

(2019) 02 J&K CK 0064

In the Jammu And Kashmir High Court

Case No : IA No. 01, 02 Of 2019 In Service Writ Petition (SWP) No. 294 Of 2019,

Aezaz Ahmad Bhat and Ors

APPELLANT

Vs

State And Anr

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Jammu And Kashmir Classification Control And Appeal Rules, 1956 — Rule 27

Citation : (2019) 02 J&K CK 0064

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Z. A. Shah, Hanan, Shah Aamir

Final Decision : Dismissed

Judgement

Caveat No. 315/2019

Heard learned counsel for the caveator.

Caveat is discharged.

IA No. 01/2019

On the set of facts and grounds urged, coupled with the submissions made at Bar, this application is allowed and the requirement of signatures in the memo of writ petition by all the petitioners is dispensed with. IA is, accordingly disposed of.

SWP No. 294/2019

Notice. On instructions, waived by Mr. Shah Aamir, learned AAG for respondents. Reply within four weeks.

List along with SWP Nos. 141/2019 and 187/2019 on the appointed date. IA No. 2/2019

1. Pending decision in the writ petition, petitioners are seeking the following ad-interim relief:

(i) That operation of Government order no. 174-HME of 2019 dated 12.02.2019 be stayed and the Hon'ble

Court may be pleased to grant extension in the joining time of the petitioners till further orders from the Hon'ble Court.

(ii) Any other interim order as the Hon'ble court may deem fit be also passed in favour of the petitioners and against the respondents.

2. Petitioners on competing the process of selection against the post of Medical Officers advertised in terms of advertisement notice No. 12-PSC (DR-P) of 2018 dated 15.10.2018, issued by Jammu and Kashmir Public Service Commission, are appointed as Medical Officers in the Health Department in terms of Government order No. 49-HME of 2019 dated 14.01.2019. Petitioners as stated have been admitted in various Government Medical Colleges/Institutes for undergoing PG Course in various disciplines and some of the petitioners are claiming to have been appointed for tenure appointments as Registrarship/Senior Residency/Demonstratorship in the Government Medical Colleges/Institutes. It is stated that all the petitioners herein are in different years of PG course and are working as Registrars, Senior Residents, or Demonstrators. While undergoing PG course are working as Registrars/Demonstrators/Senior Residents.

3. Petitioners on feeling aggrieved of the conditions of their appointment with reference to application of SRO 202 and SRO 325, had filed SWP Nos. 141/2019 and 187/2019, seeking release of regular pay scale attached to the post of Medical Officer borne in the service of Health Department, as also for regulating their transfers and postings in terms of the Rule 27 of Jammu and Kashmir Classification Control and Appeal Rules, 1956. Petitioners therefore, sought quashment of the condition No. (B) appearing in Government order No. 49-HME of 2019 dated 14.01.2019 and such other condition which prevents the petitioners from completing their " post Graduate Course"/"Tenure appointments" as "Registrars", "Senior Residents", "Demonstrators".

4. Writ petitions SWP Nos. 141/2019 and SWP No. 187/2019, filed by the petitioners prior to filing of the instant petition, were considered by this Court on 30.01.2019 and 05.02.2019 respectively, and on recording the submission of learned appearing counsel for the petitioners as also learned appearing counsel for the Government/caveators, passed the following interim order:-

" Meanwhile, the posts against which the petitioners have been appointed shall be filled up unless a decision is taken with reference to their request for completion of their PG Course/continuation of their tenure appointments as Registrars/Senior Residents, or Demonstrators, with a further direction to consider their case for allowing them to complete the course/tenure appointments."

