

(2011) 11 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1801 of 2011

Parveen Akhter Lone (Dr.)

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2011) 4 JKJ 339

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. The State Government Vide Order No. 146-HME of 2004 dated 24th February, 2004 accorded sanction to setting up of a Dental College

styled as ""Indira Gandhi Government Dental College, Jammu"". The establishment of Dental College made it necessary to set up a teaching faculty

for imparting education/training to the students enrolled in the College. The respondent No. 1 accordingly, vide Government Order No. 476-HME

of 2005 dated 17th August, 2005 accorded sanction to transfer of various posts and the incumbents serving against such posts in Dentistry

Department of Government Medical College, Jammu, to the newly established Dental College.

2. The respondent No. 2 working as Lecturer in the Department of Dentistry, Government Medical College, Jammu, was also transferred vide

aforesaid order to Indira Gandhi Government Dental College and so was the petitioner, who at the time of establishing the Dental College was

working as B-Grade Specialist in Government Medical College, Dental Hospital,

Jammu. The respondent No. 2 and other two Lecturers

transferred to the newly set up college like the respondent No. 2 were absorbed in the Jammu and Kashmir Dental Education (Dental College)

Gazetted Service Recruitment Rules, 1993. The petitioner was appointed as Lecturer vide Government Order No. 553-HME of 2006 dated 4th

October, 2006. Both the petitioner and respondent No. 2 over the years have gone up the promotional ladder. The petitioner at present is working

as Assistant Professor, Oral Surgery, whereas respondent No. 2 is Associate Professor in the Department of Periodontia of the College.

3. The petitioner, though not happy with the mode and manner in which respondent No. 2 was absorbed in Jammu and Kashmir Education (Dental

College) Gazetted Service Recruitment Rules, 1993 and favoured with promotions, one of the other, restricts challenge in this writ petition, to

Government Order No. 368-HME of 2011 dated 22nd July, 2011, whereby respondent No. 1 has asked the respondent No. 2 to look after the

duties of Principal of the Dental College though temporarily and divested Principal, Government Medical College, Srinagar of his charge as

Principal of the Dental College. The petitioner seeks quashment of Government Order No. 368-HME of 2011 dated 22nd July, 2011 as also the

communication No. IGGDCJ/Estt/GD/917-25 dated 22.7.2011 addressed by respondent No. 2 to respondent No. 1, whereby respondent No. 2

assumed the charge of Principal, Indira Gandhi Government Dental College, Jammu.

4. The petitioner's case is that the respondent does not fulfil the eligibility criteria laid down in Jammu and Kashmir Education (Dental College)

Gazetted Service Recruitment Rules, 1993. It is pointed out that in terms of Recruitment Rules, an aspirant for the post of Principal, must have

Masters Degree or equivalent in any speciality of Dentistry recognized by Dental Council of India to his credit as also ten years teaching experience

as Professor or Associate Professor in the College out of which five years should be as Professor in the Department of Dentistry. The respondent

No. 2, it is pointed out having been appointed by promotion as Associate Professor in Periodontia vide Government Order No. 501-HME of

2007 dated 27th July, 2007 w.e.f. 1st October, 2006 does not possess ten years teaching experience as Professor or Associate Professor and

five years teaching experience out of the aforesaid period as Professor in the Department of Dentistry and is, thus, not eligible to be appointed as

Principal, even on a stop-gap arrangement.

5. The petitioner pleads that the respondent No. 2 was appointed as Lecturer in the discipline of Periodontia w.e.f. 17th Aug. 2005 in terms of

Recruitment Rules of 1993 and was due to be promoted as Assistant Professor w.e.f. 17th Aug, 2013 and for the post of Professor w.e.f. 17th

Aug. 2018. The petitioner complains that the respondent No. 1 throwing Recruitment Rules to the wind promoted the respondent No. 2 as

Assistant Professor nationally w.e.f. 1st October, 2001 and on a regular basis w.e.f. 17th March, 2002 when Indira Gandhi Governmental Dental

College, was yet to be established. The respondent No. 1, it is stated, promoted the respondent No. 2 as Associate Professor w.e.f. 1st Oct.

