

HIGH COURT OF JAMMU & KASHMIR  
AT SRINAGAR

IA No. 3938/2013 in  
SWP No. 1688/2013

Date of Order: 13.12.2013

Haroon Rashid Masoodi and Ors. Vs. State and Ors.

**Coram:**

**Hon'ble Mr. Justice Ali Mohammad Magrey, Judge**

**IA No. 3938/2013**

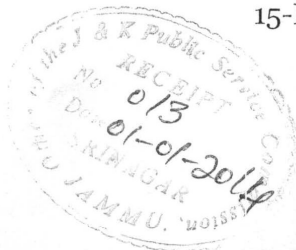
Mr. Azharul Amin, Advocate for applicant/ respondent No. 2.  
Mr. M. A. Chashoo, AAG for respondents 1 and 3  
Mr. M. Y. Bhat, Advocate for non applicants/petitioners.

In the instant application, applicant/ respondent seeks vacation of order dated 06.09.2013 passed by the Court in CMP No. 2700/2013.

Learned counsel for the applicant/respondent submits that on requisition from the Power Development Department vide their letter No. PDD/I/98/2002 dated 09.07.2013, 44 posts of Assistant Engineers (Electric) referred to the Commission for selection of suitable candidates. The prescribed qualification for the post of Assistant Engineer (Electric) is Bachelor's Degree in the relevant branch of Engineering or AMIE Section (A&B) India in the appropriate branch of Engineering.

Learned counsel for the applicant/respondent submits that posts were advertised vide Commission's Notification No. 15-PSC (DR-P) of 2013 dated 12.08.2013, however, this Court

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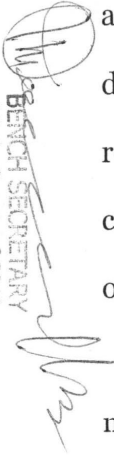
vide order dated 06.09.2013 directed the applicant/respondent not to act upon the notification till next date of hearing before the Bench. Learned counsel submits that the interim order stands extended from time to time and is in force, therefore seeks modification/vacation of the order on the ground that the process stands initiated against the direct recruitment post as per the requisition submitted by the intending department. Learned counsel further submits that maintaining the quota between the direct recruitment and promotees has reference to the recruitment rules which of course is worked out by the Government with reference to adherence of recruitment Rules.

Learned counsel for the applicant/respondent submits that the applicant has only to observe its constitutional duty of making selection in terms of prescribed rules and requisition. The writ petition of the petitioners as it relates to the stalling of selection is not maintainable as the petitioners can seek redressal of their grievances by approaching the department for having the matter settled with reference to quota. Government has power to consider their claim and in case state comes to the conclusion that there is some wrong calculations made in working out the quota, the same can be redrawn and a reference for withdrawing the requisition can be accordingly, made.

Mr. Bhat learned counsel for the non-applicants/petitioners has invited the attention of this Court to various

  
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Government orders placed on record in order to demonstrate that the Government has violated the recruitment rules and have not adhered to the rule of quota strictly. Learned counsel submits that out of sanctioned strength of 460 Assistant Engineer posts 92 posts fall within 20% quota of direct recruits and as per his calculation with reference to the appointments made from time to time 89 have already been filled up till date therefore, there is no scope for making a reference of 44 Assistant Engineer Posts to be filled up by direct recruitment. Learned counsel has also submitted that some of the candidates who have submitted application forms for competing against the post of Assistant Engineer are not qualified as their degrees are not consistent with the rules notified in terms of advertisement notice providing for Bachelor's degree in relevant discipline. The second limb of argument was raised with reference to the claim that some of the petitioners intend to compete in the selection process for direct quota as they are otherwise eligible for such claim.

  
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Heard learned counsel for the parties and perused the material on record.

Relief claimed in the writ petition to the extent of challenging the advertisement notice with reference to wrong calculation of quota cannot form a ground for stalling the process in interim. The relief claimed being final and granted by

this Court in terms of order dated 06.09.2013 has the effect of stalling the process and leaving no scope for its final adjudication. The grant of interim relief has reference to the already settled principles of law and on consideration of the matters and in order to ensure that lis is protected. By allowing applicant-Public Service Commission there shall be no prejudice caused to the petitioners who are substantively holding the post of Junior Engineers and claim their promotion against the Post of Assistant Engineer within their quota of 60 % earmarked in terms of "Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978" as amended up to 2006. The quota is worked out in the manner of ratio provided in Schedule appended with the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978.

Relevant portion is extracted as under:-

IV	B	(i) Asst. Engineer (ii) Tech. Officer to Ex. Engineer (iii) Store officers	8000-275-12950	(a) 20% by Direct Recruitment from persons possessing Bachelor's degree in the relevant branch of Engineering or AMIE section (A&B) India in the appropriate branch of Engineering (b) 60% By promotion from Junior Engineers equivalent qualification with at least 3 years service as Junior Engineer (c) 20% by promotion from Junior Engineer having diploma in Engineering or equivalent qualification from a recognized Institute in the discipline in which appointment is to be made having at least 5 years service as Junior Engineer: Provided that a Junior Engineer who has undergone condensed diploma course (as part of one time dispensation) shall also be treated as 2 years diploma holder and the ratio of promotion in a
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				particular recruitment year between 3 years and 2 years diploma holders shall be 7:3: Provided further that if at the time of consideration of promotion of eligible officers from one source of appointment.
				(Degree/ diploma) are not available, eligible officers from other source of appointment shall be taken on stop gap arrangement who shall not have preferential treatment for higher promotions. Note: The proviso permitting a Junior Engineer who has undergone condensed diploma course to be treated as two years diploma course shall be treated as one time dispensation.

In the present case this Court in exparte has granted ad interim relief which virtually amounts to grant of principal relief sought in the petition without hearing the other side thereby going against the law laid down by the Hon'ble Apex Court in case **Bank of Maharashtra Vs. Race Shipping and Transport Company Private Limited and anr.**

**(1995) 3 SC Cases 257, Assistant Collector of Central Excise Chandan Nagar, West Bengal Versus Dunlop India Ltd. and others ((1985) 1 Supreme Court Cases 260, State of Rajasthan and others Versus M/s Swaika Properties and Another; (1985) 3 Supreme Court Cases 217.**

In the given circumstances, the instant application is allowed order dated 06.09.2013 shall stand modified by allowing the applicant- Public Service Commission to proceed for finalizing the selection in terms of notification No. 15 -PSC

*[Signature]*  
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(DR-P) of 2013 dated 12.08.2013. However, selection list shall only be issued after seeking permission from this Court.

CMP No. 3938/2013 disposed of.

**SWP No. 1688/2013**

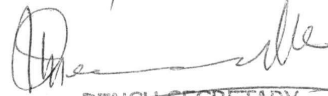
List after four weeks In the meantime, reply.

In view of urgency expressed by Mr. Azahar-ul-Amin learned counsel for applicant/respondent No. 2, copy of order shall be furnished to him under the seal and signature of Bench Secretary of this Court today itself.

Sd/ ✓  
**(Ali Mohammed Magrey)**  
**Judge**

**Srinagar**  
**13/12/2013**  
**Mohammad Yasin Durrani**

Copy of the Hon'ble Court order dated 13.12.2013 provided to the applicant for compliance and



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**Srinagar/Jammu**