

**CENTRAL ADMINISTRATIVE TRIBUNAL SRINAGAR  
BENCH,  
SRINAGAR  
O.A No. 970/2023 & M.A 983/2023**

Date of Order: 05-03-2024

**C O R A M**

**HON'BLE MR. M.S.LATIF– MEMBER (J)  
HON'BLE MR. PRASANT KUMAR, MEMBER (A)**

MOHAMMAD IQBAL KUMAR & OTHERS

..... Applicant/s

**M/S. ARIF SIKANDER MIR & MS. ASIFA PADAR – ADV.**

**Versus**

GENERAL ADMINISTRATION DEPARTMENT & OTHERS

.....Respondents.

**MR. BIKRAM DEEP SINGH – DAG & SHAH AMIR with MS. INSHA– ADV.**

**ORDER**

**M. S. Latif. M(J)**

01/ The instant O.A challenges the revised result Notification No.PSC/Exam/S/2023/90 dated 18-11-2023, impugned herein, with further direction upon the respondents to allow the applicants to appear in the J&K Combined Competitive Examination 2023 to be conducted in pursuance to Advertisement Notification No. 12 PSC(DR-P) of 2023 dated 13-04-2023 and select and appoint the petitioners on the basis of merit obtained in the selection process.

02/ Alongside the reliefs sought in this O.A, the applicants have also prayed for an interim relief seeking stay of the impugned notification and in the alternative direct the respondents to provisionally allow them to apply for the J&K Combined Competitive Examination 2023 to be conducted in pursuance of advertisement notification dated 13-04-2023.

03/ The facts of the case, as projected by the applicants in this O.A, are that the respondent – J&K Public Service Commission (JKPSC), vide Advertisement Notification No. 12 PSC(DR-P) of 2023 dated 13-04-2023, invited applications through on-line mode from the eligible applicants, who are domicile of the U.T of J&K for appearing in the J&K Combined Competitive Examination 2023 in accordance with SRO 103 dated 23-02-2018 and SO 61 of 2021 dated 23-02-2021 issued by the General Administrative Department, (GAD), U.T. of J&K read with J&K Public Service Commission (Conduct of Examination) Rules, 2022. The JKPSC processed the conduct of Combined Competitive Examination in three steps. a/ Preliminary Examination ; b/ Main Examination and ; c/ Interview.

04/ Learned counsel for the applicants submitted that in pursuance to the aforesaid advertisement notification, the application forms were received by the official respondents from the eligible candidates including the applicants herein after due process and following the norms as stipulated, the result of Preliminary Examination 2023 was declared vide notification NO. PSC/S/2023/68 dated 27-10-2023, copy whereof has been appended with this O.A. It is further submitted that thereafter on 18-11-2023, the respondents withdrew the result notification dated 27-10-2023 and in supersession of first result notification, issued a new result notification vide No. PSC/Exam/S/2023/90 dated 18-11-2023, without mentioning any reason. According to the learned counsel, by

virtue of the arbitrary action on the part of the respondents, ousting/dropping about 180 candidates including the applicants herein, who had otherwise qualified for main examination, added approximately 180 new candidates and declared them to have qualified to appear in the main examination, which, according to the learned counsel, was to commence from 20-02-2024.

05/ The matter coming up for consideration on 05-12-2023, a detailed order was passed. The grant or refusal of interim relief, as prayed for, was deferred, awaiting the reply from the other side and the counsel for the respondents was directed to ensure to file his response on or before next date of hearing as the matter was of urgent nature involving career of the applicants. Matter was again listed for continuation of arguments on 29-01-2024 and on 05-02-2024, the learned counsel for the applicants once again reiterated his earlier stand that the order impugned is violative of the basic statute, as such, same deserves to be set aside and prayed further that the applicants be permitted to sit in the examination to be conducted by the JKPSC at their own risk and responsibility.

06/ In paragraph (19) of the reply, already filed, the respondents have submitted that the revised result was notified in view of number of representations having been received in the JKPSC regarding certain, purportedly, factual errors in the notified final answer key of the first paper. According to the respondents, the JKPSC, on receipt of representations, took a sympathetic stance towards the concerns of the aspirants and decided to re-refer the concerns so raised to the experts for scrutiny once again. It is further averred in the reply that with the revision of the result and the modification so made, a total number of 167 candidates including the applicants, who were earlier declared to have qualified in the main examination as per result notification dated

27-10-2023, were falling below the revised cut off point, therefore, in all fairness, the applicants herein were ousted from the revised result. It has been further averred by the respondents that had the JKPSC not revised the result after receiving the objections from some candidates, who, according to the respondents, were more meritorious than the applicants, they would have lost the opportunity to sit in the examination.

