
(2018) 03 J&K CK 0055
In the Jammu And Kashmir High Court
Case No : SWP No.1435 OF 2017

DR. ZOYA CHOWDHARY

APPELLANT

Vs

STATE OF JAMMU & KASHMIR & ORS

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Jammu & Kashmir Reservation Act, 2004 — Section 2(d)

Citation : (2018) 03 J&K CK 0055

Hon'ble Judges : TASHI RABSTAN

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Through the medium of this writ petition, the petitioner is seeking quashing of Advertisement Notice No.DIP/J-826/17 dated 09.05.2017 issued by

Principal, Indira Gandhi Government Dental College, Jammu, respondent No.2 herein, whereby seven posts of Registrars in various disciplines of

Dental College have been invited. Petitioner is also seeking a direction to the official respondents to apply J&K Reservation Act, 2004 and the rules

framed thereunder while filling up these posts.

2. The facts as projected in the petition are that pursuant to her selection by the J&K Public Service Commission, the petitioner came to be appointed

as Dental Surgeon in the Health Department vide order dated 28.02.2012 and, subsequently, she got selected for MDS Course in Periodontics. It is

averred that prior to post-graduation, the petitioner possessed more than two years of Rural Service at her credit, i.e., at Primary Health Centre, Kot

Bhalwal. Further, it is averred that pursuant to Advertisement Notice No.DIP/J-826/17 dated 09.05.2017 issued by respondent No.2 herein, inviting

applications from inservice/non PSC doctors for filling up seven posts of Registrars in various disciplines of Indira Gandhi Government Dental College,

Jammu, the petitioner along with other eligible candidates applied against the two posts of Registrar in Periodontics on 11.05.2017. It is averred that

the last date for receipt of forms was 03.06.2017 and the date of interview had been fixed for 10.06.2017. It is further averred that vide annexure

â??Eâ? to the writ petition, the petitioner had also completed the MDS Course as certified by the concerned Professor and Head, Department of

Periodontology. Further, it is averred that the petitioner belongs to Schedule Tribe Category and roster point No.6 has been fixed for the said category.

It is further averred that although these posts were required to be filled up by giving due representation to the reserved categories, however, the said

advertisement notice was not in conformity with J&K Reservation Act, 2004 and the rules framed thereunder, therefore, the same was in violation of

Articles 14, 15, 16 and 21 of the Constitution of India. It is averred that the petitioner also submitted an application dated 24.05.2017 to respondent

No.1 with a request to direct respondent No.2 to withdraw the said advertisement notice and, then, issue fresh one providing reservation as per J&K

Reservation Act and the rules framed thereunder. However, when her request was not acceded to, she filed the present writ petition.

3. Learned counsel appearing for petitioner argued that in terms of J&K Dental Education (Dental College) Gazetted Service Recruitment Rules, 1993

dated 15.04.1993, reservation roster is applicable for appointments at all levels. He further argued that in terms of said rules, even non-PSC candidates

are allowed to participate, which constitutes direct recruitment, thus making further mandatory for providing reservation in terms of J&K Reservation

Act and the rules framed thereunder. He further argued that in terms of Annexure â??Eâ? to the writ petition, the petitioner had also completed the

MDS Course at the relevant time.

4. Objections have been filed on behalf of respondents. In the objections filed on behalf of respondents 1 to 3, it is averred that the petitioner was a

candidate for one post in the discipline of Periodontics Department. It is averred that since the petitioner had not completed MDS Course; therefore,

she was considered on the basis of BDS qualification, however, she could not make the grade as against other candidates, who were possessing MDS

qualification and were more meritorious than the petitioner. Further, it is averred that the post being a tenure post, the provisions of J&K Reservation

Act, 2004 and the rules framed thereunder do not apply to the post of Registrar in Periodontics, which is filled up from amongst in-service as well as

not in-service candidates for a specified period of three years. It is averred that the petitioner has already been given the benefit of reservation at the

time of her selection as Dental Surgeon under ST Category.

5. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the writ file.

6. Admittedly and as per own admission of petitioner, the last date for submission of application forms for the post-in-question was 03.06.2017.

Annexure â??Eâ? dated 17.05.2017 to the writ petition clearly reveals that the final examination of MDS Course in Periodontology of petitioner was

to commence with effect from 25th May, 2017, whereas the last date for submission of application forms for the post in question was 03.06.2017;

meaning thereby the petitioner was not possessing MDS Degree at the relevant time and she was having only BDS qualification when the posts-in-

question had been advertised. Whereas, it is the specific case of respondents 1 to 3 that ten candidates out of eighteen, who had also applied for the

posts-in-question, were possessing MDS qualification and were more meritorious than the petitioner, which fact the petitioner has not denied in her

pleadings. Even, the impugned advertisement notice clearly stipulated that the candidates with higher qualification, i.e., MDS in the subject concerned

would be preferred. Thus, as per this factual position, the petitioner is debarred from claiming her preferential right for the post-inquestion on account

of her possessing lower qualification at the relevant time, when candidates possessing higher qualifications were also in the queue for the said posts.

