

(2015) 09 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1445 of 2015, MP No. 01 Of 2015 C/W Contempt No. 624 of 2015

Dr. Mushtaq Ahmad Laway

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Citation : (2016) 2 JKJ 55

Hon'ble Judges : Mr. Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Mr. Jahangir Iqbal Ganai, AG with Mr. Omais Kawoosa, Advocate, for the Respondents 1 to 4; Mr. Mir Manzoor, Advocate, for the Respondent No. 5; Mr. M. Iqbal Dar, Advocate, for the Petitioner/Appellant

Final Decision : Allowed

Judgement

Mr. Mohammad Yaqoob Mir, J. - Vide advertisement notice No. SIMS/ACAD/133 of 2015 dated 22nd May, 2015, applications were

invited from eligible candidates for admission to various Postdoctoral (DM/M.Ch) 03 years courses for the session 2015 at SKIMS (Deemed

University) Srinagar which include three seats for DM Gastroenterology. Amongst others, petitioner and respondent No.5 had also competed.

Petitioner amongst the selected candidates figure at serial No.2, so as per one of the conditions of advertisement notice had to join and complete

all the formalities and submit original certificates required by or before 31.07.2015 failing which the seat falling vacant shall be offered to the next

candidate, if any, standing in the merit list.

2. Petitioner being an in-service candidate apprehending that he shall not get relieved before 31.07.2015, along with one Dr. Farooq Ahmad Mir

filed SWP No. 1455/2015 titled ""Dr. Farooq Ahmad Mir & anr. v. State of J&K & ors."" An interim direction was issued on 14th July,

2015 to the effect that the respondents No.1 and 2 therein shall relieve the petitioners within ten days so as to enable them to pursue DM & MCH

courses. Then again on 31.07.2015, in MP No.02/2015 direction was issued to the effect that ""seat of DM & MCH, for which petitioners stand

respectively selected, shall not be filled up till further orders from the Court. It is, however, made clear that in case the petitioners are relieved then

they alone shall be allowed to join the course.

3. The respondents noticing that the petitioner has not obtained NOC/relieving order up to 31st July, 2015 filled up the vacancy by issuing order in

favour of respondent No.5 allowing him to join DM Gastroenterology course on provisional basis w.e.f. 11.08.2015. Same being in contravention

to the aforesaid direction gave rise to launching of contempt proceeding which was registered as contempt No.571/2015 in SWP No.1455/2015.

4. Vide order dated 25th August, 2015, rule was directed to be framed against respondents No.2 and 3. Furthermore, it was directed that the

petitioner shall be allowed to join DM course for which he has been selected and report compliance. Subsequent to that on 27th August, 2015,

respondents have kept the order of admission of respondent No.5 in abeyance.

5. Subsequently on an unconditional apology, the rule framed against respondents No.2 and 3 was dropped in terms of order dated 1st

September, 2015. Subsequent thereto, SWP No.1455/2015 has been finally disposed of vide judgment dated 3rd September, 2015. In the said

judgment it has been concluded that the dispute about the eligibility and entitlement of a candidate for a particular seat in pursuing a post doctoral is

a subject matter of the writ petition(OWP) No.1445/2015(instant petition) and shall be taken care of in the said writ petition only. Accordingly

SWP No.1455/2015 has been disposed of.

6. While projecting case of the petitioner, learned counsel made it clear that the petitioner was doing Residency-ship in SKIMS itself. He had

applied and competed, now after selection he is being denied to reap the fruit of his toil as on merit he has made the grade. For non-production of

NOC/relieving order before 31st July, 2015 he could not be denied his valuable right. Even otherwise relieving was not within his control, it were

the authorities concerned who had to relieve him. Finally he has been relieved only on 17th August, 2015 in pursuance to communication dated

17th August, 2015 addressed by Under-Secretary to Govt. to the Director, Health Services, Kashmir and it is on the same date i.e. 11th August,

2015 the respondents No. 1 to 4 allowed respondent No. 5 to join the course.

7. Learned counsel for the petitioner would contend that the respondent No.5 had no right as there was no scope for maintaining any wait list to be

operated. The said submission is without any substance because terms and conditions of the advertisement notice are clear to the effect that in case

selected candidates fails to complete the formalities by or before 31st July, 2015, the seat will be offered to the next candidate standing in the merit

list. The respondent No. 5 was the next candidate in the merit list, therefore, respondents No.1 to 4 had authority to offer him the seat but they

have erred in offering the seat because there was a clear direction from the Court not to fill up the said seat against which petitioner was selected.

That is why in pursuance of contempt proceedings finally respondents had to keep admission of respondent No. 5 in abeyance and then on the

basis of unconditional apology rule framed was dropped.

