

(2003) 06 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1284 of 2001

Dr. Fayaz Ahmad Sofi

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 12-06-2003

Acts Referred:

Citation : (2003) 3 JKJ 154

Hon'ble Judges : N.A. Kakru, J

Bench : Single Bench

Advocate : Zafar Ahmad Shah, for the Appellant; A.M. Magray, for the Respondent

Final Decision : Allowed

Judgement

Nisar Ahmad Kakru, J.—In pursuance of the advertisement notice, the petitioner applied for the post of Assistant Professor in the specialty of General Medicine. Selection was made on the basis of evaluation of the research work and performance in the interview. The process clinched in selection of respondents 4 to 6 which is questioned through this writ petition. During the pendency of the writ petition, the petitioner moved an application seeking a direction against the respondents for his appointment against the vacant post of Assistant Professor. In response to the application, Mr. Magray admitted that one of the Assistant Professors has abandoned his services and post is lying vacant against which the petitioner can be adjusted if Court permits. The statement so made at the bar makes it easy enough to pass a direction for appointment of the petitioner, yet with a view to ensure that such direction does not confer any undue advantage upon the petitioner which may enable him to steal a

march over the head of any other meritorious candidate, examination of the record became imperative. Its perusal reveals that the petitioner figures in first four meritorious candidates out of which three have been appointed (respondents 4, 5 & 6 herein). Thus he is due for appointment on the available post and there is no legal impediment in directing his absorption on the vacant post. Matter should end here but if at any point of time the absconding Assistant Professor is reappointed/reinstated it may result in petitioner's ouster, giving rise to a fresh litigation but a difficulty likely to be faced by the petitioner is that disposal of this writ petition may debar him from raising the issues once again. I am, therefore, inclined to pass a direction which settles the controversy for good. To achieve the objective, matter needs to be examined on the basis of evaluation of research work of the respondents-selectees and the petitioner.

2. It is seen that the Committee constituted for evaluation of the research work in the discipline of General Medicine composed of Professor

Mohinder Bhandhari, Director, Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow, Prof. Syed Zahoor Ahmad, Ex Director

SKIMS, Prof. S. Jalal, Dean Faculty of SKIMS and external expert namely Prof. Sifat Afzal, Professor of Medicine, Aligarh Muslim University,

besides, the Director & Vice Chairman of SKIMS. The Professors whose particulars are detailed hereinabove are admittedly the only qualified

members of the Selection Committee in the discipline of General Medicine, therefore, it will be appropriate to give a brief narrative about the

evaluation picture recorded by these Professors. As per evaluation of Prof. Bhandhari and Prof. Sifat Afzal (External Expert) research work of

respondent No. 6 has drawn a blank, but amazingly the Vice Chairman has rated the same research work at 15 points. It is evident from the

record that as per evaluation made by other two Professors namely Prof. Syed Zahoor Ahmad and Prof. S. Jalal research work of respondent 6

could not beget him more than five points. Another instance of favoritism is evidenced by points awarded in favour of respondent 5 by the Vice

Chairman who rates his research work at 17 points whereas it has been evaluated by Professors of Medicine including the expert at 6, 8, 11 & 10

respectively. Now a work about the performance of the petitioner. Professors and Expert have rated him at 12, 10, 16 & 12 but Vice Chairman

rates his research work at 7 points only. It is clear that Vice Chairman has awarded the research work of respondents 5 & 6 more than three times compared to the award drawn in favour of the petitioner, yet in view of fair evaluation by Professors and expert the petitioner lacks only by less than one point on overall evaluation by the Committee in aggregate. Comparing the petitioner with respondent No. 4 ratings of Professors of General Medicine is almost at par. What emerges from comparative analysis is that as per rating of the Professors of General Medicine the petitioner takes a lead over respondents 4 to 6 but it is Vice Chairman's ratings which has grounded him.

3. In this behalf challenge is thrown to the selection on the ground that Vice Chairman (VC) lacks competence to evaluate the research work. It is seen from the pleadings that qualification of the Vice Chairman is MBBS only and he has no specialty or super specialty to his credit, yet it is his evaluation which has prevailed. Be it placed on record that I am conscious of the fact that I am neither an expert nor I am sitting as a Court of appeal so that the research work of the rival parties is reassessed. Nonetheless the controversy needs to be appreciated in the light of the assessment made by the Professors of the discipline which makes it crystal clear that the petitioner ranks superior in their estimation. One fails to understand as to what has prompted the Apical Selection Committee SKIMS to give preference to evaluation made by Vice Chairman notwithstanding the fact that he is a raw hand for purposes of evaluation of research work in the specialty of General Medicine. No explanation even worth the name has come forward from the respondents. Needless to say that it is the domain of experts and Professors of General Medicine to evaluate the research work in General Medicine who have the capability and caliber to examine such work qualification and expertise-wise. All this goes to show that the selection in general medicine has been camouflaged and the petitioner's non selection amounts to victimization of his professional efficiency. The assessment of evaluation of research work makes room to draw an inference that mala fides, bias and ulterior motive was the cause of non selection of the petitioner.

4. Being of the considered opinion that the selection process in general medicine was tainted one, consequently the selection of some of the

selectees in the discipline of general medicine may have to go but such course has become avoidable in view of the fact that respondents have

offered appointment to the petitioner on the post of Assistant Professor. However, it needs to be placed on record that if at any point of time the

SKIMS is persuaded on the strength of rules to declare the absconding Assistant Professor, entitled to reinstatement/reappointment they shall be

free to do so, but without disturbing the petitioner. How to overcome such a situation, it is for the respondents 1 to 3 to sort out.

5. Before parting with it calls for a mention to put the record straight that other grounds taken against the omissions and commissions of the

SKIMS in the process of selection and appointment in General Medicine have substantial strength but since the petition in my opinion is bound to

succeed on the aforementioned reasoning, therefore, I, refrain from expression of opinion with respect to other grounds.

6. In the result, this writ petition is allowed with a direction to the respondents to appoint the petitioner on the post of Assistant Professor in the

discipline of General Medicine forthwith.

7. No order as to costs. Record is returned to Mr. Magray in the open Court.