



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. of 2026
(Arising out of SLP (C) No.35896 of 2025)**

STATE OF KARNATAKA & ORS. ...APPELLANT(S)

VERSUS

SANTHOSH KUMAR C ...RESPONDENT(S)

JUDGMENT

Vikram Nath, J.

1. Leave granted.
2. The present appeal arises from the judgment and order dated 21.04.2025 passed by the High Court of Karnataka at Bengaluru (hereinafter referred to as the “High Court”) in Writ Petition No. 24455 of 2023 (S-KSAT), whereby the High Court allowed the writ petition filed by the respondent and set aside the order dated 13.10.2023 passed by the Karnataka State Administrative Tribunal, Bengaluru (hereinafter referred to as the “Tribunal”) in Application No. 4990 of 2022, as

well as the communication dated 27.06.2022 issued by the Department of Personnel and Administrative Reforms, Government of Karnataka (hereinafter referred to as “DPAR”). By the said judgment and order, the High Court directed the appellants, namely the State of Karnataka and its authorities, to consider the case of the respondent for appointment to the post in question.

3. The facts giving rise to the present appeal are as follows:

3.1. The Karnataka Public Service Commission (hereinafter referred to as the “KPSC”) issued a notification dated 03.11.2011 inviting applications for recruitment to 362 posts of Karnataka Gazetted Probationers in Group A and Group B Services under the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997 (hereinafter referred to as the “1997 Rules”).

3.2. The respondent, who is an ex-serviceman, participated in the said selection process. Upon conclusion of the process, the KPSC published the final select list on 21.03.2014. In the General Merit Ex-Military Person category (hereinafter referred to as the “GM/Ex-MP category”), one Sri Aiyappa M.A. was selected to the post of Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale. The respondent was not selected to that post. He was, however, selected to the

post of Assistant Commissioner of Commercial Taxes, Group A, pursuant to the same recruitment.

- 3.3. According to the record, Sri Aiyappa M.A. did not undergo the mandatory medical examination or police verification and did not report for duty. The respondent, on the other hand, was appointed as Assistant Commissioner of Commercial Taxes, Group A, by notification dated 05.05.2022 and joined duty on 09.05.2022.
- 3.4. On 26.05.2022, the respondent submitted a representation to DPAR, claiming that since Sri Aiyappa M.A. had not joined, the post of Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale, under the GM/Ex-MP category remained unfilled and ought to be offered to him. The basis of the claim was that he was immediately next below the selected candidate and had indicated preference for the said post.
- 3.5. By communication dated 27.06.2022, DPAR rejected the respondent's request. The communication stated that under the 1997 Rules there was no provision for preparation of an additional select list and that a post left unfilled on account of non-reporting by a selected candidate was required to be treated as a fresh vacancy to be filled in a subsequent recruitment.
- 3.6. Aggrieved by the said communication, the respondent filed Application No. 4990 of 2022 before the Tribunal

under Section 19 of the Administrative Tribunals Act, 1985. In the said application, he questioned the communication dated 27.06.2022 and sought a direction to the respondents therein to select and appoint him to the post of Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale, under the GM/Ex-MP category against the vacancy said to have remained unfilled on account of the non-reporting of Sri Aiyappa M.A.

- 3.7. The appellants and the KPSC opposed the application. Their stand was that the 2011 recruitment process had culminated in a final select list corresponding to the vacancies notified, that the 1997 Rules did not contemplate any additional or waiting list, and that in view of sub-rule (3) of Rule 4 and Rule 11 of the 1997 Rules, a vacancy arising on account of non-joining by a selected candidate could not be filled by operating the same select list.
- 3.8. By order dated 13.10.2023, the Tribunal dismissed the application. The Tribunal held that there was no provision under the 1997 Rules for preparing an additional select list and that a post not filled on account of non-reporting by a selected candidate had to be treated as a fresh vacancy. The Tribunal also accepted the stand of the appellants that the vacancy, if any, had to be filled only through a fresh recruitment process.

