

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

Reserved on : 20.07.2022.

Pronounced on : 18.10.2022.

WP(C) No. 275/2020  
in  
CCP(S) No. 157/2020

Shailender Parihar

..... Petitioner

Through: Mr. Achal Sharma, Advocate

**Vs**

Sarmad Hafeez,  
Secretary Youth Services & Sports Department and  
others.

..... Respondents

Through: Mr. K. D. S. Kotwal, Dy. AG

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGEMENT**

Heard learned counsel for the parties in support of their respective position in the case.

This case bears a recurring scenario engaging the time and energy of the constitutional courts in dealing with cases of habitual disposition of and on the part of administrative and public officials /authorities in the matter of passing orders, bearing legal effects and civil consequences, which more often than not fail to withstand scrutiny at first sight of the Rules of Natural Justice and Rule of Law thereby leaving the

real situation/ matter, meant to be dealt with by prudent decision, as an actual loser in the ultimate analysis and in the process consuming the time and energy and effort both on the part of aggrieved one and the adjudicating one. Cancelling a proper selection based engagement of a person to a public post and his consequent serving duty as well on the pretext that said person had come to report his joining after delay of few days of the period given for joining is the issue in the present writ petition and the impugned decision is found offending the test of Rules of Natural Justice

Pursuant to a government policy embodied in Govt. Order no. 141-Edu(YSS) of 2017 dated 27.10.2017, aiming to address the needs of physical fitness of the school children in the government schools put into effect and operation by the Govt. of the State of J&K, a selection advertisement notice no. 01 of 2018 dated 10.01.2018 was issued by the respondent no. 3 – Youth Services & Sports Officer, Doda as Member-Secretary for Engagement of Rehbar-e-Khel. This advertisement notice is annexed with the writ petition as annexure-III. Engagement of person/s as Rehbar-e-Khel was to be on honorarium basis in the Department of Youth Services & Sports, Govt. of J&K. This particular advertisement was for Doda District in which ten Zones were identified for 196 positions of Rehbar-e-Khel.

The petitioner, holding requisite qualifications, competed for his selection by facing the selection process and came to be selected as Rehbar-e-Khel for Zone Gundanan, district Doda to find his name in the

final provisional select list dated 30.01.2019 published in the Kashmir Times, a local English daily newspaper of 04.02.2019. A fact begs to be kept in mind that for the purpose of competing in the selection process, the petitioner had come from Oman (Muscat) where he had been then serving an employment as a Cashier in a Hotel since February, 2017 and had gone back after competing in the selection while the selection list came to be published on 04.02.2019.

A formal composite order of engagement of all the selectees came to be issued by the respondent no. 1 – the Director General, Youth Services & Sports Department, Govt. of J&K. In terms of this order the production of documents as enlisted in the said order was required for the purpose of joining of the selectees before the District Youth Services & Sports Officer, Doda.

As the petitioner was outside India working for his livelihood when the said order of engagement dated 27.02.2019 came into picture, so upon knowing that from his father the petitioner had engaged himself from that very moment in an exercise to get himself relieved from his employment in Oman (Muscat), which surely was not to happen at the drop of a hat. Thus the petitioner, acting through his father, had submitted his joining related documents before the District Youth Services & Sports Officer, Doda.

In terms of the requirements enlisted in the said composite order of engagement, requirement no. 15 had required that the selected

candidate shall join his/her duties within a period of 21 days. The petitioner came to report for duty on 26.03.2019 after he had reached back India on 25.03.2019. Thus, instead of joining duty within 21 days, the petitioner had joined duty on 26<sup>th</sup> day from the day next to the date of issuance of engagement order dated 27.02.2019. The petitioner's joining was accepted and he had come to assume his engagement and discharge duty as Rehbar-e-Khel at given place of his engagement.

The petitioner felt aggrieved of an Order no. DG/YSS/Estt/11112-16 dated 01.01.2020 passed by the respondent no. 2 – the Director General, Youth Services & Sports Department, Jammu, whereby the petitioner's engagement as Rehbar-e-Khel is ordered to be cancelled.