2006 when such a promotion had to come his way on 17th August, 2013. It is pleaded that the respondent No. 2's service as Lecturer in the

Deptt. of Dentistry, Govt. Medical College, Jammu, was not to be taken into account as the respondent No. 2 while working as such, did not

acquire any teaching experience as Lecturer in the discipline of Periodontia.

6. The writ petition is opposed by the respondents on the ground that the writ petition was not maintainable, as none of the fundamental,

Constitutional or Statutory rights of the petitioner, was violated. It is pleaded that the petitioner cannot seek a direction in favour of respondent No.

3, who admittedly is not aggrieved of the impugned Government Order. The respondent No. 1 pleads that as the order impugned in the petition

did not promote the respondent No. 2 to the post of Principal, Indira Gandhi Government Dental College and merely asked respondent No. 2 to

perform duties of Principal of the College, till the post of Principal was filled up on regular basis in accordance with rules.

7. It is insisted that challenge to the Government Order is ill-conceived and non-maintainable. It is pointed out that the respondent No. 1 was

constrained to ask the respondent No. 2 to work as Principal as the Dental Council of India did not permit the respondent No. 1 to handover the

charge of Principal, Indira Gandhi Government Dental College, Jammu, to the Principal Government Medical College, Jammu. The respondent

No. 1 admitting that vide Government Order No. 478-HME of 2010 dated 29th

September, 2010, the respondent No. 3--Principal Government

Dental College, Srinagar was asked to hold the additional charge of Indira Gandhi Government Dental College, Jammu insists that as it was difficult

and humanly impossible for the respondent No. 3 to look after the affairs of Indira Gandhi Government Dental College, Jammu, the respondent

No. 1 was left with no option but to ask respondent No. 2--senior faculty member to look after the routine work of Principal, Indira Gandhi

Government Dental College, Jammu. It is further pleaded that Dental Council of India, having vide its communication dated 24th June, 2010

certified that the respondent No. 2 had sufficient teaching experience required for the post of Principal, there was no impediment in the way of

respondent No. 1 to pass Government Order No. 368-HME of 2011 dated 22nd July, 2011 impugned in the petition and ask respondent No. 2

to temporarily look after the work of Principal, Indira Gandhi Government Dental College, Jammu in addition to his own duties, till the post of

Principal was filled up on regular basis.

8. The respondent No. 2 in his separate reply has reiterated the stand taken by respondent No. 1 in opposition to the writ petition and pleaded

that as the petitioner admittedly was not eligible to be considered for the post of Principal, he has neither competent nor had any locus to question

the appointment of respondent No. 2 as Principal on stop-gap basis. It is pleaded that as the petitioner was due for promotion as Professor w.e.f.

1st October, 2011 and his appointment as Principal was approved by Dental Council of India, the order directing the petitioner to hold the

additional charge of Principal on temporary basis was in conformity with rules and not open to challenge.

9. I have gone through the pleadings and the record available on the file and have heard learned counsel for the parties.

10. The controversy involved in the writ petition raises following issues:-

(i) What is the eligibility criteria and the method of recruitment prescribed under rules for the post of Principal, Indira Gandhi Government Dental

College, Jammu.

(ii) Whether the eligibility criteria prescribed and the method of recruitment is to be followed, even where the post is not prepared substantively

filled up but only temporary charge given or stopgap arrangement made in the

interest of administration, till the post is filled up.

(iii) Whether the respondent No. 2 fulfils the eligibility criteria prescribed under rules.

(iv) Whether the petitioner, in view of her admitted ineligibility for the post of Principal, can still question the order, whereby the respondent No. 2

has been given additional charge of Principal on temporary basis, till the post is filled up in accordance with rules.

11. Let us have a closer look on the pleadings and the Recruitment Rules, to find answer to the aforestated questions.

12. The Jammu and Kashmir Dental Education (Dental College) Gazetted Service Recruitment Rules, 1993 provide for Constitution of Jammu and

Kashmir Education (Dental College) Gazetted Service Recruitment Rules, 1993 laid down eligibility criteria for recruitment or promotion to a post

in the service, method of recruitment and allied matters. Rule 3 deals with Constitution of Jammu and Kashmir Education (Dental College)

Gazetted Service Recruitment Rules, 1993 and its classification. In terms of Rule 4, the members of service shall be of such persons, as are

appointed to the service under the Rules. Rule 4 prohibits recruitment or promotion to any person to a post in the service, unless such person

possesses the qualification and fulfils the requirements of recruitment prescribed for that post in Schedule II. The Jammu and Kashmir Public

Service Commission or Departmental Promotional Committee is in terms of Rule 8 required to have due regard to: a) academic qualification of the

candidates (b) teaching experience (c) previous record of work, if any, while making selection of the post in service.

