



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. OF 2025
(Arising out of SLP(C)Nos.24938-24939/2018)

SHEIKH JAVEED AHMAD & ANR. ...APPELLANTS

VERSUS

STATE OF J&K & ORS. ...RESPONDENTS

O R D E R

Leave Granted.

2. These appeals question the correctness of a judgment and order dated 11th July 2014 passed in OWP (PIL) No.861 of 2010 and the order dated 30th March 2018 in RPIL No.43 of 2014 as well as the order dated 30th March, 2018 in RPPIL No.43/2014, by the High Court of Jammu and Kashmir at Srinagar, whereby appointments as Assistant Professors, granted to the appellants herein, namely, Dr. Sheikh Javeed Ahmad & Dr. Abdul Hamid Rather, were set aside as being incompatible with the rules and

regulations, and the reviews sought thereagainst being dismissed as well.

At the outset, we note an order of this Court passed on 3rd November 2023-

“When the matters are called on for hearing, learned counsel for the petitioners submitted before us that out of the three petitioners of the Public Interest Litigation ('PIL') out of which the present proceeding arises, two are not traceable and one of the three persons in whose names that action has been brought has filed an affidavit before the High Court stating therein that he had not filed the said petition.

The State shall file a report as regards whereabouts of the three petitioners who had brought the PIL. The State shall also apprise this Court about the position of vacancy in the Sher-I- Kashmir Institute of Medical Sciences, Srinagar...”

(Emphasis supplied)

On 12th December 2023, it was informed that the Director General, Crime Investigation Department¹ was inquiring into the identities of the PIL petitioners. *Vide* affidavit dated 12th February 2024 filed by the Secretary to the Government of Jammu Kashmir, enclosed the report of the CID, which is extracted below for reference :

- i. The petitioner namely Mohd Syed Shah S/O Mohd Sadiq Shah figuring at S.No.01 in the *ibid* reference found to be resident of Konan, Bandipora. He is approximately 70 years of age. He was running a medical shop at Chuntimullah, Bandipora, currently his two sons are running a medical shop in main market Bandipora. The purported petitioner Mohammad Syed

¹ Hereafter, CID

Shah has denied to have filed the PIL before the Hon'ble Court. Reportedly 02 years back, he had given an undertaking to SKIMS authorities wherein he denied filing of any such PIL before the Hon'ble Court. The contact number of Mohammad Syed Shah is 9596325628.

- ii. The petitioner namely Mohammad Ishaq Khanday S/O Abdul Khaliq Khanday R/O Batpora, Sopore figuring at S.No.02 in the *ibid* reference is currently residing at Hamza Colony Bemina Srinagar since 1986 and retired as Research Assistant from Agriculture Department in 2020. His phone number is 7889505126. He admitted the filing of the PIL.
- iii. The whereabouts in respect of the petitioner namely Mohammad Amin Sheikh S/O Ghulam Ahmad Sheikh R/O Bohari, Sopore figuring at S.No.3 in the above quoted reference could not be traced out due to incomplete address.

3. The field report further revealed that the petition was reportedly filed by one Dr. Ali Mohammad Buhroo S/O Ghulam Mohammad Buhroo R/O Gundiqasier, Bandipora, the then HOD Physics SKIMS Srinagar (Now retired) 10years ago before the Hon'ble High Court of J & K on behalf of the petitioners including Mohammad Syed Shah with whom the purported petitioner Mohammad Syed Shah was working as an attendant.”

(Emphasis supplied)

We may here itself record our surprise that the High Court, after being in receipt of such an affidavit of the alleged petitioner, did not take steps to look into its order and the propriety thereof. Be that as it may, we now proceed to the facts and merits of the matters before us.

3. Shorn of unnecessary details, the factual backdrop of these appeals is as under :

3.1 The authorities of the State issued advertisement notice No. 1 on 31st December 2004 to fill up positions of Professors, Associate Professors and Assistant Professors at the Sher-I-Kashmir Institute of Medical Sciences, Soura, Srinagar². The Appellants herein applied for the position of Assistant Professors, however, were adjudged ineligible.

3.2 Subsequently, the Apical Selection Committee, in its XXIXth meeting held from 25th to 29th August 2005, recommended the appointment of the two Appellants as Senior Residents in Physical Medicine & Rehabilitation³ as also their sponsorship for a two-year diploma in the specialty. It was also stated in the resolution that they shall be appointed as Assistant Professors in Physical Medicine and Rehabilitation after completing the two years' training course and as such, two positions of Assistant Professors were blocked for such purpose.

