutional norm.”



9. Looking to the reasons advanced by the applicants regarding the constitutionality of Rule 51 in the petition, we are of the opinion that no good ground has been made out by the applicants to seek a declaration that Rule 51 is ultra vires the Constitution of India.

10. Indisputably, the facts of the case are that the applicant were appointed as Assistant Professors in 2017 and confirmed in the year 2019 and the impugned notices were issued in 2018 i.e. after their appointment by the Government. It is the case of applicant that on the recommendation by the PSC to the Government, the role of the PSC ends and that it becomes functus officio. The applicants on their appointment becoming the employees of the Government, the PSC ceases to have any jurisdiction over the appointees and it is only the employer (Government of J&K) which has the power to initiate any action against the its employees (applicants) and placed reliance on (1) 2001 (3) SCC 328; (2) 2010 (10) SCC 707; (3) 2011 (2) JKJ 42; (4) 2013 (14) SCC 495.

11. It is to be noted that the applicants at this stage have only an apprehension that their services may be terminated and which termination should not be ordered keeping in view the decision of the Hon'ble Apex

Court in aforementioned citations. So, the factual situation is that the services of the applicants are yet to be terminated.



12. However, the question arises whether after the appointment of the applicants by the Government, the PSC has the jurisdiction to initiate any action against the applicants or call for their explanation since after its recommendations, the PSC becomes functus officio. The name of applicant No. 1 and 2 was recommended by PSC to the Government vide letter dated 13.03.2017 and 21.12.2016 respectively. Applicant No. 1 and 2 was appointed vide order dated 27.04.2017 and 03.01.2017 respectively. (Note: Owing to a stay order by the Court regarding one seat, the name of applicant No. 1 was withheld till the vacation of the stay order).

13. Learned counsel for applicants in support of her argument that the PSC has no jurisdiction to issue notice to the applicants has placed reliance on Renu Bala v/s State of Jammu & Kashmir, (2011) 2 JKJ 42 wherein it has been held that:

“Rule 57 inter alia provides that decision of the Commission for making appointments by direct recruitment shall be subject to provisions of Rule 9 and 10, the recommendation shall be communicated to the Government by the Secretary; it shall be valid for a period of one year from the date same is communicated to the government which date, however, can be extended for further period of six months on the specific request of the government provided such request is made before the expiry of the validity period of one year;

wait list drawn by the commission to be communicated to the government along with all original documents.

18. Rule 57 (supra) is all inclusive and after the recommendations for selection of candidates are made to the government, the role of PSC by operation of this rule comes to an end.

19. The purpose for creating constitutional authority viz PSC is to ensure selection of meritorious and suitable candidates for being appointed on different posts. The PSC is charged with most sacred and sacrosanct duty of making selection of meritorious and suitable candidates for being appointed on different posts. The principles enunciated and underlying the Articles 14, 15 and 16 of Constitution will become vibrant and life will be breathed into them by the PSC when selections of candidates are made by it in most fair and impartial manner. The PSC in the backdrop of our constitutional scheme is the repository of the trust which constitution makers have reposed in it. In the matter of public employment, it is the PSC which is catapulted to not only focused position but gets the central place in view of the mandate contained in Article 14, 15 and 16 of the Constitution of India. Any aberration in making selections by the PSC has the potential to boomerang on the basic features of the constitution which provides for equality before law; for equal protection of laws and equal opportunities in the matter of public appointment. The PSC in order to achieve salutary and solemn purpose for which it is created by the constitution, becomes functus officio after recommendations of meritorious and suitable candidates are made by it to the government. In the event after the appointment orders are issued by the



government, post becomes available either by non-joining of the appointed candidate or by resignation or death, what is required to be done to fill up such vacancy is the question which begets answer.

20. People being sovereign are supreme and the document called Constitution of India, which was born from the bosom of constituent assembly, is the supreme document and the organs created by it have to breath and live through it. Among others what is inherent in the people is equality in access to public property, which includes public post available with the government or created by the government. The right of equal opportunity to get appointed on a post inheres in every eligible person on the basis of his/her being member of society which has resolved to form itself into sovereign, democratic and socialist state. In this back drop denial of right of equal opportunity to have access to public post will be destructive of one of the fundamental feature of the Constitution recognized by Article 14 and 16 thereof. Our state is governed by laws and not men. They are only implementing and executing agency. Some features of the Constitution lay at its core and require to be followed with religious commitment and zeal.

21. It is in the aforementioned back drop the issue raised in this appeal requires to be answered. In the event, the government or appointing authority in the government takes a decision to fill up posts either created by it or held by it, it refers them to the PSC. The PSC makes selection of meritorious and suitable candidates and sends recommendations thereof to the Government. The recommendations are made in respect of the posts referred to it by the government and





the PSC may also forward a wait list of the candidates who are next in merit of the last selected candidate, to the Government. After the recommendations of the PSC are accepted by the Government and appointment orders are issued, in the event all appointees joins on the posts, the role of the government in making appointments in respect of those posts which were referred to the PSC, comes to an end. After the event is over in the aforementioned manner, neither the government nor the PSC holds any seizen over the posts excepting to regulate the services in accordance with rules. The entire selection process initiated by the government ultimately culminates in the issuance of appointment orders in favour of the selected candidates. Nothing survives for consideration thereafter either for the PSC or for the government. The selection panel prepared by PSC, dries-up after the selected candidates are sucked up and absorbed by the government in its services. In view of the mandate contained in Article 14 and 16 of the Constitution, the PSC and also the government thereafter ceases to have control on such selection/appointment excepting for regulating the services in accordance with the rules.”

“After conclusion of the selection process by joining on the posts by appointed candidates, the PSC as also appointing authority cannot have any role to play in a concluded process.”

14. The law laid down by the Hon’ble High Court in case of Renu Bala (supra) is that after the recommendation of the candidates to the Government, the PSC becomes functus officio and has no further role play in the selection process. Therefore, the contention of the applicants that respondent- PSC has no jurisdiction to issue the impugned notices once the



applicants have been appointed by the Government has force and to be accepted. No rule in J&K PSC (Business and Procedure) Rules 1980 has been pointed out by the respondents which empowers the PSC to issue the impugned notices. At the most, the PSC can bring it to the notice of the Government about the lacuna in the appointments. So, in any case, if there is any illegality in the appointment of an employee, it is for the Government (employer) to take action under law.

15. In view of the facts and circumstances of the case, we partly allow the T.A. by quashing and setting aside the impugned notices issued by the respondent- PSC to the applicants. However, the prayer for declaring Rule 51 of J&K PSC (Business and Procedure) Rules 1980 as ultra vires the Constitution of J&K is disallowed. T.A. is accordingly disposed of. No costs.

**(ANAND MATHUR)**  
**MEMBER (A)**

*Arun*

**(RAKESH SAGAR JAIN)**  
**MEMBER (J)**