13. The minimum qualification and minimum teaching/research experience as also method of recruitment laid down in Schedule II as regards post

of Principal may be tabulated as under:-

ClassSubjectDesignation ofGrade Minimum qualification Minimum Method of
the post teaching/research recruitment

experience

1 2 3 4 5 6 7

I Principal 4500- Masters Degree or 10 years teaching By selection from

5700 equivalent in any experience as Prof. or Professor of Medical

speciality or Dentistry Associate Prof. in the or Dental College.

recognized by the Dental College out of which 5

Council of India years should be as

Professor in the

Department of Dentistry

14. From a bare look on the eligibility criteria laid down, it is more than clear that an aspirant for the post of Principal is to have ten years teaching

experience as Associate Professor/Professor in the College and out of said teaching experience five years experience is to be as Professor in the

Department of Dentistry. The Recruitment Rules of 1993, thus, do not only require teaching experience for a particular period but also place

emphasis on the capacity or position in which such experience is acquired. Had it been intention of the rule makers to only ask for/require ten years

teaching experience there was no need to further require five out of the prescribed period of teaching/research experience to be as Professor in the

Department of Dentistry. In terms of Recruitment Rules an Associate Professor becomes due for his appointment by promotion as Professor only

when he acquires five years teaching experience as Associate Professor in the said Department. In other words, a Professor has already five years

teaching experience as Associate Professor to his credit when he is appointed by promotion as Professor and has thereafter, to put in five more

years and gain teaching experience, as such, to be eligible for the post of Principal.

15. In the present case, even if, the challenge to petitioner's initial appointment as Lecturer/Periodontia, his promotion as Assistant Professor in

Periodontics and thereafter, as Associate Professor is put aside and the respondent No. 2 taken to have been promoted as Professor as per his

own claim w.e.f. 1st October, 2011, still the respondent No. 2 would not be eligible for the post of Principal because of a lack of five years

teaching experience as Professor - a sine qua none for appointment by promotion as Principal in terms of Recruitment Rules of 1993. The

clearance given by Dental Council of India to the appointment of respondent No. 2 as Principal, vide its Letter No. DE-3-(250)-2010/A/3043

dated 24th June, 2010 is not to change complexion of the matter and shall not by itself change, modify, amend the Recruitment Rules of 1993.

16. Viewed thus, the respondent No. 2 is not eligible to be appointed by promotion as Principal, Indira Gandhi Government Dental College, Jammu.

17. It is no more res-integra that even where promotion is made on adhoc/stop-gap/temporary basis, the eligibility criteria for the post against which such promotion is made as prescribed under the Recruitment Rules, is to be respected and followed. Whatever name is given to the promotion to a higher post and in whatever way it is styled the qualification and experience prescribed under rules for the post, is not to be ignored.

18. In terms of Government instructions under Article 85 of Jammu and Kashmir Civil Service Regulations, 1956 notified vide SRO 499 dated 11th September, 1975, even where, for reasons to be recorded temporary, stopgap arrangements are to be made in public interest only such officers are to be so appointed, who satisfy all the requirements for higher appointment and can stand the scrutiny of the Departmental Promotional Committee.

19. In other words, whether the authorities cannot without detriment to public interest, wait for appointment, the arrangement like the present one, is to be made but the person given the additional charge or asked to look after the affairs of the higher post, must fulfil the eligibility criteria. In the present case, even when the post of Principal is referred to the Public Service Commission/Departmental Promotional Committee, the respondent No. 2 because of not satisfying the eligible criteria prescribed under Recruitment Rules of 1993 cannot be considered by the Public Service Commission/Departmental Promotional Committee for his appointment by promotion to the post of Principal, Indira Gandhi Government Dental College, Jammu.