3.3 The appellants were appointed to such positions (Senior Residents) on 12th December 2005. Due to certain difficulties, it appears that the two-year diploma could not fructify. This led to certain correspondence between the

² Abbreviated as 'SKIMS'

³ Abbreviated as 'PMR'

Head of Department, SKIMS and the Head of Department, PMR, All India Institute of Medical Sciences, New Delhi⁴, asking for clarity in this regard. The Head of the Department of the latter institution recommended in his letter dated 10th March 2006 that according to the practice that has been followed, on-the-job training is imparted in PMR, AIIMS, under a learned teacher and that he would be more than willing to fill in this gap. It is also stated in the letter that this training is for either 6 months or any other time period as is deemed necessary. Though, this would not amount to a degree but is sufficient for the person having received the same to work as a faculty in the subject. The correspondence dated 10th March 2006 by Dr. U. Singh, the Head of Department, PMR, AIIMS, is extracted as below :

“...Dear Sir Buhroo,

Kindly refer to your letter No. SIMS/PMR/170/24/06 dated 07.03.2006 regarding training of Sr. Residents of your Department to undergo Diploma in PMR, and extending Academic Assistance to your Institution. As desired in your letter, the AIIMS does not run any Diploma Course. It runs only three years Degree course leading to MD (PMR). If you wish to train your Senior Residents in PMR. It will not be very logical to train a person already having an MD (medicine) degree to do any Degree course in PMR. As was done in the past, persons with MD (Medicines) or M.S. (Orthopaedics) used to get on the job training in PMR

⁴ Abbreviated as ‘AIIMS’

under a learned teacher, while working in Department of PMR itself. This has been the practice how our Senior illegible trained and imparted training to others.

I would like to suggest you that you should work the possibility of training your own Senior Residents, under your own care in the Department of PMR at SKIMS, Srinagar, rather than sending them away ...

...

...

I understand that for sharpening certain skills, some exposure would be required in other institutions as well for a short period of time. Our Department, at AIIMs, would be very happy to fill this gap. If you deem it necessary. The short term training may be of a few months, or the period you feel necessary ...

...

...

But, I would like to clarify once again that such short term trainings will not amount to any degree or diploma but it should be sufficient for the person to work as a Faculty of this subject.”

3.4 Consequently, the appellants undertook the short-term training program at AIIMS Delhi. On 6th October 2007, a fresh advertisement for recruitment was issued for the vacancies which remained unfilled. The record reveals that, *vide* letter dated 26th October 2007, SKIMS acknowledged that the efforts made to secure positions in a two-year diploma course for the appellants had not yielded results. It was further stated that since they had successfully completed the training offered in Delhi, they could be considered for the position of Assistant Professor.

The letter is extracted, as under :

“ANNEXURE P-9

SHER-I KASHMIR INSTITUTE OF MEDICAL
SCIENCES,

(DEEMED UNIVERSITY) SOURA, SRINAGAR

Subject : Short term training Course in Physical Medicine
and Rehabilitation at AIIMS, New Delhi.

Reference: Letter No.SIMS 302 07 (XXIX) 2005-1955-
56 dated: 11.10.2007

Refer your above communication regarding Dr. Sheikh Javeed Ahmad and Dr. Abdul Hamid Rather for undergoing Diploma in PMR as per the decision of the Apical Selection Committee held from August 25th to 29th 2005.

In this connection you are hereby informed that the possibility of undergoing Diploma in PMR was tried and it was found that Diploma in PMR was not available in AIIMS and PGI. However, HOD, Physical Medicine and Rehabilitation, AIIMS was contacted in this regard by HOD, PMR, SKIMS who had send his reply as enclosed.

Accordingly the concerned doctors were send for six months training in the department of Phy. Medicine & Rehabilitation at AIIMS and now they have returned after completing the training course.

Thus their case may be taken up for consideration to the post of Assistant Professor as decided in the Apical Selection Committee.

Registrar (Academic)

AAO (Policy)
SKIMS
Sims, ACAD/SR-995 2007
Dated: 26.10.2007

Copy for information to
1. PS to Dean for information of the Dean.”

3.5 On 12th February 2008, the requirement of a diploma was relaxed by the Directorate General of Health Services, Government of India, *qua* contractual employees⁵, which is annexed as Annexure P-10. However, yet again, a fresh advertisement dated 25th June 2009 was issued by SKIMS. Record is silent as to what became of this process.

