

(1995) 05 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : SService Writ Petition (SWP) No. 145/1994 and SService Writ Petition (SWP) No. 238/1994

Kamal Singh Chouhan, Dr.

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 323

Constitution of Jammu and Kashmir, 1956 — Section 133

Citation : (1995) JKLR 923 : (1996) 3 SCT 384 : (1995) SriLJ 110

Hon'ble Judges : B.A.Nazki, J

Bench : Single Bench

Advocate : S.K.Anand , P.N.Raina, M.K.Bhardwaj, Advocates appearing for the Parties

Judgement

1. The petitioner is an inservice Doctor and has done his post Graduate Diploma in Radio Diagnosis and Imaging from Medical College, Jammu,

and is working against the post of Radiologist, District Hospital, Doda. An advertisement notice was issued by respondent No: 2 on 1031993

inviting applications for appointment to various tenure posts of Registrars in different disciplines including the discipline of Radio Diagnosis and

Imaging. The petitioner was declared successful in the selection, but his appointment order was not issued. Accordingly, he filed a writ petition

(being SSWP No. 145/1994) before this Court.

2. Since no appointments were made, the respondent No.2 issued second advertisement notice on 841994, by which applications were again

invited for appointment to tenure posts of Registrars in different departments including the department of Radio Diagnosis and Imaging. The

petitioner in response to the said advertisement notice, again applied for appointment to the tenure post Registrar in the department of Radio

Diagnosis and Imaging. According to the petitioner, he was again selected, but his appointment order was not issued.

3. The respondents, however, on 391994, issued another advertisement notice, again inviting applications for appointment to the posts of Registrar

in different departments including the department of Radio Diagnosis and Imaging. The petitioner has challenged this advertisement notice also

through the medium of writ petition (being SSWP No:238/1994) and sought issuance of Mandamus by this Court that since he was selected during

the earlier two selections, therefore, respondents should be directed to appoint him as Registrar. Since in both the writ petitions i.e. SSWP No:

145/ 1994 as also SSWP No:238/1994, similar controversy has been raised, therefore, both these petitions will be decided by this common

order. The respondents have filed their counter.

4. I have heard the learned counsel for the parties. The main objection raised in the counter is that mere selection by the Medical College does not

confer any right of appointment on the petitioner. They have further Stated that the petitioner has not served in the rural area for a period of two

years, which was a condition for said appointment. According to the principal of the Medical College, the name of the petitioner was

recommended to the Government for relaxation of the rule but the Government has not relaxed. The respondents have further submitted that in the

advertisement notice although MBBS was the prescribed qualification, but preference had to be given to a candidate who possessed post

Graduate MS/ MD degree in the concerned specialty. No candidate with a post Graduate Degree applied, therefore it was thought proper to

readvertise the post, so that best and highly qualified talent was attracted for appointment. The learned counsel for the petitioner submits that

although the petitioner is a post Graduate Degree holder, as he has done his Diploma in the concerned specialty, which is a post Graduate

Diploma, but the requirement under the advertisement notice was that a candidate should hold the MBBS degree, and a candidate with M.D. or

M.S. Degree was only to be given preference over a candidate with MBBS Degree. As no M.D. or M.S. Degree holder had applied in the

concerned specialty, therefore the petitioner had a right of appointment to the said post.

5. The short point involved in this petition is whether after the selection of a candidate is made, Court has power to direct respondent State to

make, the appointment. This question was raised on several occasions before the various High Courts of the Country and also before the Apex

Court. The selection does not confer any right on the selected candidate to get appointed, because the advertisement notice inviting applications for

selection and appointment is merely an offer and the selection made is only in the nature of a recommendation. It is always open to the Government

either to make appointments or not to make appointments on the basis of selection. I am in a agreement with learned counsel for the respondents

that it is the duty of the State to try to get best available talent for making appointments, particularly, when the appointments are made in a Medical

College, where the Registrar has a pivotal role to play in the treatment of patients. The respondents anxiety to get the best talent available is

manifest from the fact that three times these posts have been advertised, in order to get persons with post Graduate M.D./M.S. Degrees. It is

always open to the State to readvertise a post even after making selection, if the State is of the opinion that they have not been able to attract the

best talent. It is not the case of the petitioner that some persons from the select list were appointed, who were equally qualified as the petitioner.

The point directly came up before the Hon'ble Supreme Court in a case reported in AIR 1984 SC page 1850. While dealing with a case where

recommendation was made by the Public Service Commission in terms of Article 323 of the Constitution, the Court held:

.....The selection by the Commission, however is only a recommendation of the Commission and the final authority for appointment is the

Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the

recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and

report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however,

does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the

Commission.

6. In the said case before the Supreme Court, an argument was made, which was termed by their Lordship as an argument of desperation

whereby it was contended that the Government was estopped from not appointing the candidates who had been selected. The Supreme Court

held that the Notification issued by the Board in that case was only an invitation to candidates possessing specific qualifications for selection, and it

did not hold out any promise that the selection would be made, or if it was made, the selected candidates would be appointed. The Supreme Court

further held that candidates did not acquire any right merely by applying for selection or for appointment after selection.

7. In view of the law laid down by the Supreme Court(supra), I find no merit in these writ petitions, which are dismissed accordingly.