8. Next learned counsel would submit that the petitioner was not relieved by the Director, Health Services despite repeated representations and

finally relieving fructified only on 17th August, 2015, therefore, there is no default attributable to the petitioner which would deprive him of getting

the seat. It is true that he was required to complete the formalities by 31st July, 2015 but in the stated facts such time could be extended because

final closure date for admission is 30th September, 2015.

9. According to learned Advocate General, petitioner is bound by the terms and conditions of the advertisement notice which specifically provide

that in case a candidate fails in joining and completing the necessary formalities by or before 31st July, 2015, the seat falls vacant and has to be

offered to the candidate standing next in the merit list as has been done. The petitioner is also bound by the affidavit which he has sworn in at the

time he had applied wherein he has categorically stated that in case of his selection for the seat of DM Gastroenterology, being an in-service

candidate, he shall get himself relieved from the Director Health Services, Kashmir within the stipulated time failing which his selection would be

deemed cancelled and next candidate shall be selected for admission and no legal action will be sought by him.

10. The respondent authorities of their own have given rise to unnecessary litigative process. In the advertisement notice a note is recorded to the

effect that in-service candidates shall route their application forms through proper channel, no advance copy shall be entertained. In case of their

selection, the candidates have to get themselves relieved within the stipulated time before they are allowed to join the course. The respondent

authorities in view of the note and important condition in the advertisement notice should not have entertained the application of the petitioner as he

being an in-service candidate was bound to route his application form through proper channel which means that by entertaining application form of

the petitioner directly, respondents have relaxed the condition of advertisement notice. Similarly taking the cue from there, the petitioner when

apprehended that his relieving order will not materialize before 31st July, 2015, for safeguarding his interest has filed the writ petition so as to

protect his position of selection. In-effect, indirectly he has sought relaxation of the condition of completing the formalities, in particular for

producing relieving order after 31st July, 2015 and the Court has granted interim relief protecting his selection beyond 31st July, 2015. By

entertaining application directly from the petitioner, the condition in the advertisement notice is relaxed which in other terms would mean that the

conditions were not rigid in its operation. To get relieved from the Director, Health Services, Kashmir, was not totally within the control of the

petitioner but when he noticed that he is not likely to be relieved before 31st July, 2015, he filed writ petition. That is all what was within his

control. Finally Administrative Department asked Director, Health Services, vide letter dated 11th August, 2015 to relieve him so was finally he

has been relieved by the Director vide order dated 17th August, 2015. The department has not relieved him in time, therefore, question of violation

of condition in the advertisement notice that default in submitting the relieving order up to 31st July, 2015 will gave rise to offering the seat to the

candidate next in merit, in the stated facts, could not arise.

11. Petitioner after getting selected on merit had submitted demand draft on 3rd July, 2015 for an amount of Rs. 67000/ which shows that

whatever was within his domain for completing the formalities has been done by him. The production of relieving order by or before 31st July,

2015 despite his efforts could not materialize so no default could be attributed to him.

12. Learned Advocate General contended that the petitioner is bound by the affidavit sworn by him. That is true. Affidavit has been sworn by the

petitioner in the month of May, 2015 when perhaps advertisement notice was issued and it is on the basis of affidavit, the condition contained in the

advertisement notice for submitting the application form through proper channel has been substituted. In the affidavit petitioner had stated that he

will get himself relieved within the stipulated time. The stipulated time in the stated facts of this case is not to be strictly construed as 31st July,

2015. It can be stretched beyond 31st July but in any case not beyond 30th September, 2015 which is the final closure date for admission, as has

been fixed by the Hon'ble Supreme Court in the judgment rendered in the case of ""Mridul Dhar (Minor) and another v. Union of India and

others"" (AIR 2005 SC 666).

13. Learned counsel for respondent No. 5 while relying on the aforesaid Mridul Dhar judgment tried to project that after 31st July, 2015,

petitioner has no right of admission. In this connection relied on para 10 of the said judgment.

14. It is to be made clear that after closure of admission, there is no scope for any admission but in the instant case, for petitioner last date of

joining was 31st July, 2015 but that was not last date for closure of admission. The last date for closure of admission is 30th September, 2015.

15. Learned counsel for the respondent No. 5 next relied on the judgment rendered in the case of ""Bonnie Anna George v. Medical Council

of India & anr. reported in 2014(6) Supreme, 385. In the facts and circumstances of the instant case, said judgment is of no help to him.

16. In the totality of the circumstances, the success of the petition is the only conclusion. Thus impugned order No. SIMS/Acad/305 05 PF/15-

5598-99 dated August 11, 2015 issued in favour of respondent No. 5 is unsustainable, same is quashed. Petitioner having completed all the

formalities and having been relieved by the competent authority on 17th August, 2015 in pursuance to the sanction of the Administrative

Department dated 11th August, 2015 shall be permitted to join and pursue three year course of DM Gastroenterology for which on merit he has been selected.

17. Disposed of as above along with connected MP and contempt petition.