- 3.9. The respondent thereafter challenged the Tribunal's order by filing Writ Petition No. 24455 of 2023 (S-KSAT) before the High Court contending that since the selected candidate had not even undergone the mandatory medical examination, the vacancy continued to remain unfilled and should go to the candidate immediately next below. On behalf of the appellants and the KPSC, it was contended that mere inclusion in the select list did not confer a justiciable right to appointment and that Rule 11(3) of the 1997 Rules governed the matter.
- 3.10. By the impugned judgment and order dated 21.04.2025, the High Court allowed the writ petition. The High Court held that the vacancy in question continued to remain unfilled since the selected candidate had not undergone the mandatory medical examination. It further held that Rule 11(3) of the 1997 Rules was not attracted in the facts of the case. On that basis, the High Court quashed the order dated 13.10.2023 passed by the Tribunal and the communication dated 27.06.2022, and directed the appellants to consider the case of the respondent for appointment to the post in question.
4. Being aggrieved by the judgment and order dated 21.04.2025 passed by the High Court, the appellants have approached this Court in the present appeal.
5. We have heard the learned counsel for the parties and perused the material on record. The question that falls

for consideration in the present appeal is whether, under the 1997 Rules, a vacancy arising in the course of the 2011 recruitment process on account of a selected candidate not undergoing the mandatory pre-appointment formalities or not reporting for duty could be claimed, as of right, by the respondent on the ground that he was immediately next below in the order of selection, or whether such vacancy had to be treated in accordance with the governing rules as a vacancy to be filled only through a subsequent recruitment process.

6. In order to answer the controversy in the present appeal, it is necessary to notice the relevant provisions of the 1997 Rules.

Firstly, Sub-rule (3) of Rule 4 of the 1997 Rules provides as follows:

“The candidates who apply for the competitive examinations shall clearly indicate in their application forms the services or posts for which they wish to be considered for appointment in the order of preference. They shall not be considered for such of the service or posts which are not preferred by them.”

Moreover, Rule 11 of the 1997 Rules, to the extent relevant, provides as follows:

“11. List of candidates suitable for appointment.

(1) Subject to the provisions of sub-rule (3) of Rule 4 and Rule 8, and the number of posts advertised for each of the services in Group A and Group B, the Commission shall prepare separate list of names of the candidates equal to the available number of vacancies considered suitable for appointment for each of the said services in Group A and Group B arranged in the order of merit determined on the basis of total marks secured in the main examination comprising written examination and personality test.

Provided that the name of a candidate shall not be included in more than one such list.

(2) The list prepared under sub-rule (1) shall be published by the Commission in the Official Gazette and the copies thereof shall be forwarded to the Government together with the marks secured by each of the candidates in the written examination and personality test and to each candidate whose name is included in such list.

(3) Candidates whose names are included in the list prepared in accordance with the provisions of sub-rule (1) shall be considered for appointment to the vacancies notified in each of the services and

groups of posts in the order in which their names appear in the list.

Provided that no candidate shall be appointed unless the Government is satisfied after such enquiry and verification as may be considered necessary that the candidate is suitable for such appointment.”

A bare perusal of the aforesaid provisions shows that the scheme of the 1997 Rules is one of recruitment against notified vacancies, with the candidates being considered on the basis of merit and their indicated order of preference. The list contemplated by Rule 11 is not an open-ended reservoir of candidates, but a service-wise list prepared equal to the number of available vacancies and meant to operate in respect of the vacancies notified in that recruitment itself.

7. A proper appreciation of the aforesaid provisions reveals that the scheme of the 1997 Rules is not one of mere abstract ranking, but of a structured and service-specific selection against notified vacancies. Each candidate is required to indicate the services or posts for which he seeks consideration and that too in the order of preference. Rule 11, in turn, contemplates preparation of separate lists, equal to the available

number of vacancies, for each of the services and groups of posts advertised. The proviso to Rule 11(1), which stipulates that the name of a candidate shall not be included in more than one such list, further underlines the same position. Rule 11(3), when read with Rule 11(1), indicates that the list is prepared for consideration of candidates against the finite vacancies notified in that recruitment. The Rule does not indicate that the list is to continue as an open-ended source of appointment even after the notified vacancies have been exhausted or the selection process has otherwise run its course.

