
(2020) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : SWP No. 688, 697, 698, 699, 707, 789 Of 2006

Om Kumar

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0002

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J

1. This order will dispose of a bunch of petitions bearing Nos. SWP Nos. 688, 697, 698, 699, 707 and 789 of 2006.

2. The issue raised in these petitions is with reference to selection to the post of the Deputy Medical Superintendent, advertised vide Notification No. 16-PSC of 2005 dated 13.10.2005.

FACTS OF THE CASES

3. In SWP No. 688/2006, the petitioner, claimed himself to be 40 years of age, when the present petition was filed in the year 2006. The petitioner at the time of filing of petition was working as Medical Officer in the then State of Jammu and Kashmir and was at that time had been given charge of the post of Deputy Medical Superintendent in District Hospital, Doda. He prayed for the following reliefs :-

"(i) Writ of Certiorari: seeking quashing of communication No. PSC/DR/Dy.Medical/2003/51 dated 28.03.2006 issued by respondent No. 2.

(ii) Writ of Mandamus: commanding upon respondent No. 1 to grant relaxation in the period of experience in favour of the petitioner by deciding the representation of the petitioner, which had been submitted by the petitioner and

is pending consideration, in terms of standing Government orders in this behalf;

(iii) Writ of Mandamus: commanding upon respondent No. 2 to interview the petitioner meanwhile for the post and accord him consideration for selection also."

4. While issuing notice in the petition on 22.04.2006, the respondent No.2 was restrained from holding the interviews for selection to the post in question. The writ petition was admitted on 30.05.2006 and was ordered to be heard alongwith the other petitions which are part of this bunch. The interim order passed on 22.04.2006 was modified to the extent that process of selection was allowed to be continued, however, declaration of result was stayed. The matters were directed to be listed for final hearing in July, 2006. A perusal of the soft copy of the paper book shows that the same was last listed on 12.04.2007 and was never pursued by the petitioner thereafter.

5. In SWP No. 697/2006 the petitioner, who claimed herself to be 33 years of age, when the present petition was filed in the year 2006 prayed for the following reliefs :-

"(i) Writ of Certiorari: quashing J&K Medical Education (Gazetted) Service Recruitment Rules, 1979 to the extent of Schedule-II S. No. 29 pertaining to the requirement of experience of running a hospital after post-graduation for the post of Deputy Medical Superintendent of teaching Hospital and as a consequence quashing Notification No. 16-PSC of 2005 dated 13.10.2005 so far as it pertains to the posts of Deputy Medical Superintendent to the extent of experience criteria provided for the said post.

(ii) Writ of Certiorari: quashing communication dated 28.03.2006 issued by the respondent No. 2 whereby the candidature of the petitioner has been rejected.

(iii) Writ of Mandamus: commanding the respondents to allow the petitioner to complete in the process of selection pursuant to Notification No. 16-PSC of 2005 dated 13.10.2005 for the post of Deputy Medical Superintendent and to declare his result on his merits."

6. Notice in the petition was issued 27.04.2006. On 30.05.2006, the present petition was admitted and was directed to be heard along with other cases. It was directed that the process of selection may continue, however, the result thereof shall not be declared. Though the petition was directed to be listed for July, 2006 for final hearing, however, a perusal of the soft copy of the paper book shows that the same was never pursued by the petitioner as it was not listed in Court.

7. In SWP 698/2006 the petitioner, who claimed himself to be 47 years of age, when the present petition was filed in the year 2006, prayed for the following reliefs :-

"(a) Writ of certiorari quashing J&K Medical Education (Gazetted) Service

Recruitment Rules, 1979 to the extent of Schedule-II S.No.29 pertaining to the requirement of experience of running a hospital after post-graduation for the post of Deputy Medical Superintendent of teaching Hospital and as a consequence quashing Notification No. 16-PSC of 2005 dated 13.10.2005 so far as it pertains to the posts of Deputy Medical Superintendent to the extent of experience criteria provided for the said post.

(b) An appropriate writ, order or direction in the nature of writ of certiorari quashing communication dated 28.03.2006 issued by the respondent No. 2 whereby the candidature of the petitioner has been rejected.