7. Now the question remains to be determined is: whether reservation roster in terms of J&K Reservation Act, 2004 and the rules framed thereunder

applies to the posts of Registrar in the discipline of Periodontics Department, which are tenure posts?

8. It is the specific case of respondents that since the two posts of Registrars in the Department of Periodontics are tenure posts for a specified period

of three years, the provisions of J&K Reservation Act, 2004 and the rules framed thereunder do not apply to the said posts. Even, in the impugned

advertisement notice it has clearly been mentioned that the posts-in-question are tenure posts for a period of three years.

9. Therefore, before proceeding further, it would be appropriate to reproduce hereunder the definition of "available vacancies" as defined in

Section 2(d) of the Jammu & Kashmir Reservation Act, 2004:

"(d) "available vacancies" means the vacancies, permanent or temporary, in any service and includes other posts under the Government, statutory authorities, autonomous bodies and Public Sector Undertakings owned and managed by the Government."

10. Therefore, in terms of afore-quoted definition, the reservation is to be given against the available permanent or temporary vacancies in any service.

11. Also, the definitions of Permanent post, temporary post as well as tenure post have been given in J&K Civil Service Regulations, which, for effective disposal of the writ petition, are reproduced hereunder:

31-A. Permanent post means a post, carrying a definite rate of pay sanctioned without limit of time."

34-A. Temporary post means a post carrying a definite rate of pay sanctioned for a limited time. Such a post can be held in an officiating capacity."

34-B. Tenure post means a permanent post which an individual Government servant may not hold for more than a limited period."

12. Thus, in terms of Section 2(d) of J&K Reservation Act (supra), the reservation is applicable only to the extent of available permanent or

temporary vacancies, whereas the posts fallen under Regulation 34-B of J&K Civil Service Regulations are not covered under Reservation Act;

meaning thereby Reservation Act and the rules framed thereunder do not apply to the tenure posts, rather the reservation rules apply where the post is

filled up on temporary or permanent basis. As such when a person is appointed against a tenure post, he holds the same for a limited period and,

after the expiry of such period, tenure appointment comes to an end. Since tenure posts of Registrar do not fall in either of the two categories, i.e.,

permanent posts or temporary posts, therefore, reservation roster cannot apply to these posts. Further, no right is created in a Registrar to continue as

such beyond the fixed tenure of three years nor the post is filled up through

Public Service Commission or Service Selection Board. Also, there is no probation, promotion, seniority, increments or pay scale for the post of Registrar.

13. Further, petitioner claims to be belonging to Schedule Tribe Category and roster point No.6 has been fixed for the said category, whereas during the course of hearing of this petition, respondent No.4 also produced her Scheduled Caste Category Certificate and roster point No.3 has been fixed for the said category. At the time of issuance of advertisement notice, respondent No.4 was also having the qualification of MDS. Thus, from this angle too, respondent No.4 is on much better footing than the petitioner herein.

14. Further, this Court vide order dated 07.06.2017 directed respondents 1 to 3 to allow the petitioner to appear in the interview. It was also directed not to fill up one post of Registrar in Periodontics till next date of hearing. However, during the course of hearing of this petition, respondent No.2 produced the result for the post of Registrar in Periodontics vide No.IGGDCJ/Estt/GD/845 dated 06.07.2017, wherein one Dr. Prabhati Gupta (MDS) has been shown to have acquired 83½ points and respondent No.4 (MDS) has been shown to have acquired 78½ points, whereas petitioner (BDS) has been shown to have acquired just 56 points. It is stated that Dr. Prabhati Gupta has already been recommended for her engagement as Registrar Periodontics, whereas second post has not been filled up as per the directions of this Court dated 07.06.2017 (supra).

15. Further, it is to be seen here that the petitioner applied for the post-inquestion on 11.05.2017 and when she realized that she could not be selected for the said post having lower qualification, she filed the present writ petition on 06.06.2017 with mala fide intentions to stall the whole selection process, whereas she had sufficient time to approach this Court when the advertisement notice came to be issued, instead of applying through proper channel. Even, petitioner has already been given the benefit of reservation at the time of her selection as Dental Surgeon under ST Category.

16. Therefore, in view of what has been discussed above, I do not find any merit in the writ petition. Accordingly, the same is dismissed along with connected miscellaneous petitions. Interim direction dated 07.06.2017 is hereby vacated. Consequently, respondents 1 to 3 are directed to forthwith fill up the second post of Registrar in Periodontics as per the merit list without any further delay.