As at the time of publication of appointment order, the petitioner was out of UT of J&K, and in fact out of India, working in his employment, so the petitioner was not to act for submission of joining related documents, by coming first to India and losing time in doing so but to act through someone, who in this case was his father, who was to and had made available all the relevant documents required for the joining report on 28.02.2019. In the meantime, the petitioner had set himself on journey to come back to India so as to join his engagement as Rehbar-e-Khel. The order of engagement dated 27.02.2019 was issued pursuant to publication of selection list in local newspaper on 04.02.2019. Since for the purpose of enabling him to report back to India from the place of his work at Oman (Muscat), the petitioner had to undergo the

due procedure as such the petitioner came to be in India on 25.03.2019 and on 26.03.2019 came to submit in person his joining report and thereupon reported for his duties till 22.01.2020. Thus, on the basis of all relevant documents required for the purpose of processing the joining through his father, the petitioner had come to report for his duty within 25 days from the date of his engagement order dated 27.02.2019.

On the complaint of a person figuring in the wait list, against the petitioner that his joining was illegal as he was physically not present in India, as such, the petitioner's engagement was sought to be dislodged by said wait list candidate by filing a writ petition WP(C) no. 2027/2019 before this Court.

Vide an order dated 03.06.2019 passed in said writ petition WP(C) no. 2027/2019, this Court had directed the Deputy Commissioner, Doda to conduct an enquiry and also file an enquiry report in that regard. The enquiry was conducted by the Deputy Commissioner, Doda to the effect that the petitioner was not in India and the submission of documents related to joining was carried out by the petitioner through his father on 28.02.2019. In the enquiry so conducted by the Deputy Commissioner, Doda, the matter was referred to the respondent no. 2 – the Director General, Youth Services & Sports Department, Jammu for appropriate orders under rules. The enquiry conducted by the Deputy Commissioner, Doda is dated 22.07.2019.

Acting upon the said enquiry report, the respondent no. 2 – the Director General, Youth Services & Sports Department, Jammu came to pass the impugned order dated 01.01.2020 thereby holding the petitioner being in default to join within 21 days from the date of issuance of the engagement order and as such cancelled the engagement of the petitioner. It is with respect to this order of cancellation of engagement the petitioner has posed a challenged through the medium of the writ petition.

A perusal of the order of engagement in the context of condition 15 would manifest that the joining period within a period of 21 days as a condition was not mandatory as it was not attended with any further eventuality. Thus, the period of 21 days was to be reckoned as extendable for any genuine contingency which could be there at any point of time for any selectee to be not able to join within a period of 21 days, which in the present case was with the petitioner as he was out of India working on his occupation. For the petitioner to relieve himself from his private employer in a foreign country and to come back to India could not have been a matter of his own discretion but that of following the due procedure in which he was to relieve himself from his employer, prepare the documents for coming back to India and then only report himself for joining which he did within a period of 24 days of issuance of order of engagement and as such even if there was any delay beyond 21 days then said delay was only of duration of three to four days and that delay by no stretch of mandate could be said to be unwarranted delay on the part of the petitioner.

The petitioner came and reported himself for joining on 26.03.2019 and was allowed to join without any objection from the Authorities and as such even if there was any delay in reporting joining the same stood condoned by the Authorities themselves. There was, thus, no scope for resorting to the extent of cancelling the engagement of the petitioner simply on the pretext that submission of papers and relevant documents related to his engagement were submitted by his father. In law, nothing prevented the petitioner to submit his credential documents relatable to his engagement through his father when the petitioner himself was not available. The situation could be seen from this angle also, if the petitioner would have been entangled in any unavoidable contingency while being in India and was to carry out the exercise of submission of documents before the Authorities concerned without himself being physically present then also the same could have been done by him through his family member. There was nothing illegal in such course of action adopted by the petitioner as it was once in a life time opportunity for him to have earned a public employment related engagement.

The respondent no. 2 – the Director General, Youth Services & Sports Department, Jammu acted with a mechanical mindset least sensitive to the factual and legal situation of the case. Legal situation was that condition for joining did not carry a disqualification rider that in case of non-joining within time given the selectee defaulting in joining within time so given was to lose the engagement call and as such it was well within the discretion of the authorities concerned to accept late joining

also of a selectee backed by a genuine reason which in the present case was always there. In fact out of the very same select list in the case of three candidates namely Surinder Kumar, Pawan Kumar & Imran Assad their delayed joining was condoned vide an order no. DYSSO/D/RREK/21-24 dated 08.04.2019 of the respondent no. 3. So when in case of said three selectees delayed joining was condonable so even in the case of the petitioner the same yardstick ought to have been kept in observance by the respondent no. 2 more particularly when on fact side the petitioner could not be said to have defaulted in submission of joining related documents through his father even if that included a joining report submitted on his behalf. From where the respondent no. 2 – the Director General, Youth Services & Sports Department, Jammu read it as a condition in the present case that joining was to be done by personal presence of the selectee and not otherwise is not at all gatherable from the very response and record of the case from the respondents' end.

