
(1996) 12 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : S.W.P. Nos. 910, 905, 908, 935, 992, 999, 1220 and 1228 of 1994

Pradeep Kumar Khajuria

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 115

Citation : (1997) 2 SCT 465

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

Bench : Single Bench

Advocate : S.K. Anand, Ajay Abrol, K.L. Pandita , R. Koul, B.S. Dutta, C.M. Koul,
Advocates appearing for the Parties

Judgement

B.A. Khan, J.—All these writ petitions involve identical questions of fact and law and are being disposed of by a common judgment. Out of

these, some writ petitions were not listed on the day the subject matter of controversy was considered. But, taking in regard that the points in issue

were identical, therefore, record of other petitions was also summoned for disposal by a common judgment.

2. Petitioners were selected by the Public Service Commission (PSC) for the post of lecturer in Medical Education Service. Pursuant thereto they

were appointed to the post of lecturer in Government Medical College, Srinagar, by various Government Orders. The writpetitioner in SWP No.

910/93 was appointed as lecturer, Blood Bank, by Government Order No. 494HME of 1994 dated 26.7.1994; Petitioners in SWPs 905 of

1994 and 908 of 1994 were appointed to the post of Lecturer in Pathology vide Government Order No. 488HME of 1994 dated 21.7.1994;

Petitioner in SWP No. 935 of 1994 was similarly appointed as Lecturer in Forensic Medicine by Government Order No. 495HME of 1994 dated

26.7.1994; Petitioners in SWP 992 of 1994 and SWP 999 of 1994 were appointed to the post of Lecturer in Surgery by Government Order No.

533HME of 1994 dated 11.8.1994; and lastly, petitions in SWPs No. 1220 of 1994 and 1228 of 1994 were appointed as Lecturers in

Pharmacology by Government Order No. 14HME of 1994 dated 10.10.1994. The appointment orders of all the petitioners were made subject to

certain conditions one of which provided as under :

“He/she will join the department within a period of 21 days from the date of issue of this order failing which his/her appointment shall be cancelled.”

It is this condition which is at the root of controversy and which stands stayed by this Court by interim orders passed in various writ petitions and

on the strength of which petitioners are staying away from their posts in Srinagar Medical College for the last more than two years.

3. Some of these petitioners, like writ petition in SWPs No. 122 of 1994 and 1228 of 1994, are holding the posts of Demonstrator in

Pharmacology Department even after the expiry of their tenure of 5 years by wrongly projecting the case in their writ petitions and depriving the

eligible candidates for the post of Demonstrator from consideration and appointment.

4. Petitioners' case in short is that they are unable to join at Srinagar Medical College because of the disturbed conditions in the Kashmir valley and

because of danger to their life due to the ongoing terrorist activities there. They claim on this basis that they cannot be compelled to join at Srinagar

Medical College as they have to undertake public dealing in the very nature of duties which is likely to expose their life to danger. It is further

contended that several other doctors similarly situated like Dr. Paramjit Singh (Orthopaedician), Dr. Praduman Gupta and Dr. B.S. Chopra

(Pharmacology), Dr. Ram Kapoor (Blood) Bank), Dr. Kulbhushan Krishen, Dr. K.K. Banotra and Dr. Bharat Bhushan Kapoor (Anaesthesia),

were adjusted in the Jammu Medical College and that they also deserved similar treatment. Lastly, it is pointed out that they had made a

representation for their adjustment in the Jammu Medical College which was yet

to be disposed of by the State respondent.

5. In the reply filed by the respondents, it is submitted that the petitioners were appointed against the available posts of lecturers in their respective disciplines in Srinagar Medical College and as such were required to join there if any wanted to take the benefit of their appointment order. It is projected that their apprehensions were baseless as many non Muslim doctors from outside were working in the Srinagar Medical College and in any case they could be provided security cover if needed and required in the circumstances. It is also pointed out that the nonjoining of the petitioners had blocked the posts of lecturers in the concerned disciplines which lay vacant at the Srinagar Medical College to the detriment of patients and health care in Kashmir valley. It is further stated that the petitioners were aware of their appointment/posting in Srinagar Medical College when they sought selection for the post and that they cannot now turn round and refuse to join there on the plea of inconvenience.

6. It is admitted that some doctors selected for Srinagar Medical College were adjusted in the Jammu Medical College as at that time the posts in the concerned disciplines were available at Jammu.

7. All that remains to be seen is: whether petitioners' appointment is liable to remain intact despite their nonjoining in Srinagar Medical College in contravention of the terms of their appointment order and whether the condition incorporated in their appointment order requiring them to join there within 21 days suffers from any illegality or infirmity ?

