

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

LPASW No. 169/2015

Date of order: 06.10.2015

Dr. Imtiyaz Ahmad Magray  
S/O Ghulam Ahmad Magray  
R/O Old Barzulla, Srinagar.

....Appellant.....

v.

1. Dr. Mohammad Arif Lone  
S/O Ghulam Nabi Lone  
R/O Takyabal, Darnambal  
Tehsil Sopore, Baramulla.

.....(Contesting-respondent)

2. State of J&K through  
Commissioner /Secretary to Government  
Health and Medical Education Department,  
Civil Secretariat Srinagar/Jammu.
3. Principal/Dean,  
Government Dental College and Hospital,  
Shireen Bagh, Srinagar.

....Respondents.....

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**Coram:**

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice,  
Hon'ble Mr. Justice Ali Muhammad Magrey, Judge

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**Appearing Counsel:**

For the Appellant(s) : Mr. M. A. Qayoom, Advocate.  
For the Respondent(s) : Mr. Sajad A Mir, Dy. AG.  
Mr. Shuja Ul Haq, Advocate.

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**N. Paul Vasanthakumar,CJ**

1. This appeal is filed against the order made in SWP No. 940/2015 dated 13.08.2015 wherein the learned Single Judge has allowed the writ petition filed by the 1<sup>st</sup> respondent

challenging the appointment of the appellant in the tenure post of Registrar (Prosthodontics) in Government Dental College, Srinagar and directed to engage the 1<sup>st</sup> respondent herein in the tenure post of Registrar at an earliest.

2. The case of the 1<sup>st</sup> respondent before the learned Single Judge was that applications were invited on 23.08.2014 to fill up the tenure posts of Registrar in Government Dental College and Hospital, Srinagar. The 1<sup>st</sup> respondent as well as the appellant herein applied for one tenure post of Registrar (Prosthodontics). As the Post Graduate Degrees of both the candidates were not approved by the Dental Council of India, the selection committee could not award marks for MDS qualification and recommended for re-advertisement of the said post along with other vacancies. The re-advertisement notice was issued on 01.04.2015 pursuant to which the appellant as well as the 1<sup>st</sup> respondent applied again. In the selection the 1<sup>st</sup> respondent was awarded 55 marks whereas the appellant was awarded 68 marks, including 20 marks awarded for possessing MDS qualification. The 1<sup>st</sup> respondent was not awarded 20 marks on the ground that his MDS qualification was registered by the Dental Council of India only on 20.04.2015 i.e. after the cut off date of 17.04.2015. Pursuant to the said award of 20 marks, the appellant was issued with selection order by the Government on 24.04.2015 and the said order was challenged

and quashed by the learned Single Judge with further directions to Appoint the 1<sup>st</sup> respondent in the said tenure post of Registrar.

3. The contention of the learned counsel for the appellant in this appeal is that as per the advertisement notice dated 01.04.2015 the candidates submitting the applications were to submit the same on or before 17.04.2015 which should be complete in all respects i.e. along with 13 documents including the registration certificate (upto-date) of the J&K State Dental Council. It was also one of the conditions of the eligibility that the applicants who have earlier been appointed as Registrar/Demonstrator/Tutor in any discipline but have not completed their tenure for one reasons or the other shall not be considered. One of the other requirements was that the application form should be accompanied by an undertaking having stamps of proper value duly attested by the Notary declaring that he/she has not done Registrarship/Demonstratorship/Tutorship earlier within or outside the State in any discipline. According to the appellant the registration of MDS degree with the Dental Council of India issued in favour of the 1<sup>st</sup> respondent on 31.07.2014 was cancelled by the J&K State Dental Council by order dated 26.11.2014, taking note of the fact that the Dental Council of India has not recognized the Post Graduate Degree issued by

Pt. Swami Devidayal Hospital and Dental College, Punchkula, Haryana, therefore, the registration granted earlier was cancelled by stating as “cancelled ab- initio”.

4. It is also the contention of the appellant that the 1<sup>st</sup> respondent has earlier served as Registrar in SKIMS and he was relieved on 10.02.2015 and, therefore, he was not eligible to submit the application in terms of the advertisement dated 01.04.2015. Thus the principal contention of the appellant before this Court is that the 1<sup>st</sup> respondent was not having MDS registration certificate before the cut off date and he has suppressed his earlier engagement as Registrar in SKIMS which was cancelled by order dated 10.02.2015. Therefore, he could not compete the Registrarship as he is not eligible to apply.

5. The learned counsel for the appellant emphasized the said three points against the 1<sup>st</sup> respondent and contended that the learned Single Judge has not considered these aspects and, in fact, the selection committee considered these aspects and rightly not selected the 1<sup>st</sup> respondent and the order of the learned Single Judge is liable to be set aside and the appellant, who is serving, may be allowed to continue.

