

HIGH COURT OF JAMMU AND KASHMIR
JAMMU

Case No: SWP 1759/2012,
CMA NOs. 3021/2012, 2699/2012 & 3022/2012

Date of Decision: 24.09.2012

DR. SANJEEV GUPTA & ORS.	VERSUS	STATE & ORS.
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CORAM: MR. JUSTICE J.P.SINGH- JUDGE

Whether approved for reporting : YES.

Appearing Counsel:

For the Petitioner(s)	: Mr. P. N. Raina, Sr. Advocate with Mr. J. A. Hamal, Advocate.
For the Applicant(s)	: Mr. D. S. Thakur, Sr. Advocate with Mrs. Aruna Thakur, Advocate.
For the Respondent(s)	: Mr. Abhinav Sharma, Advocate. : Mrs. Neeru Goswami, Dy. A. G.

JUDGMENT

1/ Six members of the Jammu and Kashmir Medical Education (Gazetted) Service, one serving as Assistant Professor for the last one year, i.e. Dr. Sanjeev Gupta-Petitioner No.1, and others as Lecturers since 2011, barring petitioner No. 2- Dr. Abdul Gani, who has been serving as Lecturer since 2009, in the Department of Orthopedics, Government Medical College, Jammu, governed by the Jammu and Kashmir Medical Education (Gazetted) Service Recruitment Rules, 1979, have approached this Court by their joint Writ Petition seeking, quashing of Government Medical College, Jammu's Advertisement Notice No. JMC/ ESTT/ GD/ SRO-384/569 dated June 1, 2012, whereby applications were invited from Permanent Residents of the Jammu and Kashmir State for engagement on "Academic Programme Arrangement Basis" against available posts of Professors and Associate Professors in 14 (fourteen) disciplines including that of Orthopedics, in terms of the Jammu and Kashmir Medical and Dental Education

(Appointment on Academic Arrangement Basis) Rules, 2009, published vide SRO-384 dated 14-12-2009, initially for a period of one year extendable up to maximum of four years subject to good performance and conduct or till selection/promotion was made on regular basis in accordance with the Rules of Recruitment governing the Advertised Posts by the Public Service Commission/DPC, whichever was earlier, **besides a Command to the State-respondents to consider them for promotion to the next promotional posts.**

Restraint directions too are sought against the State-respondents not to confer on persons, selected pursuant to the Advertisement Notice in question, with any status, administrative or otherwise.

2/ The case set up by the petitioners, in a nut shell, is that rather than going in for engagement on *academic programme arrangement basis* in terms of the Jammu and Kashmir Medical and Dental Education (Appointment on Academic Arrangement Basis) Rules, 2009, hereinafter to be referred as “Rules of 2009”, the State Government should consider Dr. Anil Gupta- Associate Professor in the Department of Orthopedics for Professor’s post and the petitioners for promotion as Associate Professors and Assistant Professors, urging that such a course would take care of the difficulty that the State Government was facing because of the non-availability of requisite Faculty in the Medical College, which was otherwise mandatorily required in terms of the Medical Council of India Regulations/Guidelines.

Their further case is that Professors/Associate Professors, who are selected and engaged on *Academic Arrangement Basis*, should not interfere in the working of the petitioners as regular Faculty members, in their

planning and execution of treatment/post-operative follow up to the patients.

3/ The Motion is seriously contested by the State Government. According to it, the petitioners are ineligible to compete for the posts of Professors/Associate Professors and would, therefore, have no right to maintain the Writ Petition. It is, *inter alia*, stated that in view of the retirement on superannuation of three senior Faculty Members during last six months, the Department of Orthopedics was left with very limited Faculty and that too at the junior level which had necessitated resort to the provisions of the Rules of 2009, in the interests of patient care and career of the Post-Graduate students, for, only few Guides were available for the Post- Graduate students, who urgently required their services for preparation of their Thesis required to be completed before October 31, 2012.

The State-respondents seek rejection of petitioners' Motion with costs.

4/ Five students admitted to the Post-Graduate Degree Course in the discipline of Orthopedics in Government Medical College, Jammu, too seek their impleadment in the Writ Petition to demonstrate urgent need for filling up the available posts of Professors/Associate Professors in terms of the Rules of 2009 so that they were enabled to prosecute their studies without any threat of de-recognition to Government Medical College, Jammu by the Medical Council of India, for non-availability of requisite teaching Faculty.

One of the aspirants for the Advertised positions too has moved Motion for impleadment.

5/ Heard learned Senior counsel appearing for the petitioners as also the learned State Counsel.

