

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

1. SWP No. 114/2007
CMP No. 127/2007
2. SWP No. 626/2007
CMA No. 869/2007
3. SWP No. 1107/2008
CMA Nos. D-2325/2012, 531/2009 and 1626/2008
4. SWP No. 151/2009
CMA Nos. D-2324/2012, 530/2009 & 163/2009

Date of Decision: 13.08.2012

1.	Dr. Arvind Kohli	Vs.	State & ors.
2.	Dr. Arvind Kohli	Vs.	State & ors.
3.	Dr. Arvind Kohli	Vs.	State & ors.
4.	Dr. Arvind Kohli	Vs.	State & anr.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. A. V. Gupta, Sr. Advocate with
Mr. Aditya Gupta,
Mr. M. K. Bhardwaj, Sr. Advocate with
: Mr. Ajay Abrol and Mr. Sanjay Kakkar,
Advocates.

For the Respondent(s) : Mr. D.C. Raina, Sr. Advocate with
Mr. F. A. Natnoo, Advocate.
Mr. O. P. Thakur, Advocate.
Mr. R.P. Sharma, Advocate.

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

JUDGMENT

The petitioner, Dr. Arvind Kohli has filed these Petitions seeking directions to establish and protect his claim to selection against the post of Lecturer in *Cardio-Thoracic Surgery* in Government Medical College, Jammu.

The facts in brief, leading to the filing of the Petitions, may be stated thus:-

By Writ Petitions SWP 114/2007 and 626/2007, he seeks quashing of Government Order No. 02-HME of 2007 dated 16.01.2007 in terms whereof Dr. Noor Ali was absorbed permanently as Lecturer in *Cardio-Thoracic Surgery* and Corrigendum to the above Government order substituting the word “Lecturer” by words “Incharge Assistant Professor”, so as to project his right of participation in selection against the post.

By Writ Petitions SWP 1107/2008 and 151/2009, he questions the appointment of the expert on the Selection Committee constituted by the Jammu and Kashmir Public Service Commission, besides the decision of the Commission holding him ineligible to compete in Selection against the post of Lecturer in *Cardio-Thoracic Surgery* advertised vide Notice No. 02-PSC of 2007 dated 06.03.2007.

The facts on records indicate that before the filing of Writ Petitions SWP 1107/2008 and 151/2009, the petitioner was contesting Dr. Shyam Singh’s Writ Petition SWP 513/2007 filed at Srinagar Wing of the Court where his eligibility to compete for the post was questioned, *inter alia*, on the ground that M.Ch

Qualification acquired by him was neither recognized under the Medical Council of India Act nor entered in the State Medical Register. This Writ Petition was allowed on 10.11.2010, holding that the petitioner did not possess the basic eligibility in terms of the Advertisement Notice and was, thus, ineligible to seek consideration for appointment as Lecturer. The judgment of the Writ Court in Dr. Shyam Singh's Petition was questioned by the petitioner and one Dr. Ishtiyak Ahmad Mir in two Appeals being LPA Nos. 175/2010 and 181/2010.

Both the Letters Patent Appeals were dismissed, by the Court vide its Order dated 08.09.2011, finding no scope for interference with the Writ Court Judgment. The judgment passed by the Division Bench is stated subjudice before the Hon'ble Supreme Court of India.

With the above prelude, Writ Petitions SWP 114/2007 and 626/2007 whereby the petitioner questions the absorption of Dr. Noor Ali-respondent are taken up first for consideration.

The petitioner's grievance in these Petitions is founded on the plea that the only mode of filling up the post of Lecturer in *Cardio-Thoracic Surgery*,

in terms of the Jammu and Kashmir Medical Education (Gazetted) Service Recruitment Rules, 1979, being, *by direct recruitment*, the State Government's Order of Dr. Noor Ali's adjustment against the post effects adversely the petitioner's right to consideration for selection against the post, through direct recruitment, hence illegal.

The respondents have placed on records Govt. Order No. 184-HME of 2010 dated 20.03.2010 in terms whereof it is declared that Dr. Noor Ali's absorption would be against the post of Assistant Professor and not against the post of Lecturer as it had so appeared in the earlier Government Order. They have further placed on records Government Order No. 380-HME of 2012 dated 25.05.2012 in terms whereof Dr. Noor Ali is shown to have been promoted as Associate Professor in the Department of *Cardio Vascular Thoracic Surgery*.

In view of the above two orders and the Corrigendum issued by the Government vide Govt. Order No. 02-HME of 2007 dated 16.01.2007, questioned by the petitioner in Writ Petition SWP 114/2007, the petitioner's challenge to the absorption of Dr. Noor Ali as Lecturer in *Cardio Vascular*

Thoracic Surgery Department in Govt. Medical College, Jammu, no more survives for consideration, in that, the post of Lecturer in *Cardio Thoracic Surgery* continues to remain vacant for its filling up pursuant to the Jammu and Kashmir Public Service Commission Notification No. 02-PSC of 2007 dated 06.03.2007. Likewise, the petitioner's challenge to the Corrigendum issued to Government Order No. 02-HME of 2007 dated 16.01.2007 would not survive for consideration.

The learned State counsel too affirmed the factual position that the post of Lecturer was still available for direct recruitment thereagainst.

In this view of the matter when the post of Lecturer was still available for selection, the petitioner cannot be said aggrieved by the absorption of Dr. Noor Ali against the positions superior to that of Lecturer in *Cardio Thoracic Surgery*.

Writ Petitions SWP 114/2007 and 626/2007 are, therefore, rendered infructuous, hence disposed of accordingly.

Insofar as the petitioner's claim in Writ Petitions

SWP 1107/2008 and 151/2009 whereby he questions the appointment of the expert on the Selection Committee besides the Public Service Commission's Order holding him ineligible to compete for selection was concerned, suffice would it be to say that the petitioner's challenge to the selection of expert on the Selection Committee could be examined only if he was eligible to compete for the advertised Post.

The Writ Court as also the Letters Patent Bench having held the petitioner ineligible for the post, the challenge thrown by him to the appointment of the expert on the Selection Committee cannot, therefore, be considered so long as the finding of his ineligibility continues to operate. The petitioner's challenge to the order of the Public Service Commission whereby he was held ineligible to compete for the post of Lecturer, too cannot be made subject matter of adjudication because the petitioner is estopped from re-agitating the issue, which is substantially the same on which he had failed before the Writ Court and also against the Letters Patent Bench to prove his eligibility for the post of Lecturer.

The question of petitioner's eligibility or

otherwise to compete for the post of Lecturer being subjudice before the Hon'ble Supreme Court of India, the petitioner cannot prosecute these Petitions.

These Petitions are accordingly disposed of as unnecessary, leaving the petitioner free to seek revival thereof in case he succeeds in establishing his eligibility to compete for the post before the Hon'ble Supreme Court.

(J. P. SINGH)
JUDGE

JAMMU
13.08.2012
Pawan Chopra