(c) An appropriate writ order or direction in the nature of writ of mandamus commanding the respondents to allow the petitioner to compete in the process of selection pursuant to Notification No. 16-PSC of 2005 dated 13.10.2005 for the post of Medical Superintendent and to declare her result on her merits."

8. While issuing notice in the petition on 22.04.2006 the respondent No.2 was restrained from holding interviews for selection to the post in question. The writ petition was admitted on 30.05.2006 and was ordered to be heard alongwith other petitions which are part of the bunch. The interim order passed on 22.04.2006 was modified to the extent that process of selection was allowed to be continued, however, declaration of result was stayed. The matters were directed to be listed for final hearing in July 2006. The petition was last listed in Court on 16.05.2007 and was not pursued thereafter, by the petitioner.

9. In SWP No. 699/2006, the petitioner, who claimed himself to be 38 years of age, when the present petition was filed in the year 2006 prayed for the following reliefs :-

" a) An appropriate writ, order or direction in the nature of writ of certiorari quashing J&K Medical Education (Gazetted) Service Recruitment Rules, 1979 to the extent of Schedule-II S.No.29 pertaining to the requirement of experience of running of hospital after post-graduation for the post of Deputy Medical Superintendent of teaching Hospital and as a consequence quashing Notification No. 16-PSC of 2005 dated 13.10.2005 so far as it pertains to the posts of Deputy Medical Superintendent to the extent of experience criteria provided for the said post.

b) An appropriate writ, order or direction in the nature of writ of certiorari quashing communication dated 28.3.2006 issued by the respondent No. 2 whereby the candidature of the petitioner has been rejected.

c) An appropriate writ order or direction in the nature of writ of mandamus commanding the respondents to allow the petitioner to compete in the process of selection pursuant to Notification No. 16 PSC of 2005 dated 13.10.2005 for the post of Deputy Medical Superintendent and to declare his result on his merits."

10. While issuing notice in the petition on 22.04.2006 the respondent No.2 was restrained from holding interviews for selection to the post in question. The writ

petition was admitted on 30.05.2006 and was ordered to be heard along with other petitions which are part of the bunch. The interim order passed on 22.04.2006 was modified to the extent that process of selection was allowed to be continued, however, declaration of result was stayed. The matters were directed to be listed for final hearing in July 2006. The petition was last listed in Court on 15.10.2008 and was not pursued thereafter, by the petitioner.

11. In SWP No. 707/2006 the petitioner, who claimed himself to be 42 years of age, when the present petition was filed in the year 2006, prayed for the following reliefs :-

"(i) Writ of certiorari, quashing order passed by respondent No. 4 under No. PSC/DM/Dy Medical/2003/50 dated 28.03.2006 whereby petitioner's application for the post of Deputy Medical Superintendent has been rejected."

12. While issuing notice in the petition on 22.04.2006, the respondent No.2 was restrained from holding interviews for selection to the post in question. The writ petition was admitted on 30.05.2006 and was ordered to be heard along with the other petitions which were part of this bunch. The interim order passed on 22.04.2006 was modified to the extent that process of selection was allowed to be continued, however, declaration of result was stayed. The matters were directed to be listed for final hearing in July 2006. Thereafter, the matter was not listed in Court as it was never pursued by the petitioner.

13. In SWP 789/2006 the petitioner, who claimed himself to be 37 years of age, when the present petition was filed in the year 2006, prayed for the following reliefs :-

"(i) Writ of certiorari/mandamus: requirement of "3 years working experience of running a hospital after Post Graduation" as not essential requirement for the post of Deputy Medical Superintendent of teaching hospitals as indicated in Schedule II at serial No. 29 of the J&K Medical Education (Gazetted) Service Recruitment Rules 1979"

(ii) the decision taken by the respondents-Public Service Commission rejecting the application of the petitioner for the reason that the petitioner did not possess the requisite experience as prescribed in the Notification No. 16-PSC of 2005 dated 13.10.2005

(iii) the communication No. PSC/DR/Dy.Med/2003/37 dated 28.03.2006 communicating the aforesaid decision to the petitioner;

Or

In the alternative;

(iv) quashing the requirement of "3 years working experience of running a hospital after Post Graduation" as not essential requirement for the post of Deputy Medical Superintendent of teaching hospitals as indicated in Schedule II at serial No. 29 of the J&K Medical Education (Gazetted) Service Recruitment

Rules 1979;

For issuance of further writ, direction or order in the nature of mandamus:-

(i) commanding the respondents to treat the petitioner having acquired the 3 years working experience of running a hospital after Post Graduation and considering him for the post of Deputy Medical Superintendent of Teaching Hospital in pursuance of the Notification No. 16-PSC of 2005 dated 13.10.2005."