8. The first proviso to Rule 11(3) also makes it clear that inclusion in the list does not by itself result in appointment. Appointment remains subject to such enquiry and verification as may be considered necessary and to the satisfaction of the Government regarding suitability. Significantly, the 1997 Rules do not provide for any reserve list, waiting list, or additional list. Nor do they contain any provision enabling the State to revert to the same list and travel further downward to fill a post left unfilled on account of non-completion of pre-appointment formalities or non-joining by a selected candidate. The scheme of the 1997 Rules, therefore, is of recruitment against notified vacancies through service-wise lists prepared to the extent of available

vacancies, and not of continued operation of the same list beyond its statutory framework.

9. The above understanding also accords with the settled principle that inclusion of a candidate's name in a select list does not by itself confer an indefeasible right to appointment. A select list makes a candidate eligible for consideration in accordance with the governing rules. It does not create a vested right to claim appointment dehors the statutory framework. In ***Shankarsan Dash v. Union of India***¹, this Court held that even where vacancies exist, a candidate whose name appears in the select list does not acquire an indefeasible right to appointment, unless the relevant rules so indicate. Similarly, in ***Rakhi Ray v. High Court of Delhi***², and ***State of Orissa v. Rajkishore Nanda***³, this Court has held that appointments must conform to the notified vacancies and the governing rules, and that a select list cannot be operated in a manner not contemplated by the statutory scheme.
10. Tested on the touchstone of the aforesaid principles, in our considered opinion, the respondent's claim cannot be sustained. The respondent does not point to any provision in the 1997 Rules under which a candidate placed below a selected candidate acquires a right to be

¹ (1991) 3 SCC 47

² (2010) 2 SCC 637

³ (2010) 6 SCC 777

appointed to a post left unfilled on account of non-completion of pre-appointment formalities or non-joining. In the absence of such a provision, the mere fact that a selected candidate did not join cannot, by itself, create an enforceable right in favour of the respondent.

11. Applying the aforesaid principles to the facts of the present case, we find ourselves unable to sustain the claim of the respondent. The respondent was not excluded from the recruitment process altogether. He participated in the selection pursuant to the notification dated 03.11.2011 and was in fact selected and appointed to the post of Assistant Commissioner of Commercial Taxes, Group A, under the same recruitment. He joined duty on 09.05.2022. His present claim, therefore, is not one arising from total non-selection, but a claim to appointment to another post, namely Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale, on the ground that the selected candidate to that post did not undergo the mandatory medical examination, police verification, or report for duty.
12. The foundation of the respondent's case is that, since the selected candidate did not complete the pre-appointment process, the vacancy must necessarily go to him as the candidate immediately next below. The respondent has also sought to place reliance on the

circumstance that he had indicated preference for the said post. In our view, neither of these circumstances can, by themselves, create an enforceable right in his favour. Under the 1997 Rules, the relevant question is not merely whether a post remained unfilled in fact, but whether the Rules permit such post to be filled by reverting to the same select list and moving downward to another candidate. As already noticed, the 1997 Rules contain no such enabling provision.

13. The matter assumes greater significance when one bears in mind the structure of the selection itself. The recruitment was to multiple services and posts in Group A and Group B. The Rules required candidates to indicate their order of preference. The KPSC was then to prepare separate lists, equal to the number of vacancies, for the respective services and groups of posts. The process, therefore, was one of service-wise selection and allocation against notified vacancies. Once that exercise had culminated in publication of the final list and appointments were made in accordance therewith, the respondent could not claim, in the absence of express statutory sanction, that he should be shifted to another post merely because the selected candidate for that post did not complete the pre-appointment formalities or did not join.

14. There is yet another feature which dissuades us from accepting the respondent's claim as one of clear entitlement. Even on the material placed on record, including the respondent's own subsequent stand, his asserted position as the person exclusively entitled to the vacancy is not free from difficulty. The record indicates that there were candidates above the respondent, and the respondent himself appears to have sought to explain why such candidates ought not to be considered. We do not propose to enter into the comparative position of such candidates, since none of them is before us. However, that circumstance itself is sufficient to show that the respondent's claim was not one of an automatic or self-evident right. A writ of mandamus directing consideration for appointment against such a vacancy could not have been issued on so uncertain a premise.
15. In the end, the respondent's case rests on an assumption that whenever a selected candidate does not complete the pre-appointment requirements or does not report for duty, the post must pass on to the next candidate below. Such an assumption may have held good only if the governing rules expressly so provided. In the absence of any such provision in the 1997 Rules, the respondent could claim no more than what the statutory framework permitted. That framework did not confer

upon him any enforceable right to appointment to the post in question.