3.6 On 20th October 2010, a Notification was issued appointing the instant appellants as Assistant Professors in the said department. The order of appointment, which runs into five pages, annexed as Annexure P-14⁶, elaborately discusses the background of the appointments of the appellants as Assistant Professors. Pursuant to SKIMS' communication with AIIMS, Delhi, they undertook training at the latter institution. This was with the approval of the Apical Selection Committee, since despite best efforts by the former, admission into a two-year diploma could not be secured for the appellants on the ground of non-availability across the number of institutions in the country. It is in the aforesaid backdrop that the Apical Selection Committee recommended the relaxation of this condition *qua* the appellants which was so done by the

⁵ Page 100 of the paperbook.

⁶ Page 121 of the paperbook

competent authority, viz., Hon'ble Chief Minister, Chairman of the SKIMS Governing Body.

Consequently, on 3rd November 2010, with a requisite notification, they were relieved of their duties as senior residents.

3.7 The public interest litigation, which is the subject matter herein, under Section 103 of the J&K Constitution, the subject matter of the present appeals by special leave, came to be filed before the High Court on 9th December 2010 seeking for setting aside/cancellation of the appointment of the instant appellants⁷ as Assistant Professors in the Department of PMR, SKIMS.

4. Two issues that arose for consideration before the High Court are : one regarding the maintainability of the public interest litigation, as it pertains to service matters; and two, regarding the ‘impossibility’ of obtaining the prescribed qualifications, thereby justifying the appointment of the appellants without the same.

4.1 It was acknowledged that the maintainability of public interest litigation in service matters is no longer *res integra*, with reference to ***Dr. Duryodhan Sahu v. Jitendra***

⁷ Referred to as Respondents 8 & 9 before High Court

Kumar Misha & Ors.⁸ and **Gurpal Singh v. State of Punjab**⁹. It was also noticed, though, that this Court had carved out an exception to this rule in cases where appointments made to public offices were against statutory rules prescribed therefor. In such cases, it was held that the Court would be justified in issuing a writ of *quo warranto*. [See: **Hari Bansh Lal v. Sahodar Prasad Mahto**¹⁰.] The question of maintainability was thus answered keeping in view the decision in **High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat & Ors.**¹¹, which clarified the scenarios in which the Court could issue *quo warranto* as against *certiorari*.

4.2 The position in law, that the law does not compel a man to do something which is impossible, was acknowledged, but it was held that there was nothing on record to show that the appellants obtaining a diploma in PMR was impossible. It was observed that the appellants did not make any effort for admission into the institutions that ran courses in the field of PMR. Regarding Dr. U. Singh it was observed that it appeared as if his opinion was solicited only to justify the appointment of the appellants.

⁸ (1998) 7 SCC 273

⁹ (2005) 5 SCC 136

¹⁰ (2010) 9 SCC 655

¹¹ (2003) 4 SCC 712

Furthermore, it was held that in the event of difficulty in securing the qualifications as required by the MCI, the correct course of action would have been to seek amendment of the rules.

4.3 In conclusion, it was held that if doctors without the requisite qualifications were allowed to continue in an institution of such repute, it would jeopardise patient care in such hospitals and negate efforts to achieve academic excellence. The appointments, as such, were set aside.

4.4 The appellants were, upon approval of the then Chief Minister of the erstwhile State of Jammu Kashmir, who is the Chairperson of the SKIMS Governing Body, removed from service by way of orders cancelling the appointments being issued bearing the following particulars – Government Order No.42 – SKIMS of 2018, dated 21st May 2018.

5. Aggrieved, the appellants are before us. We have heard Mr. Gaurav Pachnanda and Mr. A.M. Magrey, learned Senior Counsel for the appellants and Mr. G.M. Kawoosa, learned counsel appearing for the State.

6. Relief in the nature of a writ was claimed before the High Court against the appellants' illegal appointment, which was granted. Prior to delving into the merits, it is essential to look at

the advertisement(s) for the positions to which the appellants had applied.

6.1 The relevant extracts of the advertisement dated 15th February 2005, is as below :

“GOVERNMENT OF JAMMU AND KASHMIR
SHER-I KASMR INSTITUTE OF MEDICAL
SCIENCES, SOURA, SRINAGAR

ADVERTISEMENT

Applications are invited for filling up of following vacant faculty positions at SKIMS on regular/temporary basis :-

... ...