14. The writ petition was admitted on 30.05.2006 and was ordered to be heard along with other cases. The petition was last listed in Court on 12.04.2007. Thereafter, the same was never pursued by the petitioner.

DISCUSSIONS

15. The case was shown in the supplementary cause list of the cases for June 30, 2020. None of the counsels for the parties had put in appearance even though, some of them had been appearing in other cases, being filed by them during the period of lockdown. They have lost interest in these cases. In fact, these cases have lost relevance, at this stage.

16. As has already been noticed above, the issued raised in the present petitions pertain to selection and appointment to the post of Deputy Medical Superintendent in the then State of Jammu and Kashmir. Advertisement was issued on 13.10.2005 and the last date for receipt of applications was 28.11.2005. The date is being mentioned as could be read from the copy of the advertisement placed on record, which is not legible at all. The counsels did not even have the courtesy to place on record a document which is legible.

17. Neither the petitioners nor their counsels have taken any interest to pursue the present matters as the same were last listed in the year 2008. The selection to the post of Deputy Medical Superintendent, which is one of the important job in any Hospital in the Health Care System, has been put on hold vide interim order passed by this Court on 22.04.2006. Even the counsel for the respondents did not choose to put an appearance.

18. There are matters pending in this court in which issue of admission to various professional courses and other classes is involved. In some by interim order either admission was granted or seats were directed to be kept vacant but the cases are still lying in court for decades. There are matters where issues regarding construction of roads, culverts, schools, colleges, community centers and other projects of development are pending consideration before this court. In some cases interim stay had also been granted. In these cases even the government departments and counsels are not taking any interest to furnish the requisite information to the court and get those cases disposed of. In fact, as a result of pendency of these types of cases lot of development projects have been put on hold. These are few examples being noticed. There are many more.

19. Regularly, the cause list is being issued, which is being uploaded on the

website of the High Court. The same is accessible to the Advocates as well as to the litigants. In the cause list issued for this Court, a specific note is being printed to the following effect:

"All Advocates whose cases are listed in cause list are requested to contact the concerned Bench Secretary-Mr. Hilal Yousuf on Mobile No. 9419150533 / Reader-Mr. Reagan Thakur on Mobile No. 9419140621."

20. In the present cases none of the parties contacted the Bench Secretary or Reader of this Court.

21. Detailed reasons have been recorded in order dated June 30, 2020 passed in SWP No. 2374/2002 titled as Santosh Kumari Vs. State of J&K and others", to take up the matters, which are pending in this court for years together and in which neither of the parties was taking interest.

22. Information was sought from the Department as to why no steps were taken to follow up the case in which process for selection to the post of Deputy Medical Superintendent had been stayed way back in the year 2006. To my utter surprise Mr. Rai Arvinder Singh, Legal Assistant in the Litigation Department informed the bench secretary of this court that some similar matter has been decided by Srinagar bench of this court. He furnished the number of the writ petition. Copy of the judgment in that case was got from Registrar Judicial, Srinagar Bench of this Court. The judgment was delivered in SWP No. 585/2007 titled as Dr. Jameel Ahmed Mir and another vs. Secretary to Government, Health and Medical Education Department and others, on 24.10.2019.

