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*Important.*  
*Pl. district*  
*AS*  
*30/11/13*

**HIGH COURT OF JAMMU & KASHMIR  
AT SRINAGAR**

IA No. 3939/2013 in  
SWP No. 1850/2013

Date of Order: 13. 12 .2013

Gowhar Nabi Khan and Ors.

Vs. State and Ors.

**Coram:**

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

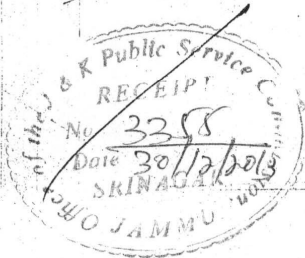
**IA No. 3939/2013**

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

In the instant application, applicant/ respondent seeks vacation of order dated 27.09.2013 passed by the Court in CMP No. 2969/2013.

Learned counsel for the applicant/respondent submits that on requisition from the PHE, Irrigation and Flood Control Department vide their letter No. PHE, IFC/HRM/2013 dated 30.05.2013, 41 posts of Assistant Engineers (Civil) referred to the Commission for selection of suitable candidates. The prescribed qualification for the post of Assistant Engineer (Civil) is Bachelor's Degree in the relevant branch of Engineering (Civil Engineering) or AMIE Section (A&B) India (Civil Engineering).

Learned counsel for the applicant/respondent submits that requisitioned posts were advertised vide Commission's Notification No. 11-PSC (DR-P) of 2013 dated 28.06.2013,



however, this Court vide order dated 27.09.2013 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.

*Amey*

Mr. Haqani, learned counsel for the non-applicants/petitioners has invited the attention of this Court to various 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 there is no scope for making a reference of 41 Assistant Engineer Posts to be filled up by direct recruitment.

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 27.09.2013 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	<p>(a) 20% by Direct Recruitment from persons possessing Bachelor's degree in the relevant branch of Engineering or AMIE section (A&amp;B) India in the appropriate branch of Engineering</p> <p>(b) 60% By promotion from Junior Engineers equivalent qualification with at least 3 years service as Junior Engineer</p> <p>(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:</p> <p>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 particular recruitment year between 3 years and 2 years diploma holders shall be 7:3:</p> <p>Provided further that if at the time of consideration of promotion of eligible officers from one source of appointment.</p>
				<p>(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.</p> <p>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.</p>

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.

Mr. Haqani, learned counsel for the non-applicants/petitioners submits that petitioners have become eligible for promotion to the post of Assistant Engineers (Civil) in Hydraulic Wing of PHE way back in the month of April, 2010 i.e., after having completed three years period of service in the posts of Junior Engineers. Learned counsel for the non-applicants/petitioners submits that in the matters of consideration of Promotion, service of petitioners are regulated by the Provisions of Jammu and Kashmir Civil Services (reference of Vacancies and holding of meeting of the Departmental Promotion Committee) Rules 2005. It is submitted that in terms of Sub-Rule (2) of Rule (2) of the said rules, respondent State are under legal obligation to refer the vacancies in the promotion quota to Public Service Commission and Departmental Promotion Committee as the case may be, at

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at least twice a year, preferably in the month of January and July and also take necessary steps for having the meetings convened.

In view of the contentions raised by Mr. Haqani, learned counsel for the non-applicants/respondents their claim for consideration of their case for promotion it has become necessary to direct respondent State to consider the case of petitioners for promotion within their quota in accordance with rules governing the subject and as per rules, i.e., (reference of Vacancies and holding of meeting of the Departmental Promotion Committee) Rules 2005, within one month.

In the given circumstances, the instant application is allowed order dated 27.09.2013 shall stand modified by allowing the applicant- Public Service Commission to proceed for finalizing the selection in terms of notification No. 11 -PSC (DR-P) of 2013 dated 28.06.2013. However, selection list shall only be issued after seeking permission from this Court.

CMF No. 3939/2013 disposed of.

SWP No. 1850/2013

List after ensuing winter vacation.

Copy of order shall be furnished to Mr. M. A. Chashoo, AAG under the seal and signature of Bench Secretary of this Court today itself.

Srinagar  
13-12-2013

Sd/ Hishik Singh

Nr. 49670 dt. 10.12.13  
copy forwarded to Respondent no. (3)  
for Compliance.

NID  
10-02-2014 cart

16/11/13

Joint Registrar

by

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BEFORE THE HON'BLE HIGH COURT OF J&K  
AT SRINAGAR

SWP No. 1856/2013

MEMO OF PARTIES

In the case of :

1. Gowhar Nabi Khan (aged 34 yrs)  
S/o Gh. Nabi Khan  
R/o Rawalpora, Srinagar.
2. Shuja Shoukat Hussan (aged 32 yrs)  
S/o Bashir Ahmad  
R/o Pulwama-Kashmir
3. Ishfaq Hamid Wani (aged 40 yrs)  
S/o Abdul Hamid Wani  
R/o Keller-Pulwama, Kashmir
4. Abid Hussain Khan (aged 31 yrs)  
S/o Zahoor Ahmad Khan  
R/o Lal Bazar, Srinagar
5. Javid Ahmad Karpal (aged 32 yrs)  
S/o Gh. Nabi Karpal  
R/o Rainawari, Srinagar
6. Zubair Ahmad Naqash (aged 34 yrs)  
S/o Abdul Hamid Naqash  
R/o Lal Bazar, Srinagar
7. Faisal Farooq (aged 32 yrs)  
S/o Farooq Ahmad  
R/o Nanil, Anantnag, Kashmir
8. Zahoor Ahmad Shah (aged 40 yrs)  
S/o Mohd Yaseen Shah  
R/o Hawal, Srinagar

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Joint Registrar  
High Court of J&K, Srinagar

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High Court of J&K, Srinagar~~

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Joint Registrar  
High Court of J&K, Srinagar

9. Farooq Ahmad Ganie (aged 40 yrs)  
S/o Abdul Ahad Ganie  
R/o Warapora

10. Younis Hamid Kirmani (aged 32 yrs)  
S/o Abdul Hamid Kirmani  
R/o Batwara, Srinagar

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~~Joint Registrar  
High Court of J&K, Srinagar~~

Petitioners

Versus

1. State of Jammu and Kashmir through  
Commissioner/Secretary to overnment,  
PHE, Irrigation & Flood Control Deptt.,  
Civil Secretariat, Srinagar

2. Chief Engineer  
PHE, Irrigation and Flood Control,  
Kashmir

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3. J&K State Public Service Commission,  
Poloview, Srinagar through its Secretary

Respondents

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