20. Viewed thus, the respondent No. 2 was not to be given temporary charge of the Principal, Indira Gandhi Government Dental College, Jammu, in addition to his own duties. The stipulation in the impugned order that the arrangement shall not confer any preferential claim/right upon respondent No. 2 to hold the post on regular basis, would not change complexion of the matter.

21. The arguments advanced by learned counsel for respondents that as the

petitioner, on her own admission, was not eligible for the post of Principal, Indira Gandhi Government Dental College, Jammu, she had no locus to question the Government order impugned in the petition, is specious and destined to fail.

22. It is important to point out that the petitioner seeks a writ of quo warrant against the respondents 1 and 2. The petitioner's case is that as the

respondent No. 2, in terms of Recruitment Rules, 1993, is not eligible to hold the post, that the respondent No. 2 has been asked to hold, though

temporarily vide Government order impugned in the petition, the petitioner is within her rights to persuade the writ Court to ask the respondents to

show/disclose the authority under which the respondent No. 2 has been asked to hold/holds the post of Principal, Indira Gandhi Government

Dental College, Jammu. A writ of quo warrant, it is well known, can be issued, when the holder of public office has been appointed in violation of

constitutional provisions, provisions of an Act or the statutory/recruitment rules. It is well settled law that the petition, seeking judicial review for the

purpose of issuance of writ of quo warrant/is maintainable where the holder of a public office is alleged not to be eligible for the appointment to the

public office or where the procedure mapped out in the Recruitment Rules, has not been adhered to. It is strenuously argued by learned counsel for

the petitioner and rightly so that writ of quo warrant is issued amongst others on the ground that the appointment is contrary to the statutory rules. It

has been held that while examining whether a person holds a public office under valid authority or not, the Court must not give any importance to

the technicalities like delay or motive behind the challenge, as what is necessary for the Court is to prevent continuance of usurpation of office or

perpetuation of an illegality. It is also well settled that the writ of certiorari, writ of mandamus and the writ of quo warrant are different and distinct

in ambit and scope and writ of quo warrant would lie even where the petitioner does not claim or has not to derive any benefit from quashment of

an order impugned before the Court, whereby holder of a public office is alleged to have been appointed in violation of constitutional provisions,

provisions of an Act or the statutory/Recruitment Rules. While in case of a writ of certiorari or a writ of mandamus, the petitioner has to establish a

personal interest in the matter recognized as sufficient to have the writ issued

the exclusive emphasis in the petition for writ of quo warrant is to be on infringement of constitutional or statutory provisions and not on bona fides, intention and conduct of the petitioner. In other words, the writ of quo warrant can be maintained by a person who has no personal interest in the matter in controversy or fruits of litigation and does not expect a positive fall out or spill over in his favour, once the petition commenced by him succeeds.

23. In the present case, though the petitioner is not eligible for the post of Principal, Indira Gandhi Government Dental College, Jammu, yet the petitioner as a faculty member of the College and as a tax payer, has a legitimate and valid interest to see that no one holds a public office or is appointed to public office in violation of constitutional provisions, provisions of an Act or the statutory/Recruitment Rules. Though the petitioner would not be entitled to maintain a petition for a writ of certiorari but her petition for a writ of quo warrant cannot be thrown out on the ground that she is not herself eligible for the post held by respondent No. 2 and cannot maintain a petition throwing challenge to the appointment of respondent No. 2.

24. For the reasons discussed above, there is merit in challenge to the Government Order No. 368-HME of 2011 dated 22nd July, 2011, whereby the respondent No. 2 has been asked to temporary hold the office of Principal, Indira Gandhi Government Dental College, Jammu.

25. So viewed, the writ petition is allowed and the Order No. 368-HME of 2011 dated 22nd July, 2011 as also the Communication No.

IGGDCJ/Estt/GD/917-25 dated 22.07.2011 are set aside. Resultantly, the Principal, Dental College, Srinagar-respondent No. 3 shall continue to

hold the additional charge of Principal, Indira Gandhi Government Dental College, Jammu till the post is substantively filled up in accordance with

rules or ad-hoc/stop-gap temporary charge of the post is given to a person having qualification and experience prescribed for the post of Principal

under J&K Dental Education (Dental College) Gazetted Services Recruitment Rules, 1993.