6/ The plea projected by the State Government justifying operation of the Rules of 2009, is not contested by the petitioners, when one goes through Paragraph No. 5 of their Writ Petition, in which they admit that the Government Medical College, Jammu, was facing acute shortage of teaching Faculty Members additionally because of the retirement on superannuation of some of the Faculty Members. Therefore, in view of the admitted emergency, as projected by the State Government, to have resort to the provisions of Rules of 2009 to engage persons eligible under Rules on *Academic Programme Arrangement Basis*, against available vacancies of Professors and Associate Professors in 14 (fourteen) disciplines in Government Medical College, Jammu, the petitioners' challenge to Government Medical College, Jammu's Advertisement Notice dated 01-06-2012, cannot but be said to be utterly misconceived, in that, their plea that rather than going in for "*Academic Programme Arrangement Basis*", the State Government in the Health and Medical Education Department should have filled up the available posts in terms of the Rules of 1979, by considering Dr. Anil Gupta, Associate Professor for the post of Professor and the petitioners against the posts of Associate Professors and Assistant Professors, need to be noticed only for its rejection, for, even if the State Government were to consider the petitioners and Dr. Abdul Gani for promotion, which is, otherwise, impermissible, in terms of the Rule position, the strength of the Faculty would continue to remain the same as it presently is and such a course would not, therefore, help meeting the situation that the State Government was trying to deal with, by having resort to the Rules of 2009

in engaging Professors and Associate Professors on *Academic Programme Arrangement Basis.*

This apart, none of the petitioners, being eligible for any of the available positions of Professors/Associate Professors, which position was not disputed at the time of Motion hearing, by the petitioners' learned Senior counsel, and which, even otherwise, is apparent in view of the Rules of 1979, in terms whereof, to become eligible for the post of Professor, minimum Teaching/Research Experience of five years in a Medical College or a recognized Teaching Medical Institution, as Associate professor, And for the post of Associate Professor, minimum experience of five years as Assistant Professor in a Medical College or a recognized Teaching Medical Institution, is one of the necessary qualifications, which none of the petitioners possess. Their claim for promotion as Professors/Associate Professors is, therefore, clearly misconceived and in this view of the matter, they are disentitled to question the Advertisement Notice issued by the Government Medical College, Jammu for engagement of Professors/Associate Professors on *Academic Programme Arrangement Basis*, in view of their admitted ineligibility therefor under the Rules of 1979.

7/ This apart, the petitioners cannot be permitted to prosecute litigation by proxy pleading for promotion of Dr. Anil Gupta, who has opted not to seek his consideration for promotion as Professor.

8/ The Petitioners' last plea that the persons selected and engaged pursuant to *Academic Programme Arrangement Basis* in terms of Rules of 2009 be directed not to interfere in their planning and execution of treatment/post-operative follow up to the patients, too is

found untenable, for, the nature of the duties that a Professor/Associate Professor or, for that matter, a Head of the Department in a Medical College, discharges in his capacity as such, do not contemplate segregation of teaching part of their duties from planning and execution of treatment/post-operative follow up to the patients, which is part and parcel of the duties which the persons engaged on *Academic Programme Arrangement Basis* are required so to do during their tenure of service.

9/ The Medical Council of India Regulations referred to by the petitioners' learned counsel do not in any way support the case set up by the petitioners.

10/ For all what has been said above, the petitioners' Writ Petition is found not only misconceived but an attempt to stall the process initiated by the State Government to urgently supply the deficiency presently existing in the teaching Faculty of Jammu Medical College to comply with the Medical Council of India Regulations, not only in the discipline of Orthopedics but in all the 14 (fourteen) disciplines in the Government Medical College, Jammu and that too without any justifiable reason or cause.

11/ Petitioner No. 3 to 6's joining the other petitioners in filing the joint Petition, looked from any angle, cannot be viewed bona fide, in that, having only one year's experience as Lecturer, they had absolutely no cause to approach the Court to seek consideration for promotion either as Assistant Professor, Associate Professor or Professor for which they were ineligible.

The petitioners' Motion, which has resulted in delaying the selection process for engagement of Professors and Associate Professors in 14 disciplines in Medical College, Jammu, because of the interim

directions, issued on their request, therefore, needs to be dismissed with costs.

12/ This Writ Petition is, accordingly, dismissed with costs quantified at Rs. 6,000/-, lifting interim order dated 30.08.2012.

(J.P.Singh)
Judge

Judgment pronounced by me in terms of Rule 138 (3) of the Jammu and Kashmir High Court Rules,1999.

(Hasnain Massodi)
Judge

Jammu:
24.09.2012:
Tilak, Secy.