23. A perusal of the judgment of this Court in Dr. Jameel Ahmad Mir's case (Supra) shows that reference has been made to number of other writ petitions filed before Srinagar Bench of this Court, pertaining to same selection. The details thereof are as under:

- i) SWP No. 498/2006
- ii) SWP No. 507/2006
- iii) SWP No. 585/2007
- iv) SWP No. 47/ 2008
- v) SWP No. 678/2009

24. A perusal of the writ petition bearing SWP No. 585/2007 shows that the same was filed on 04.02.2007 with the following prayers :-

"(i) Certiorari, thereby quashing the recommendations made by respondents 2 and 3 to respondent No.1 requesting therein to appoint the persons mentioned in the said recommendations as Deputy Medical Superintendents bearing No. PSC/DR/Medical Suptd/05 dated 5-4-2007. and the Government order No. 258-H & ME of 2007 dated 10-4-2007 (Annexure A and B) of the writ petition.

(ii) Mandamus, commanding the respondents 1 o 3 to consider and appoint the petitioners to the post of Deputy Medical Superintendents with consequential benefits including the promotions to the next higher post.

(iii) Quo-Warranto directing removal of respondents 5 to 7 from the post of Dy. Medical Superintendents and declare them vacant available posts with further directions to respondents 1 to 3 to selection and appoint the petitioners as Dy. Medical Superintendents with all consequential benefits ."

25. It is surprising to note that same advertisement was subject matter of consideration before Jammu Bench of this Court in SWP No. 688/2006, in which the respondent No. 2 therein was restrained from finalising selection to the post in question i.e. Deputy Medical Superintendent. Despite interim stay granted by this Court, the authorities continued with the process of selection. This is evident from the pleadings in SWP No. 585/2007 filed before Srinagar Bench of this Court, where challenge had been made to a communication No. PSC/DR/Medical Suptd/05 dated 5-4-2007 and Government order dated 10.04.2007. From a perusal of the aforesaid documents it is evident that interviews for the post in question, were held on 01.04.2007. The names of the selected candidates were recommended to the department concerned by the J&K Public Service Commission. In pursuance to the recommendation, the government had even issued order of appointment to the selected candidates. The writ petition was filed before Srinagar Bench of this Court, which came up for hearing on 07.05.2007. The order passed on that day notices that vide advertisement dated 13.10.2005, eight posts of Deputy Medical Superintendent were advertised and out of which three had been filled up. It was further directed that three posts be kept vacant and appointment of the selected candidates shall be subject to the outcome of the writ petition. Though the aforesaid matter was taken up on number of occasions but none of the parties or their counsels apprised the Court that there are matters pending before the Jammu Bench of this Court challenging the same selection process.

26. Further in the order passed by Srinagar Bench of this court reference has been made to two other writ petitions bearing SWP Nos. 498/2006 and 507/2006 filed before Srinagar Bench of this Court, in which interim direction was issued for interviewing the petitioners therein at their own risk and responsibility, however, their result was not to be declared till further direction from the Court. Apparently, they were interviewed and their result was also declared.

27. In order dated 26.07.2013, passed in Dr. Jameel Ahmed Mir and another's case (supra) reference has been made to SWP 47/2008 filed by Dr. Mushtaq Ahmed Rather, challenging revocation of his selection and appointment.

28. Further in the order dated 12.04.2014 passed in the aforesaid petition reference has been made to SWP No. 1711/2013, filed before Srinagar Bench of this Court, seeking direction to the respondents therein for filling up of vacant posts of Deputy Medical Superintendent. The Court order records that the prayer

made therein was in conflict with the interim stay granted by the Court. The aforesaid writ petition is stated to be pending.

29. Dr. Jameel Ahmed Mir and another's case (supra) was finally disposed of on 24.10.2019 by Srinagar Bench of this Court with the following directions :-

"(i) The selection of Respondent Nos. 5 to 7 shall remain intact and is not interfered with.

(ii) The petitioners shall also be entitled to be appointed as Deputy Medical Superintendents in the Health and Medical Education Department, with effect from the date respondent Nos. 5 to 7 have been appointed retrospectively withal consequential benefits minus the monetary benefits. However, the petitioners shall be entitled to the monetary benefits from the date of their actual appointment.

(iii) The respondent No. 1 is directed to take note of the observations made herein above and to take immediate remedial measures to set right the Rule prescribing qualification for the post of Deputy Medical Superintendents so that un-necessary litigation on the subject is avoided and the posts of Deputy Medical Superintendents are filled up in time.

