
(2000) 10 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 203 of 2000

Mohammad Ahsan Dar

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2000) 10 J&K CK 0006

Hon'ble Judges : N.A. Kakru, J

Bench : Single Bench

Advocate : M.A. Qayoom, for the Appellant; J.A. Kawoosa, for the Respondent

Judgement

1. The facts material for disposal of the CMP may be stated in brief. It transpires from the pleadings of the parties that the petitioner as also

respondents 3 to 5 had applied in consequence to an advertisement Notice of Sher-i-Kashmir Institute of Medical sciences, Soura (for short

SKIMS) for the post of Lecturer in Ophthalmology. The respondents 3 to 5 succeeded in the selection process to the exclusion of the petitioner,

consequently they came to be appointed in SKIMS vide Government order No. 43-IMS of 1999 dated 25.09.1999. Such appointment has not

irked the petitioner but it is the selection of the respondents 3 to 5 made by the Jammu and Kashmir Public Service Commission for the post of

Lecturer in the department of Health & Medical Education, the petitioner is aggrieved of, which owes its origin to the Advertisement Notice No.

21-PSC of 1997 dated 6.10.1997. The selection is impugned on the basis of a condition imposed on the respondents 3 to 5 in their appointment

order issued by the SKIMS bearing No. 43-IMS of 1999 dated 25.09.1999 which is extracted for facility of reference.

The appointees shall be required to submit an undertaking in the prescribed format, duly attested by a Ist Class Magistrate within ten days from the date of joining to the effect that they shall not apply for any post outside the SKIMS Medical College, Bemina, Srinagar for a period of five years from the date of joining.

2. Controverting the contention it is contended that the condition does not apply to their case because they had applied to the J&K Public Service

Commission prior to their appointment in SKIMS Medical College, Bemina, Srinagar. The contention needs to be appreciated in the light of the

contents of the Advertisement Notice No. 21-PSC of the J&K Public Service Commission which dates back to 06.10.1997 and a bare perusal of

the notice reveals that the last date for receipt of application forms in case of personal delivery of applications was 17.11.1997 and for postal

delivery it was 13.11.1997. In this view of the matter it can be safely inferred that respondents 3 to 5 had applied for the posts to the J&K Public

Service Commission somewhere in the month of November 1997 whereas their appointment in the SKIMS Medical College, Bemina Srinagar has

come into existence on 25.09.1999. These facts being not in dispute, the conclusion available is that they did not apply for the post to the Jammu

and Kashmir Public Service commission after imposition of the condition but certainly prior to it.

3. It is next contended that respondents 3 to 5 having been selected by the SKIMS Bemina Medical College, were relieved by the Health and

Medical Education Department vide communication No. HD-GAZ/93/95, dated 27.10.1999, therefore, they are not eligible for selection /

appointment because their appointment was made as in-service candidates and since they have ceased to be the members of the Health & Medical

Department they have lost the right of selection / appointment. This contention is refuted by the other side by making reference to the very

notification of 1997 to show that right to apply was not confined to in-service candidates of Health & Medical Education Department only.

4. During the course of arguments, learned counsel for the petitioner canvassed that having ceased to be on the rolls of Health & Medical

Education Department, one of the respondents namely Smt. Salima Dar was rendered in eligible to apply. To this contention objections of learned

counsel for the respondents is that it does not form a ground of challenge in the writ petition, therefore, cannot be gone into. It is further contended

that the objection is not well founded. At this juncture question arises as to whether petitioner is entitled to the relief prayed for and to arrive at a

just conclusion it is pertinent to notice that petitioner as also the respondents 3 to 5 sought consideration through application for the post of

Lecturer Ophthalmology. All of them participated in the competition and by dint of merit the respondents 3 to 4 came in the select list and the

respondent No. 5 in waiting list at S. No. 1. Significantly the merit position is not questioned. Admittedly the selection of the selectee-respondents 3

to 5 is not through back-door entry but they have been selected through a legally valid mode. The condition imposed in the SKIMS order may

govern the relationship between the SKIMS and respondents 3 to 5 but what can be the fall out of violation of such condition is essentially a

question which may have relevance for the SKIMS and may or may not have an adverse impact on the selection / appointment of respondents 3 to

5 and nothing can be said with certainty at this stage and such state of uncertainty has to continue unless the petitioner establishes the violation of

right at the final disposal of the petition. Same is true of other grounds aforementioned. Conversely, the respondents 3 to 4 are in the select list

whereas the respondent No. 5 is at S. No. 1 of waiting list. On top of all even if a situation is assumed that the petitioner succeeds in the writ

petition and selection / appointment of respondents 3 to 5 is quashed, in such eventuality there shall be no impediment in the induction of the

petitioner, therefore, there is no justification for the petitioner to register an apprehension of any loss, muchless irreparable one. That apart

pecuniary loss if any can be quantified.

5. Viewed thus interest of justice would be met if the adinterim direction is vacated. Accordingly I do so. However, to protect the rights of the

petitioner selection / appointment of the respondents 3 to 5 shall be subject to outcome of the writ petition. The CMP is disposed of accordingly.

Main petition to come up for hearing soon after completion of the pleadings.