07/ On 05-02-2024, learned counsel for the applicants vehemently argued that identical matters have been dealt with by the Hon'ble Jammu Bench of CAT as also by this Bench, wherein, in similar circumstances, orders have been passed. He also referred to various case laws like ***J&K Public Service Commissioner versus Hidayat Ahmad Mir and others, decided by Hon'ble High Court of J&K at Srinagar on 13-03-2018 and Hidayat Ahmad Mir and others versus State of J&K and others decided by Hon'ble High Court of J&K at Srinagar dated 30-12-2017.*** However, grant of interim relief was again deferred in view of the fact that it was felt expedient by this court to call for the record with regard to certain objections having been raised by some unsuccessful candidates after declaration of the results. The matter coming up for consideration on 21-02-2024, record, as directed, was not submitted, however, learned counsel for JKPSC, referred to a communication No. JKPSC-Legal/59/2023 dated 20-02-2024, addressed to him by one Shri Mudasir Rasool Wani – Assistant Law Officer, JKPSC, wherein he was directed to inform the court that due to break down at the *e.office* for the last eight days, the JKPSC was unable to process the same, as such, sought two weeks' time for filing the said affidavit along with the record. Vide order dated 21-02-2024, it was observed that the JKPSC has taken the order of the court, seeking production of record, in a very routine and casual manner. It was expected that the JKPSC would have complied with the

directions on priority basis as the career of the students was involved. It was also observed that the JKPSC, being the apex body and creation of Statute, ought to have come up with a categorical stand as the institution of the JKPSC is as sacred and pure as a temple and what was, above all, expected from such institution, was purity and fairness in pursuit of their duties.

08/ In view of the conduct of the respondent – JKPSC aforementioned, this court was left with no option, particularly in absence of the record and in view of a very novel submission that whatever was done was done out of sympathy, the matter was reserved for orders in the interim.

09/ Learned counsel for the applicants referred to rule 46 of J& K Public Service Commission Conduct of Examinations Rules 2022, to impress upon that there is no provision for re-evaluation of answer scripts/OMP answer sheets and the candidates, who have appeared in the written examination/off-line/on-line screening test, conducted by the JKPSC, will not be allowed on any ground/s whatsoever and to substantiate and buttress his argument in this regard, learned counsel referred to a catena of judgements.

10/ Admittedly, the applicants had qualified and made it in the first list after having been subjected to examination/test. However, subsequently, passing of the impugned order, cancelling the candidature of the applicants, is definitely against the JKPSC Conduct of Examination Rules 2022. Although it is true that, in law, a candidate who has passed the examination and whose name appears in the select list even, does not have an indefeasible right to seek appointment, yet the appointment cannot be denied arbitrarily nor can the selection list be cancelled without giving any proper justification. The courts are not powerless to issue

appropriate directions, where decision is found to be arbitrary. The examination of the applicants herein could not have been cancelled, particularly in violation of the basic Statute and that too on the basis of those candidates who had failed in the earlier test.

11/ Prima facie, the order impugned seems to have been passed without proper application of mind. It is also apparent that the decision making authority has not applied its mind and has not been alive to the material on the basis of which the impugned action has been taken other than showering sympathy upon a few and this court will not hesitate in terming them as blue eyed, at least, tentatively.

12/ The power conferred upon the authority is held by that authority in trust and thus the power has to be exercised for legitimate purposes. The main issue is as to whether it was permissible to the competent authority/s to cancel the test without giving proper justification. Reiterating that while no candidate acquires any indefeasible right to a post merely because he/she has appeared in the examination or even found his/her place in the selection list yet the State does not enjoy an unqualified prerogative to refuse an appointment or a right of a candidate being considered for the appointment in an arbitrary fashion or to discard the merit of the candidates as was reflected in the earlier merit list. We may reiterate that court is not powerless if it finds an action to be arbitrary, backed by favoritism or activated with colorable exercise of power. Non application of mind, as a facet of arbitrariness, need for reason to dispel, sufficiency of material have all along been the subject matter before the constitutional courts. In this view, we are fortified by the judgement of the apex court titled **Suresh Kumar Lalit Kumar Patel and others versus State of Gujarat and others reported in 2023 Live Law SC 137 and U.T. of Chandigarh versus Dilbagh Singh, 1993**

**vol.1 SCC 154**, wherein yet again the court reiterated that while a candidate, who finds place in the select list, may not have a vested right to be appointed to any post but at the same time, he or she may be aggrieved of their non appointment if the authority concerned acts arbitrarily or with mala fide intention or in a discriminatory manner.

13/ Mr. Shah Amir, learned counsel appearing for JKPSC, submitted that the JKPSC has rightly issued the order impugned, as such, same deserves no interference.

14/ **Heard** learned counsel for the parties.

15/ In the backdrop of what has been discussed above, a case for indulgence is made out at this stage and it is, accordingly, ordered that the respondents shall allow the applicants herein to appear provisionally in the J&K Combined Competitive Examination 2023 to be conducted in pursuance to Advertisement Notification No. 12 PSC(DR-P) of 2023 dated 13-04-2023. It is made clear that the applicants shall be allowed to appear in the mains strictly at their own risk and responsibility. It is further provided that mere appearance of the applicants in the examination shall not confer any preferential right upon them to claim for their appointment. It is also directed that the result of the applicants shall not be declared unless otherwise directed by the court. However, this order, which is passed in the peculiar facts and circumstances of this case, shall remain subject to final outcome of the main O.A.

16/ List this matter for consideration on 15-04-2024.

**PRASANT KUMAR**  
**Member (A)**

**M.S.LATIF**  
**Member (J)**

**Tariq Mota**  
**05-03 -2024**

