
(2001) 08 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2128 of 1999

Vikrant Parihar and Others

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) KashLJ 535 : (2001) SriLJ 456

Hon'ble Judges : H.K.Sema, C.J and B.L.Bhat, J

Bench : Division Bench

Advocate : Z.A.Shah, Z.A.Qureshi, S.H.Thakur, R.A.Jan, M.Y.Sherkhan, M.Y.Sherkhan, M.I.Dar, J.A.Kawoosa, A.Andrabi, A.M.Dar, Advocates appearing for the Parties

Judgement

1. This bunch of writ petitions raise common questions of facts and law and they are being disposed by this common judgement and order.

2. What appears to be a perpetual litigation by the seekers for admission in the two Government Medical Colleges at Srinagar and Jammu into

Postgraduate and diploma courses, once again has engaged the attention of the court for the considerable time.

3. The Government of Jammu and Kashmir has framed procedure called the Jammu and Kashmir Government Medical Colleges (Selection of

candidates for Post Graduate Degree and Diploma Courses) Procedure Order 1995, in SRO 158 by Notification dated 12th July, 1995, (in short

the rules). Rule 4 of the Rules mandated for holding entrance examination every year for selection of doctors for postgraduate Degree and Diploma

Courses in different disciplines. Rule 6 of the Rules deals with the determination of the merit and provides that the merit of the eligible candidate

shall be determined separately in each discipline on the basis of the total marks obtained in the aforesaid written test. Rule 7 of the Rules deals with

the preparation of the select list and provide that the select list shall be prepared on merit in each discipline and further provides that allocation of

discipline made by the competent authority shall be final. Rule 8 provides procedure for publication of select list. Rule 10 of the Rules is some what

important and deals with the waiting list and provides that the authority shall prepare a waiting list in each discipline in order of merit and such

waiting list shall be valid for one month from the last date of regular admission.

4. In terms of procedure prescribed in Rule 4 of the Rules, the entrance written test examination to postgraduate Courses and Diploma were held

on 31.12.1995 and 01.01.1996. the result thereafter was declared and the selected candidates were admitted to various courses on different

disciplines. For the years 199798, and 199899 and 2000 no entrance test were held, however, candidates form the waiting list or otherwise

prepared on the basis of entrance test held in 199596 were continuously provided admission either on the strength of interim order passed by this

court in the writ petitions filed by many candidates or interim orders obtained in Letters Patent Appeals from this court. In the interregnum even

Special Leave Petition has been filed namely SLP (C) No. 4982 of 2000 titled Dr. Vikrant Parihar, Appellant Vs. State of J&K and others,

Respondents, which has been disposed of by the Supreme Court by its order dated 06.09.2000, interalia directing that all these petitions be

placed before two Judges or more for disposal on merits and in accordance with the law and it is how all the writ petitions and PLA's are clubbed

together and listed before us. The direction of the Supreme Court has an important bearing for proper adjudication of these bunch of writ petitions

and we shall be dealing in detail at appropriate time.

5. All the writ petitions have been filed by the candidates who participated in the written test examination held in 1995 96 and were not selected.

6. Before we advert further, we may at this stage dispose civil rules which in our view have by now become in fractious. OWP No. 939 of 2000

has been filed by a candidate who was not selected in the entrance test examination conducted in 199596. The main grievance of the writ

petitioner is that his case was wrongly rejected and the respondent No.3 has

been wrongly selected in terms of SRO 540 treating the respondent

No. 3 as reserved category, although he was from open category candidate. The petitioner challenged the validity of SRO 540. Learned Advocate

General brought to our notice that during the pendency of the writ petition, SRO 540 has been superseded by SRO 390. In this view of the matter,

the writ petition has become infructuous and is accordingly disposed as infructuous.

7. In OWP No. 968/1992, petitioner challenged selection list prepared in 1989. Subsequent entrance examination has been held in 1992 and in

1995/96 as already stated. This writ petition, therefore, does not survive and is being disposed as infructuous.

8. Reverting to the main grievance of the petitioners, the main thrust of argument has been advanced by Mr. Z.A. Shah, learned counsel for the

petitioners that in the entrance examination held in 1995/96, the petitioners obtained higher marks than other candidates who have been allowed

admission in subsequent years on the basis of list of 1995/96 without conducting fresh entrance test, but the case of the petitioners have not been

considered. According to the learned counsel for the petitioners that it should be considered strictly on the basis of marks obtained by candidates.

9. We may at this stage dispose of this argument. As already said, all the writ petitioners and respondents were not selected candidates in

1995/96 select list. If some candidates whose names do not figure in the select list secure admission subsequently on the strength of the interim

orders passed by this court or otherwise the same cannot be followed as a precedent. The court orders become precedent when it decides the law.

Granting the same relief would amount to allowing perpetuation of illegality.

10. There is no quarrel over the proposition that once an entrance test is held and the result is declared on the basis of merit, there is no reason

why it should not be considered on meritwise. However, in the instant case, a peculiar situation has arisen and the present situation must be dealt

with in accordance with given facts and circumstances of the situation. We have already noted that the rule prescribes that the waiting list will be

only for a period of one month. Normally the select list including the waiting list stands automatically lapsed after the expiry of one month.