5. During the pendency of the writ petitions, it is stated that respondents have in terms of Government order No. 174-HME of 2019 dated 12.02.2019, considered

the claim of the petitioners and directed that the petitioners / appointees are not allowed to the benefit of continuation with PG /tenure appointments as Registrarship /Senior Residency /Demonstratorship and they have only one choice either to opt for appointment or opt out and go for PG /tenure appointment as Senior Residency/ Registrarship/Demonstratorship and are directed to report at their place of postings, made in terms of Government order No. 49-HME of 2019 dated 14.01.2019 within a period of 10 days from the date of issuance of the order, failing which their appointments, as stated be deemed cancelled ab-initio and the candidates from the waiting list will be considered for appointment without any further notice.

6. Petitioners have questioned the Government order dated 12.02.2019, in the writ petition on the grounds detailed out in the petition with particular reference that the order amounts to arbitrary exercise of powers by respondents and is discriminatory in nature, as the Medical Officers, who were appointed in the year 2018, as a consequence of completion of process of selection by Public Service Commission against 371 posts of Medical Officers for New Type Primary Health Centres, created vide Government order No. 585-HME of 2014 dated 17.10.2014, have been accorded benefit of extension in joining time till they complete their PG/tenure appointment as Registrarship/Senior Residency/Demonstratorship.

7. Mr. Z. A. Shah, senior counsel appearing for the petitioners has made reference to Government order No. 630-HME of 2018 dated 14.11.2018 to support his contention. Mr. Shah, learned senior counsel further submits that sizeable number of Medical Officers appointed in Health Department are continuing as resident Doctors in the Government Medical Colleges/SKIMS and other Institutes. He has provided details of those Doctors in the petition. Mr. Shah, further submits that the Health and Medical Education Department is on record of having allowed all the Medical Officers, appointed from time to time to continue with PG/tenure appointment as Registrarship/Senior Residency/Demonstratorship. He has also provided the details of Doctors, who have been time and again allowed to continue with the course and on completion allowed to join the post. It is further submitted that it is first time when the Health Department has denied the benefit to the petitioners of continuing for undergoing the PG Course as also tenure appointments as Registrarship/Senior Residency/Demonstratorship. Learned counsel has also provided the details of the petitioners, who are only left with few months of completion of their PG Courses, ranging from 3 to 6 months. Mr. Shah, learned senior counsel submits that the treatment given to the petitioners in terms of impugned order is discriminatory, therefore, violative of Article 14 and 16 of the Constitution of India.

8. The petitioners in paragraph 11 of the writ petition have provided the details of the Medical Officers out of 254 allowed by the Government to complete their PG course/tenure appointments and from the perusal of the said details it is

demonstrated that those medical officers will complete their course/tenure appointments in the month of February, 2019, as such, sizeable number of medical officers will be available in the Health Department for posting. Mr. Shah, learned senior counsel submits that in case the petitioners are not allowed to continue with the PG course/tenure appointments as Registrarship/Senior Residency/Demonstratorship, the same will not cause prejudice to their rights but will also deprive them of the higher qualifications/eligibilities for higher posts, which will be beneficial for the patient care of the State.

9. Mr. Shah AAmir, learned AAG, who is on caveat submits that the writ petition is not maintainable as the order impugned is as a consequence of implementation of the direction passed by this Court in the earlier writ petitions SWP No. 141/2019 and 187/2019. He further submits that the reference to the Government decision notified in terms of Government order No. 630-HME of 2018 dated 20.11.2018, does not clothe the petitioners with any of their rights, seeking the relief as prayed for in the writ petition. It is submitted that the appointment of the petitioners is governed by the terms and conditions of SRO 202 of 2015, as also the terms and conditions of advertisement notice issued by Public Service Commission and that of the appointment order. Learned counsel further submits that there is no scope for the petitioners to turn round on their selection and appointment to seek the benefit of continuation for PG/tenure appointments as Registrarship/Senior Residency/Demonstratorship.