8. An examination of the appointment orders of the petitioners shows that all of them were appointed to the post of lecturers in various disciplines in Srinagar Medical College subject to certain terms and conditions including that they were required to join there within 21 days from the date of issue of their respective appointment orders. Therefore, whatever right accrues to them, it springs from their respective appointment orders and such right is enforceable only in the context of the terms of these orders. Since they were appointed to the posts of lecturers in the Srinagar Medical College with some conditions including that they were to join there within 21 days from the date of passing of the appointment order, it was for them to accept or reject this appointment. Once they accepted it, they had to do so along with the conditions contained in the order of

appointment. They cannot be allowed to take the benefit of the order as regards their appointment to the posts of lecturers and reject the

conditions laid down for such appointment. In other words, they will have to sink or swim in accordance with the terms of their appointment

orders. If they feel reluctant to abide by its terms, their appointment itself comes under a cloud and cannot take effect.

9. Another aspect of the matter is that the petitioners' appointment would take effect on their joining the post and their nonjoining for whatever

reasons renders their appointment order hollow and illusory which cannot be kept alive for all times to come. The order of appointment is only an

offer which fructifies when the appointee joins on the post inhering rights in him to hold the post with all consequential benefits. But, where the

appointee fails to take benefit of the appointment order, no right accrues to him to keep his appointment alive to the prejudice and detriment of the

public interest and the interest of administration. Such an appointee cannot be allowed to have the best of both the worlds by not joining on the

post to which he is appointed and by restraining the government employer to cancel his appointment order and to declare the post vacant.

10. The impugned condition requiring the petitioners to join against the post of lecturer in Srinagar Medical College within 21 days, is an integral

part of their appointment and as it is, such a condition cannot be said to be suffering from any illegality or infirmity. If the petitioners are unable to

join within the stipulated period, or for that matter, within the extended period, they cannot hinge on to their appointment order and prevent its

cancellation. After all they have no right to keep the posts of lecturers blocked for all times to come till they may feel convenient to join at Srinagar

Medical College. If it is impossible or inconvenient for them to join at Srinagar, the only inference that can be drawn is that they had failed to take

the benefit of the appointment order and in that event offer of appointment would be revocable and the appointment order liable to cancellation.

11. It may be true that this Court had shown indulgence to some appointees placed in similar circumstances by extending their joining period in

view of the disturbed conditions in the Kashmir valley. But, that also cannot hold valid for all times to come, more so, when conditions in the

Kashmir valley have undergone a sea change for the good for the last few years. It cannot also be said that now conditions are not conducive for

normal functioning in the Kashmir valley and the appointees from Jammu are in any way incapable of discharging their duties there.

12. It is not a question of the petitioners being compelled to join at Srinagar Medical College. It is for them to join or not to join. But, once they

fail, their appointment order loses all its significance and is revocable and liable to be cancelled. It is also not the case that they were picked up for

any hostile discrimination in violation of their rights under Article 14 of the Constitution by requiring them to join at Srinagar. Such a plea of

discrimination is wholly misdirected. It could as well be that the State respondent had allowed some doctors appointed in similar circumstances in

the last few years to be adjusted at Jammu. But, as already noticed, the two situations are not comparable and any such adjustment made 2/3

years back cannot be invoked today when it is the categorical stand of the State respondent that no post in the discipline in question was available

in the Jammu Medical College.

13. In the circumstances I hold that the condition incorporated in the appointment orders of the petitioners requiring them to join a Srinagar

Medical College within 21 days, is a part of their appointment order and that they have no right of any adjustment at Jammu Medical College, as

they stand appointed to the posts of lecturers in Srinagar Medical College and that the State respondent is not obliged to await their joining at

Srinagar Medical College and is entitled to proceed to revoke and cancel their appointment orders.

14. At this stage it is pointed out that the writ petitioners in SWPs No. 1220 of 1994 and 1228 of 1994, namely, Dr. Vinod Kapoor and Dr.

Sangeeta Choudhary respectively, are holding the posts of Demonstrator in Pharmacology discipline on the basis of an interim order obtained by

one of them even after the expiry of their 5 year tenure, which has resulted in blocking the two posts in this discipline and has deprived the eligible

candidates of consideration who had responded to advertisement notice dated 1.2.1996.

15. All these writ petitions are accordingly dismissed. The interim direction dated 23.8.1995 passed in SWP No. 1220/94 shall stand vacated and

the Principal, Government Medical College, Jammu, is directed to take steps to fill up the posts of Demonstrator in Pharmacology department by

completing the selection process in reference to advertisement notice dated 1.2.1996 issued by him. The writpetitioners in these two writ petitions

(SWPs 1220 of 1994 and 1228 of 1994) be allowed to hold the post of Demonstrator till the selected candidates who had applied pursuant to the

aforesaid advertisement notice become available regarding which separate orders prescribing time frame are passed in writ petition of one of such

candidates (SWP 943 of 1996.)

16. Petitions dismissed.