

(2006) 03 J&K CK 0011
In the Jammu And Kashmir High Court

Parveiz Ahmad, Dr.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Citation : (2007) 3 JKJ 125

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—The petitioner presently working as a Registrar in Government Medical College, Srinagar since 25.6.2005 was

selected and appointed as Assistant Surgeon in Health Department on 1.8.2005 where after under another order No. 529-HME of 2005 dated:

12.9.2005 he alongwith others appointed with him and holding the post of Registrar in Medical College of Srinagar or Jammu were directed be

relieved by concerned Principles to report for further posting before Director Health Services. The grievance projected is that since petitioner is a

cancer patient, the respondents be directed not to relieve him from Medical College, Srinagar for his posting elsewhere by Director Health

Services because posting in some far flung area would deprive him of the treatment facilities available at Srinagar. It is further pleaded that in

acknowledgement of his condition Government had already asked the Principle, Medical College, Srinagar vide letter No. HC (Gaz) S/94/05

dated: 24.10.2005 to retain petitioner in Medical College which was however withdrawn under another communication No. ACAD/257-66/MC

dated: 16.3.2006 with the result that the petitioner stands directed to report to the Director Health Services for further posting. Aggrieved thereby

the petitioner challenges the same inter alia on the grounds that in some other cases similarly placed with him, this Court had already stayed the operation of the order where under Registrars in Medical Colleges of Jammu and Srinagar were directed not to relieve them and as such the petitioner also deserve the same treatment particularly because he being a diagnosed patient of cancer deserved to be posted in Srinagar City for health care etc. Materials appended with the memo of petition include a certificate from TATA Hospital; Mumbai certifying that petitioner was a confirmed cancer patient under regular treatment. During course of her threshold contentions the petitioners Counsel has also contended that the benefit of orders passed in some other cases by this Court be extended to the petitioner also and the relieving order in his case be quashed and he be allowed to continue as Registrar in Medical College, Srinagar.

2. I have heard learned Counsel and considered the matter. Question relating to petitioners entitlement to continue as Registrar in Medical College, Srinagar despite his appointment as Assistant Surgeon in the Health Department and the vires of relevant Government order directing Principal, Medical College, Srinagar to relieve him for reporting to Director Health Services for further posting is already pending before different Benches of this Court as stated by petitioners Counsel so it may not be advisable to go into that.

3. However taken on its own the instant case appears to be attended by a very peculiar feature pertaining to petitioner's health condition which slightly changes the complexion of his case otherwise involving a question of transfer and posting simplicitor, into a somewhat purely human problem attracting certain broader principles of law and justice. As already said the petitioner is a confirmed patient of cancer having already received six cycles of chemotherapy and as such it can hardly be denied that he requires constant follow up to keep the disease in check which is certainly not available anywhere outside Srinagar City in Kashmir Valley. In other words for enabling the petitioner to have an affective follow up medical treatment he requires to be posted in Srinagar only and that aspect certainly enlarges the contours of consideration of the instant matter because of the fact that in given circumstances the question of petitioners posting and placement appears to become incidental, if not essential to his

right to life. Obviously if he is posted at some far flung area outside Srinagar City, he would certainly be deprived of the facility of medical follow

up, and as the case is, lack or availability of such facility may at some crucial point of time mean all the differences between life and death for him.

At the same time, however, since his relieving order from Medical College, Srinagar is integral to the policy of Government which does not cover

petitioner only, it would not be proper to deviate from the same as that may amount to differential treatment to petitioner and against others

similarly circumstanced with him.

4. In over all circumstances as catalogued above and with agreement of petitioners Counsel and without touching the impugned order, the petition

is disposed of with an observation that after the petitioner is relieved by Principal, Govt. Medical College, Srinagar under the impugned order and

reports to Director Health Services for further posting, it be ensured that in view of his disease as aforesaid, he is posted in or nearer Srinagar City

to enable him to get necessary medical treatment.

5. Matter stands accordingly disposed of alongwith connected CMPs.