

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

Reserved on: 01.07.2025.

Pronounced on: 03.07.2025

WP(C) No. 482/2022

CM No. 1663/2022

Sushant Khajuria

Age 24 years S/O Sh. Shashi Kant

Khajuria R/O Village Keral

Manhasan Tehsil Bishnah District

Jammu

.....Appellant(s)/Petitioner(s)

Through: Mr. Gagan Kohli, Advocate.

vs

Jammu and Kashmir Bank,

Th. Managing Director/Chief Executive

Officer Corporate Headquarters, Mulana

Azad Road, Srinagar.

President Human Resources Division

Corporate Headquarters, Mulana Azad

Road, Srinagar.

..... Respondent(s)

Through: Mr. Raman Sharma, AAG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The petitioner, in the instant petition, filed under Article 226 of the Constitution has averred that being possessed of the qualification of graduation in Mechanical Branch of Engineering, he, the petitioner applied in response to a notification bearing No. JKB/HR-Rectt-2020-27 & 28 dated 06.10.2018 issued by the respondent-Bank for filling up the post of Probationary Officers under General Category, whereafter the petitioner appeared in the written examination and subsequently appeared in the interview as well upon being called by the respondent-Bank, however, the respondent-Bank selected and appointed 138

candidates as against 175 posts notified in the advertisement notification dated 06.10.2018, in that, 37 candidates did not join and that the respondent-Bank had also prepared a waiting list of 18 candidates, out of which, only 16 candidates joined and though the petitioner had secured higher merit in the process of selection undertaken by the respondent-Bank, the petitioner was required to be selected and appointed against one of the leftover unfilled vacancies and that the petitioner even though submitted a representation in this regard before the respondent-Bank, the respondent-Bank did not consider claim of the petitioner, leaving no option for the petitioner except to file the instant petition.

2. **Objections** to the petition stand filed by the respondents, wherein it is being admitted that the petitioner participated in the process of selection undertaken by the respondent-Bank for the post of Probationary Officer in General Category, wherein 175 vacancies came to be notified vide initial notification dated 06.10.2018 and subsequent notification dated 01.06.2020. It is being further stated that the petitioner, however, in the said process of selection did not make the grade, in that, the last selected candidate in the General Category secured 61.65 marks and in the waiting list, the last candidate had secured 61.27 marks and that the petitioner did neither make the grade in the main list nor in the waiting list.

It is being further stated that the advertisement notice had stipulated that no appointment of candidate(s) can be made outside the select list or the waiting list. It is also admitted that besides the select list of 175

candidates, a waiting/reserve list was also drawn qua the selection in question to the extent of 10 percent of the notified vacancies in terms of the advertisement notice, wherein both the lists, the petitioner did not figure on the basis of points secured by him. It is being further stated that the waiting/reserve list of the selection in question have had to automatically expire on 31.03.2021 as provided in the advertisement notice, while stating further that the advertisement notice also provided that the candidates who are not in the select list and also do not figure in the waiting/reserve list, will not be considered for any further process for the vacancies of the year 2020-21, and that since the petitioner participated in the process of selection pursuant to the advertisement notice in question with all terms and conditions set out therein, the petitioner cannot now seek his consideration for selection and appointment in negation to the said terms and conditions.

Heard learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner while making his submissions in tune with the case set up in the petition would pray for grant of reliefs prayed in the petition, whereas on the other hand, counsel for the respondent-Bank insisted for dismissal of the petition on the basis of the stand taken by the respondent in the reply filed to the petition and also would contend that the petitioner in fact secured 61.22 marks as against the last candidate figuring in the waiting list, who secured 61.27 marks and since the petitioner did not make a grade in the process of selection, the petitioner cannot claim his selection and

appointment against the left-over unfilled vacancies on any ground whatsoever.

4. Having regard to the respective pleadings of the parties, inasmuch as the rival submissions of the appearing counsel for the parties, the moot question for determination of this Court would be as to whether the petitioner is clothed with any right enforceable in law for seeking the reliefs as prayed for in the instant petition.
5. Before proceeding to advert to the said question, it would be appropriate to refer to the position of law occupying the filed in this regard.

The Apex Court in case titled as “**Shankarsan Dash vs. Union of India**”, reported in **1991 (3) SCC 47**” has held, at para-7, as follows:-

*"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in **State of Haryana v. Subhash Chander Marwaha and Others**, [1974] 1 SCR 165; **Miss Neelima Shangla v. State of Haryana and Others**, [1986] 4 SCC 268 and **Jitendra Kumar and Others v. State of Punjab and Others**, [1985] 1 SCR 899."*

The Apex Court further in case titled as "**State of Orissa Vs. Bhikari Charan Khuntia and ors.**", reported in **2003 (10) SCC 144**" has at para 8 held as follows:-

*"8. As was observed by this Court in **Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar v. Haraprasad Das and Ors.**, [1998] 1 SCC 487, whether to fill or not to fill up a post, is a policy decision and unless it is arbitrary, the High Court or the Tribunal has no jurisdiction to interfere with such decision of the Government and direct it to make further appointments. In the present case, even no selection was made and not even any select list was in existence. Even if there had been any such selection or inclusion of any of the names in the select list, same could not have given any right. Therefore, mere sending of name by the employment exchange could not have and in fact has not conferred any right. The writ applications were thoroughly misconceived, and the court misdirected itself as to the nature of relief to be granted."*

6. Keeping in mind the aforesaid position of law and reverting back to the case in hand, it is an admitted fact that the petitioner has preferred the instant petition on 05.03.2022. it is also an admitted fact that the petitioner did not figure in the select list or the waiting/reserve list notified by the respondent-Bank qua the post in question. It is also not being denied by the petitioner that he secured 61.22 marks as against the last candidate appearing in the waiting/reserve list having secured 61.27 marks. It is significant to mention here that the petitioner do not dispute to have responded to the advertisement notice JKB/HR-Rectt-2020-27 & 28 dated 06.10.2018 issued by the respondent-Bank qua the post in question, a perusal of which would reveal manifestly tend to show that the waiting/reserve list qua the selection in question will automatically expire on 31.03.2021. Undoubtedly, the petitioner has neither figured in the select list nor in the waiting list, as such, the

petitioner cannot, in law, seek his selection and appointment against the leftover vacancies of the post in question on account of his having voluntarily and without any objection or reservation participated in the process of selection, subject to the terms and conditions set out in the advertisement notice.

7. For the foregoing reasons, the writ petition in hand is found to be grossly misconceived and is accordingly **dismissed along with the connected application.**

(JAVED IQBAL WANI)
JUDGE

Jammu
03.07.2025
Sahil Padha