16. The requirement of preference under sub-rule (3) of Rule 4 furnishes an additional reason for caution. The recruitment in question was not to a single post, but to multiple services and groups of posts in Group A and Group B. Candidates were required to indicate their preferences, and the KPSC was required to prepare separate lists corresponding to the vacancies in each service or group of posts. The process was, therefore, not one of a single linear progression where, upon one candidate falling out, the next candidate would necessarily step into the very same post. Any such post facto adjustment would risk unsettling a service-wise and preference-based allocation exercise which had already attained finality.
17. The observation of the High Court that the principle that inclusion in the select list does not confer a right to appointment would not apply because the Government had already decided to appoint, also does not commend acceptance. The decision of the Government to fill the notified vacancies cannot be equated with creation of a right in favour of every candidate below the selected candidate to claim automatic substitution in the event of non-joining. The right, if any, must arise from the Rules themselves. In the absence of any provision in the

1997 Rules enabling such substitution, the respondent could not claim appointment merely because one selected candidate did not complete the pre-appointment process.

18. The position is further reinforced by the Karnataka Civil Services (Validation of Selection and Appointment of 2011 Batch Gazetted Probationers) Act, 2022 (hereinafter referred to as the “Validation Act”). Section 3 thereof validates the selection of the 2011 batch Gazetted Probationers made by the KPSC and mandates issuance of appointment orders as per the KPSC selection list. It further provides that no suit or other proceeding shall be maintained for review of any such appointment made in accordance with the provisions of the Act. Though the Validation Act may not by itself conclude the entire controversy, it certainly underscores the legislative intent to attach finality to the 2011 selection and appointments as made in accordance with the KPSC selection list. A direction which, in effect, reopens that concluded process and compels recourse to a mode of appointment not contemplated by the 1997 Rules would be plainly inconsistent with such legislative finality.
19. The principal reason for the impugned order of the High Court is that, since the selected candidate did not undergo the mandatory medical examination, the post

continued to remain unfilled and, therefore, the respondent, being the candidate immediately next below, ought to have been considered against that post. In our view, this approach conflates the factual existence of an unfilled post with the legal question as to the permissible mode of filling it. Even if it were assumed that the post continued to remain vacant in fact, the further question still remained whether the 1997 Rules permitted the same select list to be operated for filling such post. It is precisely on that question that the High Court, with respect, fell into error. The High Court was also not justified in holding that Rule 11(3) of the 1997 Rules had no application to the case at hand. On the contrary, Rule 11(3), read with Rule 11(1) and sub-rule (3) of Rule 4, lies at the heart of the controversy. It is these provisions which delineate the scope of the select list, the manner in which service-wise consideration is to take place, and the limits within which appointments may be made against the vacancies notified in that recruitment. Once the Rules themselves define the contours of the list and do not provide for any reserve or additional list, the absence of a selected candidate from the field cannot enlarge the statutory operation of the list.

20. In our considered view, therefore, the impugned judgment cannot be sustained. The Tribunal was right

in holding that the 1997 Rules do not contemplate preparation or operation of any additional or waiting list, and that a post left unfilled on account of non-completion of pre-appointment formalities or non-joining by a selected candidate could not be claimed by the respondent as of right from the same selection process. The High Court erred in quashing the communication dated 27.06.2022 issued by DPAR and the order dated 13.10.2023 passed by the Tribunal.

21. In view of the above discussion and analysis, the appeal is allowed.
22. The impugned judgment and order dated 21.04.2025 passed by the High Court in Writ Petition No. 24455 of 2023 (S-KSAT) is set aside and the writ petition stands dismissed.
23. Pending applications, if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI
MARCH 23, 2026.