Assistant Professor (11625-325-15200)

Anaesthesiology, BT & IH, Cardiology, CI. Haematology, CI. Pharmacology, Community Medicine, Hospital Administration, CI., Community Medicine, Hospital Administration, Immunology & Molecular Medicine, Medical Oncology, Neurosurgery, Nuclear Medicine, Pathology, Paediatric Surgery, Physical Medicine & Rehabilitation, Plastic Surgery, Radio-diagnosis, Radiotherapy, Radiological Physics & Bio-Engineering, Surgical Gastroenterology and Urology...

Professor

Qualification-Essential for Medical candidates:-

- (1) A medical qualification included in the Schedule I or II Part-II of the Third Schedule to the Indian Medical council Act of 1956 (persons possessing qualifications included in Part-II or Third Schedule should also fulfil the conditions specified in Section 13(3) of the Act.
- (2) A Postgraduate qualification e.g. MD/MS, or a recognised qualification equivalent thereto in the respective discipline/subject.

...

...

ASSISTANT PROFESSOR

Qualification – Essential for Medical candidates (general discipline):

Same as 1 and 2 for Professor (medical candidates)

Experience - Essential for Medical candidates (general discipline):

3 years teaching and/or research experience in a recognised institution in the subject of speciality after obtaining the qualifying degree of MD/MS or a qualification recognised equivalent thereto.

Qualification – Essential for Medical candidates (Super Speciality disciplines):

Same for Professor (Medical candidates)

Experience – Essential for Medical candidates (Super Speciality disciplines)

One year teaching and/or research experience in a recognised institution in the subject of speciality after obtaining the Degree of DM/M C.H. (2 years or 5 years recognised course after MBBS) or qualification recognised equivalent thereto. However, no experience is necessary for the candidates possessing the 3 years recognised degree of DM/M Ch. Or qualification recognised equivalent thereto.”

6.2 Notification dated 24th November 2005 blocking two positions of Assistant Professor for the appellants, subject to the condition of completion of the diploma, is as under:-

“The Apical Selection Committee in its (XXIX) meeting held from August 25th to 29th, 2005 recommended appointment of following two candidates as Senior

Residents in Physical Medicine & Rehabilitation and their sponsorship for two years diploma in the Speciality for which they are required to execute necessary bond/agreement with the institute to the effect that they will serve the institute after completion of training for a period of seven years:-

1. Dr. Shiekh Javeed Ahmad
2. Dr. Abdul Hamid Rather

The above two doctors shall be appointed as Assistant Professors, Physical Medicine & Rehabilitation after completing two years' training course and for this purpose two posts of Assistant Professor are blocked..."

(Emphasis supplied)

7. We are of the view that the High Court erred in coming to such a conclusion in the facts of this case. The basis of the conclusion drawn by the High Court was that there was nothing on record to show that the appellant had made efforts to be admitted into the institutes offering the diploma and that their candidature had, after due consideration, been rejected. In other words, there was no impossibility in law to secure the qualifications as required.

8. We find this to be the mistaken position of fact. The Notification issued by the competent authority, blocking two positions of Assistant Professor for the appellants, as reproduced above, tells us so. It makes clear that the two candidates would be sponsored for two-year diploma in their specialty, and subsequent to the completion of which, they

would serve the institution for seven years in accordance with the necessary bond/agreement, which will have to be executed. A bond or agreement of this nature is formed when the employer financially supports the educational advancement of one of its employees, who is then expected to return and contribute to the employer's growth with the newly acquired experience and knowledge for a specific period. The condition is that if such an employee fails to do so, the bond they have executed, which may be for a specified amount of money, shall be forfeited, or the amount paid by the employer in sponsoring such education shall have to be returned.

9. It is clear, therefore, that SKIMS was the one who had to make arrangements to secure admission for the appellants. The notification extracted in paragraph 7.2 of this order makes that abundantly clear. This is acknowledged by their counter affidavit dated 23rd July 2023. It has been deposed therein :

“6. That thereafter the matter was again placed before the Apical Selection Committee, in 2007, with the submission that the said Diploma could not be arranged for the petitioners at AIIMS, New Delhi and PGI, Chandigarh as they have discontinued such course. Apical Selection Committee in 2007 was apprised of such situation which advised SKIMS to arrange the Diploma in other identified Institutions in other parts of the Country. The sponsorship of the petitioners could not materialize as the training has been discontinued by various institutions except few, where only natives were eligible to apply and these doctors were sent for 06 months short term training course in Physical Medicine & Rehabilitation at AIIMS,

New Delhi w.e.f. 13.03.2007 which they successfully completed.

