
(2003) 06 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1623 of 2001 and CMP No's. 739 and 743 of 2002, 2629 of 2001

Dr. Rohul Jabeen and Others

APPELLANT

Vs

SKIMS and Others

RESPONDENT

Date of Decision : 12-06-2003

Acts Referred:

Citation : (2003) 3 JKJ 457

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : M.A. Qayoom, for the Appellant; A.M. Magray, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Nisar Ahmad Kakru, J.—The Petitioners came to be selected as Stipendiary Senior Residents by Order No. ACAD/98/95 dated

08.05.1995 in Sher-E-Kashmir Institute of Medical Sciences, Srinagar (SKIMS for Short) on tenure basis for a period of two years on the

conditions stipulated in the annexure thereto. In terms of condition 10, on expiry of two years tenure term, they are deemed to have been relieved.

By medium of this writ petition they are seeking their appointment on the posts of Assistant Professors in Community Medicine. Along side a CMP

was filed and an ad interim relief was granted way back in the year 2001. Ever since petitioners are continuing on the strength of the said interim

direction. Endeavor of the petitioners to continue in SKIMS is vehemently opposed by Mr. Magray placing reliance on the judgement of the

Division Bench of this Court passed in LPA No. 144/99 titled SKIMS Versus Dr. Makhmoor Rauf Jeelani which has the effect of maintaining the

judgement of the Single Bench declining the relief of retention on expiry of tenure term.

2. It is seen that the petitioners have accepted their selection on the terms and conditions contained in annexure 'B' to the order bearing No.

ACAD/98/95 dated 8.5.1995, therefore, these conditions have to govern their appointment and condition 10 leaves no room for the petitioners to

advance a claim for their continuation as Stipendiary. Senior Residents beyond the period stipulated Situations are conceivable where subsequent

orders/events are of such character and consequence which may amount to modification of the conditions but in the case on hand there being no

such order or event, no option is left for the court but to consider the claim of the petitioners within the four corners of conditions stipulated in

annexure B. Examining as such coupled with the mandate of judgement supra the petitioners are disentitled to the relief of continuation.

3. Faced with the situation Mr. Qayoom appearing counsel for the petitioners took a stance that the petitioner's case is not for their continuation

but it is the recommendation proposing adjustment of the petitioners ""in District/ Sub District Hospitals/lower administrative level in the SKIMS and

in other Hospitals of the state"" which has aggrieved them, therefore, impugned. Before dealing with the relief sought, it needs to be observed that

SKIMS is not required to make any recommendation in favour of the petitioners. Once petitioners have completed their Stipendiary 'tenure term'

they are to be relieved. Recommendation aforementioned being a favour bestowed upon them, no mala fides can be attributed to the SKIMS.

Examined from any angle the recommendation does not provide any cause for the petitioners to challenge the decision. Recommendation or no

recommendation they have still to pack up and go unless term is extended or some other position is assigned to them by SKIMS.

4. Now I would like to dilate upon the claim of the petitioners for their selection/ appointment on the post of Assistant Professors in the community

Medicine. It is averred by the petitioners that they are entitled to selection/ appointment in the discipline of community Medicine on the basis of

assurance given by the respondents. I will be failing in my duty if I don't faithfully notice the documents which have been pressed into service and

the relevant portions of these documents may be extract:

REMARKS & RECOMMENDATIONS

It is suggested that the institution should adopt 3 years course after internship. The M.D. students should rotate in community

Medicine/Pediatrics'/Obstetrics-4 months each in the first year of the course.

They should identify areas in maternal child health and develop thesis subject with Supervisors/Co-Supervisor in rotation between the three

identified disciplines (Community Medicine, Obstetrics and Pediatrics).

Note of the Director SKIMS:

Their experience shall make them eligible for positions in Community Medicine (MCH) to which they belong to

5. On the strength of the remarks and the note of the Director it is pleaded by the petitioners that a promise is held out and believed by them,

therefore, they cannot be denied appointment. To substantiate the contention reliance is placed on Bhim Singh and Others Vs. State of Haryana

and Others, . How far this argument helps the petitioners needs to be appreciated in the light of the reply filed by the respondents wherein it is

specifically stated that they had made a recommendation to the Medical Council of India to include the degree of M.D. (MCH) in the brochure of

requisite academic qualification for the post of Assistant Professor Community Medicine but the recommendation has not been agreed to and the

rule position remains that M.D. (MCH) does not make a person eligible for the post of Assistant Professor Community Medicine.

6. Let us assume that SKIMS had made the promise to the petitioners to treat M.D. (MCH) as criteria for the post of Assistant Professor

Community Medicine but can such promise have the effect of amending the Regulations called "minimum qualifications for teachers in Medical

Institute , 1998" (Regulations hereafter). Certainly not, because M.D. (MCH) is not prescribed qualification in terms of Regulations for the posts of

Assistant Professor in Community Medicine. Obviously, they cannot be treated to be possessed of requisite academic qualification. I hold so

because it is basically for the MCI to prescribe the eligibility and no promise of the Director or for that matter of any functionary, howsoever high

he may be, can be allowed to sustain if it impinges upon the Regulations. Admitted position is that the petitioner lack requisite qualification

prescribed by the Regulations. Therefore, promise if any cannot confer eligibility

upon them. Suffice it to say that the judgement supra is not attracted for the simple reason that lack of pre-requisite qualification renders the petitioners ineligible for the post of Assistant Professor in Community Medicine.

7. Much emphasis was laid by learned counsel for the petitioner on interview call letters (Pages 54 & 55) of the writ petition. To appreciate the contention Para 6 of page 55 may be reproduced:

Subject to consideration of MCH qualification as the basic eligibility for the appointment as Assistant Professor Community Medicine.

It is clear from the extracted para that the Petitioners were called for interview in hope of declaration of MCH degree equivalent to the degree in

Community Medicine and the forms were accepted because SKIMS had an expectation that the recommendation made to the MCI may be

accepted which did not materialize, therefore, interview call on the expectation aforementioned did not debar the respondents from denying

consideration to the petitioners from their selection/appointment. More so, the parties are not at variance on the count that process of selection was

initiated in accordance with the criteria prescribed by Regulations; therefore, the requirement relating to eligibility was to be met by the petitioners

before they could be accorded consideration. The eligibility being an essential pre requisite condition under the Regulations the petitioners have to

be judged in the light of the Regulations, Tested on the criteria laid down in the Regulations the petitioners are not eligible.

8. In the result, this writ petition is dismissed. Interim direction shall stand vacated.

9. No order as to costs.