

(2019) 10 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 26 Of 2006

Dr. Muddassar Hassan Rather & Ors

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Citation : (2019) 10 J&K CK 0031

Hon'ble Judges : Gita Mittal, CJ

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gita Mittal, CJ

1. This writ petition was filed in the year 2006 seeking quashing of the communication dated 24th November, 2005 whereby the petitioner were denied to be relieved. The writ petitioners have also sought a direction upon the respondent no. 1 to relieve the petitioners as Assistant Surgeons to enable them to take up their assignments as Senior Residents in SKIMS, Soura, Srinagar.

2. The respondent no. 3 has filed the objections wherein it is stated as follows:

"1. That while challenging communication No. HD (Gaz) Gen. 183/2005 dated 24.11.2005 issued by the respondent No. 1, petitioners have sought relief of being relieved by the respondents 1 and 2 so as to enabling them to take up their assignment as Senior Residents in Sheri-i-Kashmir Institute of Medical Sciences, Soura, Srinagar, which is a tenure appointment.

The respondents respectfully submit that the petitioners had applied for the post of Assistant Surgeon borne on the cadre of service and governed by the J&K Medical (Gazetted) Service Recruitment Rules, 1970. On completion of the process of selection by the J&K Public Service Commission, petitioners along-with other eligible candidates were selected and recommended by the P.S.C. for appointment as Assistant Surgeons in the respondent department and

consequently in terms of Government Order No. 464-HME of 1005 dated 1-8-2005, petitioners came to be appointed as Assistant Surgeons and posted at different places in the State of J&K. It is significant to submit here that before issuance of formal appointment order in favour of petitioners, petitioners had responded to the Advertisement Notice dated 29.06.2005 inviting applications from eligible candidates for appointment on stipendiary basis as Senior Residents in SKIMS and after appearing in the interview and competing selection process, they were selected and engaged as Stipendiary Senior Residents in terms of order forming Annexure (F) to the writ petition. Consequent upon issuance of appointment/engagement order in favour of petitioners as Assistant Surgeons vide aforementioned Government order, they have since joined and have been working and functioning as such in the Health Centres of the respondent department, but have approached for relieving them to join SKIMS as Senior Residents which request has not been accepted by the Government in terms of the communication dated 24.11.2005 which has been assailed through the medium of present writ petition. It is submitted that petitioners have no right or locus to challenge action of the Government as petitioners are estopped to do so after they applied and get appointed as Assistant Surgeons and joined the posts.

2. That the relief sought by the petitioners have the effect of claiming deputation which is the domain of the Government alone. It is submitted that the Government needs service of the petitioners in the areas where they were posted and as such the impugned decision has been taken in the interest of patient care who would be put to miserable conditions in absence of Doctors.

3. That an identical writ petition was before this Hon'ble Court filed by some Assistant Surgeons who were also selected and appointed by the Medical College as Registrars which is a tenure appointment. The writ petition was also opposed by the Government on the ground that appointment was outside their cadre which needed deputation and the Government in exercise of its power/authority/discretion, decided not to issue such deputation order at the cost of patient care in the rural areas and the writ petition stands reserved for judgment. The respondents are sure that the writ petition will be dismissed because the stand of the Government is based on principle."

3. No relief was granted to the petitioners in the writ petition.

4. The Senior Residency is a tenure posting period and the same must be long over. The writ petition is rendered infructuous by efflux of time.

5. There has been no appearance on behalf of the petitioners on 9th August, 2019 and 16th August, 2019. There is no appearance on behalf of the petitioners even today. Clearly, the writ petitioners have lost interest in prosecuting this case.

6. In view of the above narration of facts, the writ petition is dismissed.