

(2019) 03 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 320 Of 2019, IA 01 Of 2019

Dr. Hilal Ahmad Dar & Ors

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16(1)

Citation : (2019) 03 J&K CK 0034

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M.Y. Bhat, Shah Aamir

Final Decision : Disposed Off

Judgement

1. In the instant petition, petitioners pray for the following reliefs:-

"That by issuance of a writ of certiorari the condition below mentioned in the Govt. orders bearing No. 160-HME of 2019 dated 08.02.2019, order No. 162HME of 2019 dated 08.02.2019 and order No. 156 HME of 2019 dated 08.02.2019 as under;

"The above candidates shall report the Principal Govt. Medical College, Baramulla and Rajori respectively within a period of 21 days from the date of issuance of this order in case any failure of the appointees to join within a stipulated period their appointment order shall be deemed to have been cancelled without any further notice".... Be quashed.

That by issuance of writ of Mandamus the respondents be directed to allow the petitioner No. 1 & 13 to complete DM Gastro in SKIMS and petitioner No. 2 to complete Fellowship at AIMS till such time they complete these course their post as Assistant Professor (Lecturer) general Medicine and Radiology may be protected and the respondent be also directed to treat the period spend by the petitioners as DM gastro and Fellowship as probation in the interest of justice.

Brief Facts;

2. Petitioners are aggrieved of the condition of the appointment orders and challenge the same with further relief of allowing the petitioners to complete the tenure courses and thereafter be allowed to join the posts of Assistant Professor in the Health Department. The condition impugned being relevant for the decision of the writ petition is taken note of:-

"The above candidates shall report the Principal Govt. Medical College, Baramulla and Rajori respectively within a period of 21 days from the date of issuance of this order in case any failure of the appointees to join within a stipulated period their appointment order shall be deemed to have been cancelled without any further notice".

3. Challenge to condition aforesaid of the appointment orders has reference to working harshly and causing inconvenience by such condition, is violative of rights guaranteed under the Constitution of India and Constitution of Jammu and Kashmir, further ground to challenge has reference to violation of right to public employment guaranteed under the Constitution of Jammu and Kashmir read with Constitution of India. Petitioners have right to be appointed and any deprivation would amount to violation of fundamental right as same would amount to deprivation of rights enshrined in Article 14 and 16(1) of the Constitution. Further ground of challenge is that the Government cannot deny the petitioners to exercise their right to continuation as Assistant Surgeons till they complete period of appointment. It is submitted that the State has already incurred some expenses on petitioners for undergoing tenure courses/fellowship and the petitioners having spent lot of time have acquired knowledge and expertise, which will benefit the patient care in peripheral areas of the State of Jammu and Kashmir. The condition impugned, if given effect, will amount to wastage of State exchequer and will further amount to action ultra vires to the Constitution. Deprivation of the petitioners from completing the tenure courses/fellowship by pressing into service the impugned condition is devoid of intelligible differentia, which in other words means respondents by incorporating the aforesaid condition have failed to show any rational nexus between the basis of not allowing petitioners to complete their tenure courses/ fellowship and the object intended to achieve. Petitioners also submit that they can be allowed to join the posts and subsequent thereto grant study leave for remaining few months.

4. Heard learned counsel for the petitioners, considered the matter and perused the records.

5. The challenge to the condition aforesaid in terms of the grounds taken in the writ petition has no substance. Petitioners on selection and appointment have to join the post, so as to enable the department to avail their services for the patient care and in the event such course is not acceptable to petitioners, they have no option but to lose the appointment. It is stated that the petitioners challenge the said condition as being arbitrary, unreasonable and violative of the

rights of the petitioners guaranteed under the Constitution of India. The benefit, which has accrued to the petitioners is with reference to their appointment against the posts, which benefit of the posts they can be allowed only on joining the posts, but there can be no law on the subject to keep the posts vacant, till the petitioners complete the tenure courses/fellowship.

6. A similar issue was raised in SWP No. 294/2019 titled Aezaz Ahmad Bhat and Ors. Vs. State and Anr., by some of the Doctors, who were appointed against the post of Assistant Surgeons in the Health Department and on consideration, this Court has rejected their claim for continuation of PG/tenure appointments as Registrarship/Senior Resident/Demonstrators.

7. Admittedly, the petitioners on completion of the process of selection against the post of Assistant Professor advertised by the Public Service Commission stand selected/appointed on the said posts. The petitioners instead of joining the posts, challenged the condition of the appointment order, which provides that the petitioners shall not be allowed to undergo the tenure courses/fellowship and have only choice to join within a stipulated period. Admittedly, the selection and appointment of petitioners has been made in terms of Jammu and Kashmir Health and Family Welfare Gazetted Service Rules, with reference to the requirement in the department. There is no scope for the petitioners to seek extension in joining time from the Court, as the Court cannot pass such direction by extending the period of joining till the petitioners complete their tenure appointments/fellowship, and in the event such relief is allowed, same will amount to interference with the decision of the Government. The Government while making the appointment of the petitioners on the recommendation of Public Service Commission against the posts of Assistant Professor, consequently posted them in Health Department and provided the period of joining time with the object to make available the Doctors in the most difficult 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 Doctors, therefore, these appointments are made with reference to special needs for the patient care of the State.

8. The Government in order to meet the public interest, have made these appointments of the Doctors and their postings, which needs no interference from the Court. In the event, any indulgence is shown by the Court for the relief prayed for, same will amount to depriving the patient care of the State. The posts against which the petitioners have been appointed, cannot be kept unfilled on account of non-availability of petitioners, who are in the process of completing their tenure courses/ fellowship in different institutions.

9. Learned counsel for the petitioners was pointedly asked as to how the impugned condition of appointment challenged in the writ petition is violative of fundamental or legal rights of the petitioners, which he could not point out, therefore, the claim made is by no stretch of imagination, worth to be allowed.

10. Learned counsel of the petitioners submits that the case of the petitioners is pending decision with the Government as the petitioners have been earlier allowed by the Government to pursue the courses. Be that as it may, in view of the above discussion, the relief prayed for by the petitioners cannot be granted by any stretch of imagination, however, having regard to the submissions made by the learned counsel for the petitioners, the petitioners shall be at liberty to pursue the matter with the Government and in the even that Government takes any decision, the petitioners will be bound by the said decision.

11. Writ petition alongwith connected IA disposed of as above.