

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

PRESENT :-

The Hon'ble Mr. Justice Bansi Lal Bhat-Judge

SWP No.2564/2011, CMA No.3785/2011

1. WASTU RASOOL MALIK
SON OF GHULAM RASOOL MALIK,
RESIDENT OF 255-P, WAZARAT ROAD,
NEAR D.C.OFFICE, JAMMU PRESENTLY
POSTED AS INCHARGE DEPUTY MEDICAL
SUPERINTENDENT, GOVT. HOSPITAL
GANDHI NAGAR, JAMMU, AGED- 40 Yrs.

12.2.14
Hs(L)

Sery
11/2/14

2. GURDEEP SINGH SODHAN
SON OF SHRI BARKAT SINGH, R/O 94-B,
GANDHI NAGAR, JAMMU PRESENTLY POSTED
AS INCHARGE DISTRICT TUBERCULOSES
OFFICER, RAJOURI, AGED- 36 YEARS.

AS(L)
12/2

... PETITIONER

VERSUS

1. STATE OF JAMMU AND KASHMIR THROUGH
PRINCIPAL SECRETARY, DEPARTMENT OF
HEALTH AND MEDICAL EDUCATION DEPARTMENT,
CIVIL SECTT. JAMMU.

cleared

CF-65/-

2. CHAIRMAN,
JAMMU & KASHMIR PUBLIC SERVICE
COMMISSION, RESHAM GARH, COLONY,
JAMMU.

52
7/10/2014
CANCELLED

3. SECRETARY,
JAMMU & KASHMIR PUBLIC SERVICE
COMMISSION, RESHAMGARH COLONY,
JAMMU.

28/1/11

4. Dr. Shafa Abazde D/o
Wahid -u- Zaman D/o
Nagishbandi Lodge
Shelkh - ud - Alam Colony
Hyderabad Sec Nagar

... RESPONDENTS

Respondent no 4
impleaded in
term of writ
court order
dt. 11.02.2012

W.H.

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- Cont -

5 Dr. Kewal Krishan Pandita
Aged 43 yrs of 8l. Son
Nath of H. no. 568/5
Suraja Vanshi Nagar
Muthi Jammu presently posted
as Facilitator, Kashmir State
Health Society (N.R.H.M).

Respondent no. 5 impleaded
in term of writ court order
dt. 10.05.2013
15/5/2013

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High Court of J&K
JAMMU
11/2-14

SWP No. 2564/2011
CMA No. 3785/2011

Appearing counsel:

For the petitioner(s) :	Mr. K. L. Pandita, Advocate.
For the respondent(s) :	Ms. Neeru Goswami, DyAG,
	Mr. F. A. Natnoo, Advocate 2 & 3.
	Mr. P. N. Raina, Sr. Advocate with
	Mr. J. A. Hamal, Advocate for 4.

- | | | | |
|-----|---|---|-------------------|
| i. | Whether approved for reporting in Press/Media | : | Yes/No/Optional ✓ |
| ii. | Whether to be reported in Digest/Journal | : | Yes/No |

✓ 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

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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.

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

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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's Degree in Hospital Administration from Recognized Medical Institution. 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.

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.

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.

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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 vs. 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 on 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

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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.

Sd/ Hon'ble
(Bansi Lal Bhat)
Judge

Jammu:
Sunita
07.02.2014

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Name of the Applicant... J. A. Hamal
Amount including extra fee for... 20/-
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Jammu & Kashmir
Date: 10-2-14
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