

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

SWP No. 550/2002

Date of Decision: 17.11.2009

Dr. Neeru Sharma	Vs	State and ors.
------------------	----	----------------

Coram:

Mr. JUSTICE J.P.SINGH, JUDGE.

Appearing Counsel:

For the Petitioner(s) : Mr.M.K.Bhardwaj, Sr. Advocate
with Mr. Ajay Abrol, Advocate.

For the Respondent(s): Mr. D.C.Raina, Sr. Advocate
with Mr. F.A. Natnoo, Advocate.

i)	Whether approved for reporting in Press/Journal/Media	: Yes/No.
ii)	Whether to be reported in Digest/journal	: Yes/No.

The petitioner has questioned the selection of respondent Nos. 3 to 13 as Dental Surgeons, by the Jammu and Kashmir Public Service Commission, Srinagar, held pursuant to Notification No. 5-PSC of 1999 dated 4.8.1999, inviting candidates possessing minimum qualification of Bachelor's Degree in Dentistry (BDS), for selection against Twenty Eight posts of Dental Surgeons, in the Health and Family Welfare Department of the State Government, on the ground that the petitioner's merit was converted into de-merit by the Public Service Commission, evaluating the merit of the candidates only on the basis of their performance at the interview, relying on Rule 51 of the Jammu and Kashmir Public Service Commission (Conduct of Business and Procedure) Rules, 1980, which had

been struck down by a Full Bench of this Court in Dr. Inder Parkash's case.

Mr. D.C.Raina, learned Senior Counsel, appearing for the Jammu and Kashmir Public Service Commission, hereinafter to be referred as "the Commission", for short, submitted that the final verdict on Rule 51 of the Jammu and Kashmir Public Service Commission (Conduct of Business and Procedure) Rules, 1980, was delivered by Hon'ble Supreme Court of India in *Inder Parkash Gupta versus State of Jammu and Kashmir and others, reported as (2004) 6 SCC 786*, in terms whereof the selections made prior to the Judgment had been saved, in that, Rule 51, in terms of the Judgment, had to be recast for further selections. Producing a short note indicating the merit of the petitioner and respondent Nos. 3 to 13, on the basis of the Public Service Commission records, learned counsel supported the selection made by the Commission urging that the petitioner's plea that her merit was converted into de-merit by the Commission, was not tenable, in that, the records would not support her plea.

I have considered the submissions of learned counsel for the parties and gone through the judgment in Inder Parkash Gupta's case (supra).

Although the Supreme Court of India had found Commission's keeping 100 marks for a Viva Voce Test to determine the suitability of the candidates, contrary to the law laid-down by the Court, yet the direction, which, in the circumstances of the case, had been issued by the Court, to the Commission, was to recast the Rule, meaning thereby that the vice in the Rule had been directed to be removed by the Commission so that it did not affect the selections to be held after the judgment.

The selection of respondent Nos. 3 to 13, having taken place, prior to the judgment of Hon'ble Supreme Court of India, the vice pointed out in the Rule by the petitioner's learned Senior Counsel, may not thus affect the selection of the respondents, as such, in the present case too, as it would not be in the interests of justice, to upset the selection and consequent appointment of the respondents who are serving the State Government for the last eight years as Dental Surgeons.

That apart, the evaluation of the merit of the respondents, by the Commission, is not found based solely on their performance at the interview, in that, while evaluating the merit of the petitioner and the respondents, along with other candidates, the Commission had evaluated their merit on the basis of their performance at the interview, giving due weightage to them for their academic merit as well.

Another reason which dissuades the Court not to interfere with the selection of the respondents is that despite having been awarded 65 marks in the interview, the petitioner had not been able to make up the mark, when some of the selected candidates with similar marks at the interview, had figured higher in the Merit List, on the basis of their higher academic merit.

Looking to the information supplied by the Commission's learned counsel as to the merit of the petitioner and the selected candidates, even if, the marks obtained by other selected candidates, at the interview, were to be allowed to the petitioner too, she would still not come in the zone of consideration to seek selection, as her rating in the Open Merit Category candidate was at Serial No.25 of the Merit List.

For all what has been said above, I do not find any merit in the petitioner's contention that petitioner's merit has been converted into de-merit by operating Rule 51 and that the

selection of respondent Nos. 3 to 13 was in any way unjustified warranting exercise of jurisdiction under Section 103 of the Constitution of Jammu and Kashmir.

There is thus no merit in this Petition, which is, accordingly, dismissed.

**(J. P. Singh)
Judge**

**Jammu
17.11.2009**

Pawan Chopra