(iv) It shall be appropriate for the respondent No. 1 to do away with the practice of making temporary / adhoc or contractual appointments against the posts of Deputy Medical Superintendents and instead fill up the same by way of deputation of Chief Medical Officers/Medical Superintendents or equivalent from the Department of Health as provided in the existing Recruitment Rules."

30. A perusal of the aforesaid orders passed by Srinagar and Jammu Benches of this Court pertaining to the same selection, shows total casualness on the part of the department concerned and also the counsels to some extent. The manner in which the same process of selection is being dealt with shows that these are not two benches of the same High Court rather two different High Courts. Order passed by one bench pertaining to same selection is not even brought to the notice of the Court in the matters pending before the other Bench. The Commission is the single authority, which carried out the selection process. It cannot escape from its responsibility to apprise the Court as to whether there is any other matter, pertaining to same selection, pending before the other Bench. For this total casualness, which has resulted in passing different contradictory orders, the J&K Public Service Commission as well as the Commissioner Secretary, Department of Health and Medical Education, are burdened with a costs of Rs 1.00 lakh each. The amount shall be deposited in the J&K State Legal Services Authority, within a period of four weeks from the date of receipt of copy of the order.

31. In fact it is not a case in isolation where there had been total casualness on the part of counsels appearing for different parties, in apprising the court about similar matters pending in Court in different categories. Some of the issues came

up for consideration before Division Bench of this Court earlier in LPA No. 147/2019 titled as State of J&K and others Vs Showkat Ali and others, where matters pertaining to selection of constables were being decided in piece meal by both the benches as no one pointed out that other matters pertaining to same selection are also pending or disposed of. Order passed on 26.11.2019 can be referred to, when all the pending appeals and writ petitions were directed to be clubbed.

32. Another glaring example came before this Court in LPASW No 183/2017 and others. The issue pertained to challenge to various orders passed by the authorities prematurely retiring 75 employees way back in the year 2015-16. In order passed on 29.11.2019 details of various cases, which were got from the department in those cases, clearly established pathetic state of affairs in managing the litigation. As the cases were being decided in piece-meal independently before both the benches of this court and so was filing of appeals by State either before Division Bench of this Court or taking up those matters further before Hon'ble the Supreme Court.

33. Similar was the position in LPA No. 176/2018, which pertains to selection to the post of Naib Tehsildars. LPAs' were filed before both the benches of this High Court. None of the counsels pointed out this but when this transpired during the course of hearing, vide order dated 30.12.2019, the government counsel was directed to furnish details of all similar matters pending before both the benches of this Court and vide order dated 11.0.2020, all the cases were directed to be clubbed for hearing together. The strange fact is that the same department is filing appeals against the orders passed by both the Benches on same issues, as the cases are decided separately by Jammu and Srinagar Benches but the factum of filing or pendency of any similar matter is never brought to the notice of the Bench concerned at either of the places. The final result in number of cases is contradictory and sometimes different orders are passed in cases involving identical issues, which results in shattering public faith and confidence in judicial system. Different departments of the Government, especially the Law Department needs to revamp itself. There are chances of connivance of officers/officials in different departments, which results in this kind of situation.

34. Though, not directly relevant in this case but the manner in which the officers of the department take interest in litigation or they are in connivance with the petitioners in those cases, is evident from the fact that there were hundreds of cases pending before both the Benches of this Court, wherein orders of transfer had been stayed and the matters were pending for years together. Some even relate back to the year 2010. No interest was taken by anyone in the concerned department to raise that issue before the Court and get those matter listed for expeditious disposal. As a result of interim stay granted, those persons had been serving at the same place for decades. This also results in heart-burning of the other employees in the Department who may be transferred either prematurely or when it is due as per the transfer policy having completed their

tenure.