6. The learned counsel appearing for the 1<sup>st</sup> respondent on the other hand, contended that the registration of MDS Degree by J&K Dental Council was made earlier which was cancelled

and the Dental Council of India having granted recognition to the College where from the 1<sup>st</sup> respondent studied, again registered the DMS Degree of the 1<sup>st</sup> respondent on 20.04.2015 and, therefore, he is qualified to apply. Insofar as the cancellation of Registrarship at SKIMS by order dated 10.02.2015 is concerned, the said order was passed based on the cancellation of MDS Registration by the State Dental Council and the 1<sup>st</sup> respondent having been asked to sign the model affidavit of undertaking, he has mistakenly omitted to state the said fact in the affidavit which cannot be treated as suppression of fact. Therefore, the order of the learned Single Judge in giving direction to award 20 marks to the 1<sup>st</sup> respondent, as it was awarded to the appellant, is just and proper and no interference is called for.

7. In reply to the said submissions the learned counsel appearing for the appellant submitted that the 1<sup>st</sup> respondent was subsequently selected as Registrar for a tenure post of two years in SKIMS by order dated 06.06.2015 along with 20 others and in the said select list the name of the 1<sup>st</sup> respondent is shown at serial number 10, thus the 1<sup>st</sup> respondent is now in an advantageous position than the appellant and the appeal may be allowed so that the appellant can continue on the post as per the selection order dated 24.04.2015.

8. We have considered the rival submissions.

9. The advertisement notice issued by the official respondents on 01.04.2015 contemplates satisfaction of several conditions of eligibility. One of the conditions is that the applicants should submit their applications along with duly attested copies of 13 documents. Admittedly the earlier registration certificate issued by the J&K Dental Council in favour of the 1<sup>st</sup> respondent was cancelled by order dated 26.11.2014 and after the institution was recognized by the Dental Council of India, the State Dental Council registered the MDS degree of the 1<sup>st</sup> respondent only on 20.04.2015. Thus it is not possible for the 1<sup>st</sup> respondent to enclose the registration certificate with MDS qualification for award of 20 marks and the 1<sup>st</sup> respondent can be treated as a candidate possessed of BDS qualification for the purpose of award of marks on the cut off date of 17.04.2015. The second reason for which the 1<sup>st</sup> respondent is disentitled to apply is more important. The advertisement notice clearly states that candidates who have earlier been appointed as Registrar/Demonstrator/Tutor in any discipline but have not completed the tenure for one reason or the other, shall not be considered. The conditions of eligibility are stated in condition nos. 8 and 9 which are extracted below:-

“08. The applicants who have earlier been appointed as Registrar/ Demonstrator / Tutor in any discipline but have not completed their tenure for one reason or the other shall not be considered.

09. The application form should be accompanied with an undertaking having stamps of proper value duly

attested by the Notary declaring that he/ she has not done Registrarship/Demonstratorship/Tutorship earlier within or outside the State in any discipline.”

10. It is not in dispute that the 1<sup>st</sup> respondent was appointed as Registrar in SKIMS which appointment was cancelled by order dated 10.02.2015 and due to which he cannot complete his tenure. Thus in terms of condition no. 8 he is disqualified to submit the application as he is ineligible. Further the undertaking affidavit submitted by the 1<sup>st</sup> respondent dated 16.04.2015 nowhere mentions about the previous engagement of the 1<sup>st</sup> respondent as Registrar in SKIMS. Thus there is suppression of fact on the part of the 1<sup>st</sup> respondent while submitting the application that too in sworn affidavit. These two aspects have not been considered by the learned Single Judge while setting aside the selection of the appellant.

11. It is well settled proposition of law that the advertisement issued is normally the norms of selection unless it is contrary to the Recruitment Rules. A candidate submitting application must satisfy the conditions contained in the advertisement notice including the eligibility to apply. Since the 1<sup>st</sup> respondent was not eligible to apply due to his previous engagement as Registrar in SKIMS, which engagement he could not complete due to cancellation or his appointment by order dated 10.02.2015, he is disqualified to apply for the post advertised on 01.04.2015. Further his MDS degree was registered by the

J&K State Dental Council only on 20.04.2015 i.e. 4 days after the cut off date. Thus the selection Committee treated the writ petitioner as B.D.S passed candidate and not awarded marks for MDS degree. Hence the selection of the appellant, which was quashed by the learned Single Judge, cannot be sustained and is upheld. The appeal is allowed and the order of the learned Single Judge is set aside. However, this order will not disentitle the 1<sup>st</sup> respondent to continue on the post which he is occupying now, namely, Registrar in SKIMS pursuant to appointment given to him vide order dated 06.06.2015.

12. No costs.

**(Ali Muhammad Magrey) (N. Paul Vasanthakumar)**  
**Judge Chief Justice**

Srinagar  
06.10.2015  
Anil Raina, Secy