Indian Judicial System led by the Hon'ble Supreme Court and followed by the High Courts, by exhausting efforts of its judgments, has kept and is keeping its trust with a cherished conviction to see sooner than later the time of administration of justice in India when there will hardly be a need and occasion to repeat and apply in a case a ruling/ finding as to the Rules of Natural Justice and Rule of Law being defeated by the judgment/ decision given by the judgment/ decision maker, and till that time comes the constitutional courts will keep on infusing the jurisprudential wisdom into the psyche of the public institutions and its

functionaries that expression “Application of Mind” is not meant as a matter of usage for ritual sake but is a living principle of law out of which only an administrative/ judicial/ quasi judicial decision, as the case may be, must bear its natural delivery and not come by caesarean mode. The legal principle of Application of Mind its operational level envisages the full view, comprehension and understanding the facts of a given situation/ case without any edit regarding which a decision in return is warranted in law from the decision maker/ giver.

Any public official/authority, be it judicial, quasi judicial and/or administrative one, who/which knows it as a fact that he/it is meant to judge/decide matters being part of the very constitution of the office/position held/occupied by him/it, must know and/or be made to know it compulsively and consciously without any miss that there is and will be an ever present institutional demand upon his/its understanding to make a decision, which if and upon being questioned, by any aggrieved person who is to suffer the effects of the given decision, is able to self exhibit its factuality and legality so evidently and expressly so as to test and tax the wit of the person in questioning the given decision. This is what is and will be meant in real sense and spirit an act of application of mind on the part of the maker of the judgment/decision. A judgment/decision must commend itself for ready acceptance making its rejection a demanding task for the person willing to question it and for the person/authority meant to examine the question posed to challenge it.

Facts are the building stuff of a decision to be taken or given concerning the affairs of life, be it public or private. Reasoning operates upon and through a medium which is only of facts to fetch a decision in a given case. There can be a case wherein sufficiency and deficiency of reasoning on the part of the decision maker can become debatable issue for the courts to examine but before that if the facts have been left unseen, unexplained, unheeded, unveiled and unattended by the official/authority meant to decide by and upon facts then the decision of said official/authority will be nothing better than a description by and from blind person with respect to an object requiring visual description.

The Hon'ble Supreme Court of India is re-enforcing with regularity a singular statement of law in its judgments following in series that an order passed without application of mind deserves to be annulled being an arbitrary exercise of power (Ref: Onkar Lal Bajaj and others V. Union Of India and ors 2003 AIR SC 2562). The Hon'ble Supreme Court of India in the case of the Province of Bombay V. Kusaldas S. Advani and others 1950 AIR SC 222 has held that the word "a decision" in common parlance is more or less a neutral expression. However with respect to the personality and potentiality of a decision being a judicial/ quasi judicial/ administrative one, the Hon'ble Supreme Court in A.K Kraipak V. Union Of India 1970 AIR SC 150 has subjected the quasi judicial and administrative decision to bear the scrutiny of Rules of Natural Justice with an end purpose in view that the decision ought to be a fair and just decision.

In the present case, without taking pain and bearing patience to see and examine the facts in complete frame of the situation, the respondent no. 2 came to upset the employment of the petitioner which was earned by him by mode of proper selection process and was earning honorarium for the service being rendered by him only to suffer loss of his employment by rush of impulse disguised as the impugned decision on the part of the respondent no. 2 and the impugned decision is exhibit of non application of mind.

In the face of the facts and circumstances so attending the case, this Court holds and declares the impugned Order no. DG-YSS/Estt/11112-16 dated 01.01.2020 as being arbitrary and unfair by all standards and consequently sets it aside. The petitioner is held entitled to continue with his engagement as Rehbar-e-Khel, without any break having intervened, with all consequential engagement dues and benefits. All other connected matter/applications in the case shall stand disposed of.

*Disposed of* accordingly.

**(Rahul Bharti)**  
**Judge**

**Jammu**  
18.10.2022  
Muneesh

Whether the order is speaking : Yes

Whether the order is reportable : Yes