35. Another glaring issue which has emerged in the present case is that the attitude of the officers in the then State of Jammu and Kashmir in not complying with the order passed by the Court or deliberately violating the same. Once there was interim stay granted by this court in SWP No. 688/2006 restraining the respondent No. 2-J&K Public Service Commission from finalizing the selections, how the process could have been proceeded further and selection carried out? Final Selection was subject matter of dispute before the Srinagar Bench of this Court. Such an attitude can prima-facie lead to the conclusion that it is nothing else but connivance of the officers/officials of the department leading to anomalous orders by the Court. There can be more than one reason for sleeping over the matters after interim orders are passed in the cases. The officers in department, who have charge of the posts meant to be filled by way of direct recruitment always have interest in delaying the process so that they can enjoy their status and other perks attached to the higher post. It is matter of networking. In Public Service Commission as well as in the office of the Secretary of the Department concerned there must be same officers dealing with process of selection to the post of Deputy Medical Superintendent, hence, they must be aware of the pending litigation before both the Benches. They need to explain as to why the Court was not apprised of the pending cases before other bench of the Court and the interim orders passed therein.

36. Further from the record reference is also found of SWP No. 47/2008 filed by Mushtaq Ahmad Rathar. In this case recommendation for appointment was withdrawn as there was interim stay of appointments, however, withdrawal of the recommendation was stayed by this Court vide order dated 23.01.2008. As a result thereof he had been able to join service. Without deciding the issue on merit, his writ petition has been dismissed as infructuous as the petitioners before the Court in Dr. Jameel Ahmed Mir and another's case (supra), had been granted appointment with all consequential benefits.

37. As has already been noticed above, as a result of the anomalous situation created with the violation of the interim stay granted by Jammu Bench of this Court pertaining to same selection, the Srinagar Bench of this Court had to direct appointment of the petitioner therein as Deputy Medical Superintendent, retrospectively from the date the private respondents were appointed, with all the consequential benefits, minus the monetary ones. As a result of this, they may have been appointed directly on some promotional post, for which as per Rules some experience of working on lower post may be required, which they were lacking.

38. In Dr. Jameel Ahmed Mir and another's case (supra), the age of the petitioners, who were before the Court in the year 2007, was 41 and 40 years, respectively. The appointment to the post in question of respondent Nos. 5 to 7 in that petitions was made in the year 2007. Meaning thereby till 2019 more than 12 years had passed. That would mean entry of petitioners therein in service at

the age of 52-53 years. As they are deemed to be appointed from the year 2007, there actual service would be less than the deemed service. These had facts are being noticed only for the reason that authorities should realise that on account of their lapse how much loss can be caused to system.

39. This is the result of casualness on the part of department which is otherwise also evident from various interim orders passed in the aforesaid writ petition.

40. Now coming to the facts of the present case, advertisement in question for selection to the post of Deputy Medical Superintendent was issued way back in the year 2005 and after more than 14 years thereafter nothing survives to be adjudicated upon. The same are accordingly, dismissed.

41. As the conduct of the Department of Health and Medical Education and J&K Public Service Commission shows that there had been gross violation of the interim orders passed in these cases as is the normal attitude of the officers here, not to comply with the court orders, I deem it appropriate to issue notice to the Secretary, Department of Health and Medical Education and the Secretary to Jammu & Kashmir Public Service Commission to show cause as to why proceedings of contempt be not initiated against them for violation of the orders passed by this Court. For the present, notices are being issued to the aforesaid Secretaries who shall apprise the Court about the names of the persons who were at the helm of affairs at the relevant time when despite interim stay granted by this Court, the process of selection was completed. Affidavit to that effect be filed before next date of hearing. It shall also be stated in the affidavit that the persons so named in the affidavit have been informed about this case so that they also put in appearance on the next date of hearing as separate notices shall not be issued to them.

42. Separate Contempt Petition may be registered titled as Court on its own motion Vs. Secretary Department of Health and Medical Education (whose names are to be substituted later on). Suo-moto contempt proceedings have been initiated in the case in hand for the reason that there is a dire need to inculcate the habit of complying with the Court orders in the Union Territory of Jammu and Kashmir, which otherwise are taken too casually. It is evident from the number of Contempt Petitions pending in this Court vis-à-vis the cases decided.

43. Let the contempt petition be now listed on 26.08.2020. Intimation of the order passed in the present contempt petition and issuance of notice for contempt be sent to the aforesaid two Secretaries by the Registry of this Court through e-mail.

44. A copy of this order be also sent to Chief Secretary and Secretary Law of the Union Territory of Jammu and Kashmir for information and necessary corrective action.