

(2005) 05 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1083 of 2004

Dr. Jyotsana Lamba

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Indian Medical Council Act, 1956 — Section 13, 3

Citation : (2005) 3 JKJ 137

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant; Shaista Hakim, Dy AG for the Respondents 1 to 6 and D.S. Chauhan, for Respondent-7, for the Respondent

Judgement

Permod Kohli, J.—Selection of respondent-7 as Registrar in the Department of Gynaecology and Obstetrics in Medical College, Jammu

vide order No. 456 of 2004 dated 6.7.2004, is in question in the present petition. The Government Medical College, Jammu issued Advertisement

Notice No. 3 vide his No. JMC/Estt/GD/109/90 dated 19.01.2004 inviting applications for the tenure post of Registrar for a period of three years

in the pay scale of Rs. 8000-13500 lying vacant in the four departments indicated in this notice. The conditions of eligibility were specified in the

advertisement notice. Conditions 1 and 2 are relevant for the purpose of present controversy. The same are noticed as under: -

1. The applicant should be MBBS with Postgraduate qualification in the discipline concerned i.e. speciality applied for the post. 2. No

Postgraduate doctor will be considered for appointment as Registrar unless he/she has completed two years minimum active service as Assistant

Surgeon in the Health Department after obtaining postgraduate degree.

2. Petitioner and respondent-7 both applied in response to the aforesaid notification along with some other candidates. As per averments made in

the petition, total 13 candidates applied in the discipline of Obstetrics & Gynaecology against five available vacancies. Petitioner and 11 other

candidates were found eligible. They were issued interview calls and were accordingly interviewed on 11.5.2004 by Selection Committee

comprising respondents 3 to 6. It is alleged that after the interview, the candidates were informed of their merit and petitioner figured at Serial No.

1 in the merit list. However, the result of selection was not declared. It is further alleged that the result was delayed with the sole object of adjusting

respondent-7. The result was finally declared on 28.6.2004 when 6th vacancy of Registrar in the said discipline also became available. According

to petitioner, respondent-7 was ineligible at the time of making application and continued to be so even at the time of declaration of result and her

selection as Registrar. Respondent-7 completed her M.D. in Obst and Gynae on 24.7.2002 on declaration of result by the University of Jammu.

Copy of the result notification is placed on record. Petitioner also qualified in the same notification. Petitioner was at Serial No. 10 whereas

respondent-7 was at Serial No. 11 of the notification. They were declared pass. After the declaration of the result, respondent -7 came to be

appointed vide impugned order dated 6.7.2004.

3. The challenge to the selection of respondent-7 is, firstly on the ground that she had not completed two years of service as Assistant Surgeon

after acquiring Post- graduation qualification. The other ground is that against five advertised posts, five candidates who were eligible, were

selected and respondent-7 has been appointed against the 6th vacancy, which became available only on 28.6.2004 and this vacancy was never

advertised. But the respondent-7 has been adjusted against 6th vacancy. It is further stated that petitioner and respondent-7 are similarly situated

and the petitioner having better merit in the selection process, she had preferential right to be appointed as Registrar. Accordingly, besides seeking

quashment of appointment of respondent -7 made vide order No. 456 of 2004 dated 6.7.2004; a further direction is sought to declare the result of

selection of the petitioner on the basis of her merit and consider her appointment against the 6th post of Registrar which has fallen vacant on

28.6.2004.

4. Respondents 1 to 6 filed their objections to the writ petition. It is stated that at the time of advertisement notice, there were five vacancies and

6th vacancy has become available in June, 2004. The process of selection was initiated for all the six vacancies and accordingly the selection was

also to be made for all the six vacancies. In all, 12 candidates were called for interview. The selection committee ascertained their eligibility as per

the criteria prescribed in Government Order No. 633- HME of 1984. It is further alleged that petitioner did not fulfill the eligibility condition-5 of

the Government Order, which provides field service after Post- graduation. She had also not two years service as Assistant Surgeon in the Health

Department at the time of interview after acquiring Post- graduation. The Selection Committee took into consideration the merit position of those

candidates who possessed eligibility of two years active service after Post- graduation. It is further stated that respondent-7 had three years active

field experience after Post - graduation and she obtained merit position at Serial No. 6 in the eligible candidates and not at Serial No. 12 as

alleged. The other allegation that there was pressure from the Selection Committee, has also been denied.

5. Respondent-7 has filed separate reply. This respondent has also stated that writ petitioner did not fulfill the eligibility condition -6 of the

Government Order dated 19.9.1984 which provide field service after Post - graduation . Petitioner was not having two service as Assistant

Surgeon after Post- graduation to her credit at the time of interview.

