

(2014) 02 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2564/2011 and CMA No. 3785/2011

Wasiq Rasool Malik

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 2 JKJ 14

Hon'ble Judges : Bansi Lal Bhat, J

Bench : Single Bench

Advocate : K.L. Pandita, Advocate for the Appellant; Neeru Goswami, Dy AG, F.A. Natnoo, Advocate, P.N. Raina, Sr. Advocate and J.A. Hamal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Bansi Lal Bhat, J.—Petitioners, serving as Medical Officers in department of Health and Medical Education found tables turned on them

when their application forms for post of Deputy Medical Superintendent in Government Medical College Srinagar came to be rejected on the

ground that petitioner No.1 did not possess requisite experience on cutoff date and held Degree in Hospital Administration from an unrecognized

Institute and that the petitioner No.2 held a Degree in Hospital Administration from an Unrecognized Institute. The grounds of rejection are said to

be violative of Rules and Regulations under the University Grants Commission. It is submitted that the petitioners have submitted the experience

certificate from competent authority as required. It is further submitted that the Post Graduate Degrees of petitioners have been respectively issued

by Osmania University and DAV Indore (M.P.) which are prestigious Institutes and petitioners have been appointed as Assistant Surgeons on the

recommendation of Public Service Commission (PSC) on the strength of such Degrees. Aggrieved of their rejection of applications petitioners

have approached this Court assailing the impugned order dated 19.12.2011 passed by respondent No. 3. Respondents have contested the

petition on various grounds. It is pleaded that on requisition received from Health and Medical Education Department one post each of Deputy

Medical Superintendent in Government Medical Colleges at Srinagar and Jammu were notified vide notification No. 01-PSC of 2011 dated

07.01.2011 with following eligibility criteria:

i. Post Graduate qualification in Surgery/Gynecology or Medicine and/or other clinical subject/Hospital Administration.

ii. Three years working experience of running a Hospital after Post Graduation.

2. In terms of explanation added subsequently the experience of running a Hospital was meant as experience obtained by Doctors having been

assigned charge of running a Hospital by a formal order. As PSC sought clarification from Government in regard to Degrees/Diplomas for

determining eligibility, the Health and Medical Education Department clarified that the candidates possessing Post Graduate Degree of Master in

Hospital Administration from unrecognized Tata Institute of Social Sciences Mumbai were not eligible for the post of Deputy Medical

Superintendent. It also indicated the method of selection/appointment in terms of J&K Medical (Gazetted) Service Recruitment Rules, 1979.

Medical Council of India also conveyed that masters Degree in Hospital/Health Administration obtained from unrecognized Tata Institute of Social

Science could not be treated as Master Degree in Hospital Administration from Recognized Medical Institutions. In view of the eligibility criteria

petitioner No.1 was neither found having obtained Degree from an Institution recognized by Medical Council of India nor could he produce the

requisite experience Certificate. Petitioner No.2 was found not possessing a Post Graduate Degree from an Institution recognized by MCI. Thus,

candidature of both the petitioners came to be rejected in terms of the impugned notice.

3. In terms of interim order dated 29.12.2011 petitioners were allowed to participate in the selection process subject to determination of their

eligibility by this Court. The selection process is yet to be finalized as the

eligibility of petitioners is disputed.

4. In his reply filed by respondent No.5 it is pleaded that the controversy raised in the instant writ petition is covered by the judgment of this Court

dated 31.12.2012 rendered in SWP No. 658/2011.

5. Heard the rival sides perused the record. It is not disputed that the petitioners hold Post Graduation Degrees in Hospital Administration from

unrecognized Institutes. This Court, while dealing with a batch of petitions with lead case being SWP No. 658/2011 titled Dr. Arun Sharma v.

State of J&K & Ors. extensively dealt with contentions similar to one raised in the instant writ petition and after referring to the rule position and

the case law of the subject held that an aspirant for a teaching post borne on Medical Education (Gazetted) Service was required to satisfy the

requirements of Indian Medical Council Act 1956, Regulations made thereunder as also J&K Medical Education (Gazetted) Service Recruitment

Rules 1979. It was further observed in the Judgment that the Hospitals associated with Government Medical College Jammu and Srinagar are

teaching Hospitals and the students enrolled for MBBS and other courses in these colleges are required to attend the Hospitals as part of their

teaching program and are taught by the Doctors who man the posts like Medical Superintendent and Deputy Medical Superintendent in the

administrative hierarchy of the Hospital. The Court noticed that the posts of Medical Superintendent and Deputy Medical Superintendent are

borne on Medical Education (Gazetted) Service and not on Health and Family Welfare (Gazetted) Service. It also noticed that such posts were

shown to exist in Government Medical College Srinagar and Government Medical College Jammu and not in the Hospitals. Thus, the teaching

hospitals were held to be different and distinguishable from non-teaching hospitals. The Court came to a conclusion that in case of teaching

Hospitals qualifications were prescribed in Table No.1 of the Regulations of 1998 which expressly made distinction between ""Affiliated Teaching

Hospitals"" and other Hospitals. The Court came to conclusion that an aspirant for the post of Medical Superintendent of ""Affiliated Teaching

Hospital"" must possess a recognized Post Graduate Medical qualification from a ""recognized Institute"". It further held that the qualification

prescribed under regulations of 1998, which did not include post of Deputy

Medical Superintendent, would be attracted in case of Deputy

Medical Superintendent as well. The issue raised in the instant writ petition being no more res integra and the ratio of the aforesaid judgment being

squarely applicable to the facts of instant case, I find instant writ petition devoid of merit and the same is dismissed.