However, in the instant case, 1995 list has been implicitly allowed to operate by

many interim orders passed by this court either in writ petitions or in LPAs, as already pointed out. It is also admitted fact that although many undeserved candidates have now been admitted in the Medical Colleges, they have been continuing undergoing the courses, in Postgraduate or Diploma by appearing or have already appeared in the examinations conducted by the Medical Colleges and at this stage it will be difficult to dislodge them, although their admissions could be held to be irregular, moreso when the petitioners are seeking a direction to revive the select list of 199596, which in our view has now become obsolete apart from lapse of time, even from the order passed by the apex court which we shall now be dealing in detail. The apex court disposed off the SLP

(C) No. 4982/2000 titled Dr. Vikrant Parihar, Appellant Vs. State of J&K and others, Respondents, on 06.09.2000, interalia in terms of the

following directions ;

1. ""The competent authority shall conduct an entrance examination for selection of Doctors for admission to PostGraduate Degree and Diploma

Courses in different disciplines in the Medical Colleges in the State of Jammu and Kashmir on the basis of their merit expeditiously in accordance

with SRO 158.

2. All eligible candidates whether in the earlier selection list or not shall be entitled to take part in the said entrance examination.

3. Rules relating to reservation of seats, to the extent permissible in law and applicable shall be respected by the authorities at the time of making selections and admissions."" (emphasis supplied).

11. The aforesaid directions considered to three parts. First the authority shall conduct fresh entrance test strictly on the basis of SRO 158;

Secondly, the candidates irrespective of whether their names appear in 1995 selection or not are eligible to participate and thirdly adhering to reservation policy while selecting the candidates.

12. Pursuant to the aforesaid directions, fresh entrance examination was held on 26.11.2000 during the pendency of the writ petitions. Some of the

writ petitioners were selected and many writ petitions have been disposed of as infructuous. The remaining writ petitions before us survived

because they all appeared and not selected in the subsequent entrance examination held on 26.11.2000, pursuant to the directions of the Supreme

Court.

13. The question now left to be determined is as to whether petitioners after participating in the entrance examination held on 26.11.2000 and

failed to get selected are allowed to reagitate the merit list prepared in the entrance examination held in 1995-96 on ground that some candidates

who secure less marks than the petitioners have been given admission.

14. We have already held that the candidates who secured admission into the Postgraduate and Diploma courses on the basis of entrance test

conducted in 1995-96 and granted admission thereafter subsequently through various orders of the court, are now pursuing the studies in the

respective courses and it will be difficult to dislodge them at this stage. This view has also been expressed by Supreme Court in its order dated

06.09.2000 as under

We clarify that the above directions shall not be construed as setting aside the admissions already granted to candidates who are pursuing

various PostGraduate courses, pursuant to orders made by different Benches of High Court of this court and the ensuing entrance examination shall

be held to fill the determined vacancies for 1992-2000 academic session for the PostGraduate Medical Courses (Degrees and Diplomas). Our

directions shall also not disturb any order of admission of candidate that has acquired judicial finality, provided such a candidate has been so

admitted and pursuing his course of PostGraduate study.

15. At the same time in view of the direction No. 2 of the apex court, we are of the view that the petitioners are estopped from claiming list of

1995-96, once they appeared in the subsequent entrance examination held on 26.11.2000, pursuant to the directions of the Supreme Court.

Direction No. 2 of the apex court is clearly indicative that once petitioners participated in subsequent entrance examination, the merit list of 1995-96

would stand lapsed. Even otherwise once the petitioners participated in the entrance examination held on 26.11.2000 and failed themselves to get

selected, they are estopped to turn around to claim the benefit of select list prepared in 1995-96 which legally stands lapsed after the expiry of one

month as envisaged by Rule 10 of the SRO 158 of 1995. At the risk of repetition, we again, in order to clear our mind, reproduce direction No. 2

of the apex court:

2. All eligible candidates whether in the earlier selection list or not shall be entitled to take part in the said entrance examination"".

16. The incontrovertible facts are that pursuant to the aforesaid directions, all the petitioners participated in the entrance examination held on

26.11.2000 and failed themselves to get selected. In our view, therefore, the 199596 select list technically stands invalidated. At the time of

hearing of the SLP, argument has been advanced to confine the next entrance examination to fill the vacancies other than those of the interveners,

have been rejected by the apex court in terms of the following :

We are unable to accede to the request of Mr. Thakur, learned Senior Advocate to confine the next entrance examination to fill vacancies, other

than those of the interveners. Since they have been litigating all this time, they shall be at liberty to take the next entrance examination, if otherwise

eligible to do so. Academic excellence and not litigative persistence has to be the criteria for admission to PostGraduate Medical Courses.

17. In view of the Supreme Court order and in the facts and circumstances as recited above, we are of the view that the cause does not survive

and this bunch of writ petitions are dismissed on merits. Parties are asked to bear their own costs.

18. This judgement shall cover all the analogous cases pending before this court on the same subject i.e. any dispute relating to the selection of

199596.

19. We are told by the learned Advocate General that for the academic session 20012002, entrance examination is going to be held some time in

October 2001. It is also stated at the Bar that the petitioners are not age bared. Needless to say that all the petitioners are at liberty to participate

in the entrance examination subject to their possession requisite qualification and within the age. We hope and trust that in future appropriate

Government shall strictly adhere to the procedure prescribed by SRO 158 of 1995 so that unwanted litigations as in the case at hand are thwarted.