Vide Government Order dated 19.9.1984, the criterion of selection has been laid down, which is as under:

Total marks 100

1. Academic career (MBBS or equivalent Qualification 40

(a) passed all examinations at the first attempt 40

(b) one failure

(Deduct 3 marks for every subsequent failure) 37

2. Distinction, Scholarship, Honours, Medals and Certificates

(upto maximum of 5 marks)

(a) National merit scholarship (obtained during MBBS) 1

- (b) Best Graduate of the year from the Medical College 2
- (c) First in the University in the Final MBBS Exam. = 3
- (d) Second in the University in Final MBBS Exam. = 2
- (e) Third in the University in Final MBBS Exam. = 1
- (f) Prize/Medal/Honour/ Marks(75% or 1st position In each subject, in the University professional Exam. 2
- (g) Second positioning each subject in the University Professional Examination = 1/2

3. House job career in a teaching institutions (5 marks)

- (a) For ""excellent"" grading = 5
- (b) For "" very good"" grading = 3
- (c) For "" good"" grading = 1

4. Rural Service (Prior to post-graduation.Max.5 marks)

For each one year of rural service (A certificate regarding rural service will be issued by Director, Health Services concerned regarding physical working of the Doctor in rural area) = 1

5. Field Service (after post-graduation Max 5 marks) For each one year field service after post graduation = 1

6. Post graduate career (Max. 20 marks) = 20

- (a) For MD/MS Course
- (b) For Diploma Course = 10

7. Professional publication in a standard Medical Journal (2 marks for each publication) = 10

8. Viva voce = 10

Note : For basic science department, research work done in Any recognized institution may be given credit in lieu of house job career.

6. From conditions 1 and 2 of the advertisement notice referred to above, it is clear that a candidate to be eligible for the post of Registrar should be MBBS with Post-graduation in the concerned discipline and he should have competed two year minimum active service as Assistant Surgeon in

the Health Department after obtaining Post-graduation degree. Admittedly, petitioner as also respondent-7 passed their M.D. in Obstetrics &

Gynaecology on 24.7.2002. The advertisement notice was issued on 19.1.2004 and the last date of receipt of applications was on or before

20.2.2004. The interviews were held on 11.5.2004. On cut off date of making applications and even on the date of interview, both the petitioner

and respondent-7 had less than two years after Post-graduation . The record of selection was summoned from the respondents. . It appears from

the record that petitioner was appointed as Assistant Surgeon through Public Service Commission on 12.8.1997 whereas respondent-7 was

appointed as Assistant Surgeon on 12.3.1992. Petitioner as also respondent-7 acquired one year diploma in Gynaecology & Obstetrics(DGO) in

1993-94. Both of them passed their MD Gynaecology on 21.6.2002 . It is stated that respondent -7 had acquired diploma in Gynaecology and

Obstetrics after her appointment as Assistant Surgeon and she was having two year service as Assistant Surgeon after Post-graduation i.e from

1994 to the date of application, even if the qualification of MD is ignored. On the contrary, petitioner though acquired DGO in 1993-94, but she

was appointed as Assistant Surgeon on 12.8.1997 and thus, she was not having two year serviced after Post-graduation.

7. As noticed above, admittedly the petitioner as also respondent-7 were not having two years of service as Assistant Surgeon after acquiring MD.

The question arises whether the qualification of one year Diploma(DGO) can be considered to be Post -graduation qualification for the purpose of

appointment as Registrar. As far the Medical Education Gazetted Services Recruitment Rules, 1979 are concerned, the qualification prescribed for

the post of Registrar is as under:

... Possession of recognized medical qualification included in the First or Second Schedule (other than Licentiate qualifications) to the Indian

Medical Council Act, 1956 . Holders of educational qualifications included in Part-II of the Third Schedule should fulfil the conditions stipulated in

sub section 3 of section 13 of the Indian Medical Council Act, 1956.

Post - graduate degree qualification in the concerned subject will be preferred; and

One year experience as House Officer or equivalent recognized experience.

8. There is a communication dated 14.9.2000 on record wherein recommendation was made for exemption of one year after Post-graduation.

Therefore, instead of three years service prescribed under rules, a candidate should possess two years active service as Assistant Surgeon after

Post-graduation to become eligible for the post of Registrar. The Medical Council of India has laid down norms for selection and framed regulation

namely the Post-graduation Medical Regulation 2000, wherein certain conditions laid down for Post -graduation institutions, which reads as under:

Postgraduate Medical Education in broad specialities shall be of three years duration in the case of degree course and two years in the case of

Diploma course after MBBS and in the case of super specialities the duration shall be of three years after MD/MS with the exceptions wherever

indicated.

9. Under this regulation, three years degree in MD/MS or two years in case of Diploma Course after MBBS Course is to be considered as Post-

graduation qualification, meaning thereby that one year diploma is not to be construed as Post -graduation qualification as was being possessed by

both these candidates at the time they applied and were interviewed. Therefore, none of the candidates were having two years service as Assistant

Surgeon after Post -graduation and thus both of them were ineligible. How and under what circumstances, respondent -7 has been selected when

petitioner as also respondent-7 were similarly situated, cannot be appreciated. As far the question of rural service is concerned, under the

Government Order of 1984, only some weightage is to be given for rural service. In the present case, being ineligible question of weightage for

rural service does not arise.

10. For what has been stated above, neither respondent-7 nor petitioner was eligible at the time of making application or even at the time of

interview, therefore, selection/appointment of respondent-7 is contrary to law and advertisement notice and the same is liable to be quashed. I

order accordingly.

11. The resultant vacancy shall be re-advertised and all the eligible candidates shall be considered for appointment against the said vacancy in

accordance with the procedure and qualification prescribed.