10. Heard learned counsel for the parties, considered the matter and perused the records.

11. Admittedly the petitioners have competed the process of selection against the post of Medical Officers made by the Public Service Commission in terms of advertisement Notice No. 12-PSC (DR-P) of 2018 dated 15.10.2018 and on completing the process, they have been selected/appointed on the said posts. The Court at this stage is only considering the interim application for grant or otherwise of the interim relief, therefore, with full restraint, may not make any observation which will prejudice the cause of the parties.

12. Prima facie it appears that the petitioners are governed by the terms and conditions of their selection and appointment, having reference to SRO 202, therefore, there is no scope for seeking continuation as PG / tenure appointments as Registrarship / Senior Residency / Demonstratorship.

13. Admittedly, the selection and appointment of the petitioners has been made in terms of Jammu and Kashmir Special Recruitment Rules, 2015, notified vide SRO 202 of 2015 and by application of the said rules, there is no scope for the petitioners to seek extension in joining time from the Court. Court cannot pass a direction by extending the period of joining till petitioners complete their PG course/tenure appointments as Registrarship/Senior Residency/Demonstratorship, which in case allowed will amount to interference with the decision of the Government. The Government has while making appointments of

the petitioners on the recommendation of the Public Service Commission, against the post of Medical Officers, consequently posted them in various areas of the State of Jammu and Kashmir and provided the joining time with the object of making available the Doctors in the most far flung and other areas of State of Jammu and Kashmir. The requirement for providing Doctors to the patients in the State of Jammu and Kashmir is in fulfilment of dire need of such areas, therefore, these appointments are made with reference to special creations under the Special Recruitment Rules. The word "special" in the recruitment rules by its simple meaning has reference to involving the public interest. Therefore, the Government in order to meet the public interest, have made these appointments and postings of the petitioners. In the event, the submission of learned appearing counsel for the petitioners is accepted and any indulgence shown by grant of interim relief, same will amount to depriving the patient care of the far flung areas from Medical Officers. The posts cannot be kept unfilled on account of non-availability of these petitioners who are hundreds in number, resultantly keeping the Government Health Institutions in far flung areas without Doctors.

14. The order impugned in the writ petition bearing No. 174-HME of 2019 dated 12.02.2019, in terms whereof the claim of the petitioners for extension in joining till the time they complete PG course/tenure appointments has been rejected, is a consequence of implementation of the orders passed by this Court on 30.01.2019 and 05.02.2019 in the writ petitions filed by the petitioners bearing SWP No. 141/2019 and SWP no. 187/2019, therefore, there is no scope for the petitioners to seek the relief in interim, which on consideration has not been granted in their earlier writ petitions.

15. Needless to mention that the petitioners in their writ petitions filed earlier had prayed for the interim relief having reference to staying the condition (B) of Government order dated 14.01.2019, with further direction that petitioners be allowed to complete the PG course/tenure appointments as Registrarship/Senior Residency /Demonstratorship, which on consideration was not granted, except a direction for considering their request for completion of their course/continuation of their appointment as Registrarship/Senior Residency/Demonstratorship was passed, therefore, there is no scope for the petitioners to challenge the order and seek the same relief which was declined by the Court in their earlier interim applications.

16. The petitioners are undergoing PG course in different disciplines of medical education at various Institutes and in the event they join the post, they have to half way leave the course, resultantly as submitted by Mr. Z. A. Shah, senior counsel appearing for the petitioners may deprive them of having higher qualification medical degrees, but it is for the petitioners to decide as to whether they want to continue with PG course/tenure appointments as Registrarship/Senior Residency/Demonstratorship or to join the post of Medical Officers against which post they have been appointed on the recommendation of the Public

Service Commission. In the event the petitioners chose not to join the posts, the Government cannot be asked to keep these posts vacant, as they require the Doctors, therefore, they are at liberty to fill up these posts out of the waiting list, so as to ensure making available the Medical Officers to the patients in the far flung areas. In that view of the matter, the application seeking interim relief is dismissed.

In view of above, petitioners are found not entitled to the interim relief as prayed for, resultantly, interim application, shall stand dismissed.