The Apical Selection Committee was informed that despite the strenuous efforts made by SKIMS Administration to secure sponsorship of the petitioners as Senior Residents for 02 years Diploma training in PMR in one of the Institutions of the country previously identified by Apical Selection Committee, could not materialize. This was corroborated by the external expert Dr. U. Singh, Professor & Head Department of PMR, AIIMS, who strongly recommended appointment of above doctors as Assistant Professor in relaxation of 02 years Diploma in PMR as one time exception”

(Emphasis supplied)

The inescapable conclusion, then is that SKIMS, being the sponsor, could not arrange for the appellants to undertake the course.

10. We also take exception to the manner, in which the recommendation of Dr. U. Singh has been cast aside by the High Court, insinuating that he had been involved only to obtain a stamp of approval for a foregone conclusion. It is not as if the person whose opinion is sought is unqualified to give the same; it is not as if such a request for guidance is misplaced, given that AIIMS, Delhi, is considered to be the apex Government Hospital - then, for the High to have rejected the same stating -

“... It does indeed appear that the letter of Dr. U. Singh, was elicited only with a view to justify the appointment of the private respondents 8 and 9. This was certainly not a case of there being any impossibility in the acquisition of

qualification prescribed by MCI for the post of Assistant Professor..."

in our view, is unjustified.

11. Furthermore, we find the observation of the High Court extracted below :

"This is however, contradicted by the petitioners who have placed on record, a list of medical colleges where Diploma courses in PMR are available in as many as 13 medical colleges and other medical institutes of the country. They have also placed on record the prospectus issued by the AIIMS, New Delhi, wherein the course of PMR is made available to sponsored/foreign students thereby belying the stand of the private respondents."

to be nothing short of surprising since both the aforementioned Dr. U. Singh and the SKIMS appointing authority which, of course, is the Government, to have found that various colleges have shut down the diploma course - yet the High Court, without any verification of the documents produced by the respondents therein, came to its conclusion.

12. It is clear from the record that the appellants did undertake such training and Dr. Sheikh Javeed Ahmad, who is the first appellant before us, even secured a letter of recommendation by the Head of Department, AIIMS Delhi.

13. Accounting for the aforesaid reasons, we are of the view that the High Court erred in setting aside the appointment of the appellants.

14. By our order dated 26th March 2025, we had asked the learned counsel for the parties to obtain instructions with regard to the vacancies at SKIMS. Instructions received in regard thereto by way of e-mail have been furnished to us. We reproduce the same in toto :

“As verified from the Policy Section, SKIMS, various posts including two posts of Physical Medicine & Rehabilitation (PMR) of terminated Assistant Professors (petitioners) were forwarded to JK GAD for referring to JKPSC. As on date, only 13 posts have been cleared by the Finance Department and these posts have been referred to JKPSC through Health & Medical Education Department J&K. JKPSC has also issued advertisement.

Rest of the posts including the two posts of terminated Assistant Professors in the discipline of PMRF are under revival in the Finance Department J&K, as these posts have remained vacant for more than 2 years. As per GFR (General Financial Rules) these posts fall in the category of “Deemed Abolished” and require concurrence of the Finance Department for revival”

(Emphasis supplied)

15. It flows from the above extract that the posts, which were blocked in favour of the appellants, live in the pendency of these proceedings since they had remained vacant for more than two years. For all the reasons recorded aforesaid, we are of the view that the appellants are entitled to and deserve to be reinstated in service as Assistant Professors with continuity in service. However, this may not be treated as a precedent. All other benefits, pecuniary and non-pecuniary, would accrue to them as well, save and except back wages, from the

date of their removal till their reinstatement, which shall take place forthwith. Learned counsel for the State submits that the proposal for revival of the two specific posts blocked for the appellants is pending consideration before the Department of Finance, Government of the Union Territory of Jammu Kashmir and Laddakh. In the interest of justice, we direct that the said posts be revived.

16. The appeals are allowed in the aforesaid terms leaving the parties to bear their own costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANJAY KAROL)

.....J.
(SANDEEP MEHTA)

New Delhi;
27th March, 2025.