

**Central Administrative Tribunal
Jammu Bench, Jammu**



O.A. No.702/2020

With

O.A. No.704/2020

O.A. No.784/2020

O.A. No.880/2020

O.A. No.1224/2020

O.A. No.1225/2020

O.A. No.1228/2020

Monday, this the 1st day of February, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

O.A. No.702/2020

Dr. Manpreet Kour, age 29 years

D/o Sh. Amrik Singh

r/o Basti New Bhantin Railway Patri

Post Office Miran Sahib, Jammu

..Applicant

(Mr. Rupinder Singh, Advocate)

Versus

1. UT of Jammu & Kashmir
Through Commissioner-Secretary to Govt.,
Health & Medical Education Department,
Civil Secretariat, Srinagar/Jammu
2. Financial Commissioner to Government
Health & Medical Education Department
Civil Secretariat, Srinagar/Jammu
3. Principal/Dean Government Medical College
Bakshi Nagar, Jammu
4. Director Health Services, Jammu

..Respondents

(Mr. Amit Gupta, Additional Advocate General, Mr. Sudesh Magotra and Mr. Rajesh Thapa, Deputy Advocates General)

O.A. No.704/2020

Dr. Shami Kumar, age 31 years
 s/o Sh. Balwant Raj,
 r/o VPO Sarore, Jammu
 at present posted as Medical Officer
 SDH Sanji Chat Hospital, Katra

(Mr. Rupinder Singh, Advocate)

..Applicant

Versus

1. UT of Jammu & Kashmir
 Through Commissioner-Secretary to Govt.,
 Health & Medical Education Department,
 Civil Secretariat, Srinagar/Jammu
2. Financial Commissioner to Government
 Health & Medical Education Department
 Civil Secretariat, Srinagar/Jammu
3. Principal/Dean Government Medical College
 Jammu
4. Director Health Services, Jammu
5. Chief Medical Officer, Reasi

..Respondents

(Mr. Amit Gupta, Additional Advocate General, Mr. Sudesh
 Magotra and Mr. Rajesh Thapa, Deputy Advocates General)

O.A. No.784/2020

Dr. Abhilasha Thakyal, aged 29 years
 d/o Avtar Singh
 r/o New Plots Jammu

(Mr. Mudasir Bin Hassan, Advocate)

..Applicant

Versus

1. The Union Territory of Jammu & Kashmir,
 Through Commissioner-cum-Secretary to Govt.,
 Health & Medical Education Department,
 Civil Secretariat, Jammu/Srinagar

2. The Director,
Health Services Jammu Division, Jammu

3. Principal,
Govt. Medical College, Jammu

..Respondents
(Mr. Amit Gupta, Additional Advocate General)



O.A. No.880/2020

Dr. Seema Rani, age 30 years
d/o Sh. Babu Ram
r/o H.No.41-A Hazipura Last Morh
Gandhi Nagar, Jammu

..Applicant
(Mr. Abhinav Sharma, Senior Advocate)

Versus

1. Union Territory of Jammu & Kashmir
Through Financial Commissioner
Health & Medical Education Department,
Civil Secretariat, Srinagar

2. Principal
Government Medical College, Jammu

3. Director, Health Services, Jammu

..Respondents
(Mr. Amit Gupta, Additional Advocate General, Mr. Sudesh Magotra and Mr. Rajesh Thapa, Deputy Advocates General)

O.A. No.1224/2020

Dr. Sucheta Gupta, age 35 years
d/o Dr. Makhan Lal
r/o at present H.No.147, Ward No.8
Near ISKON Temple Shakti Nagar, Udhampur
Presently posted as Medical Officer, CHC Chenani

..Applicant
(Mr. Rupinder Singh, Advocate)

Versus

1. UT of Jammu & Kashmir
Through Commissioner-Secretary to Govt.,
Health & Medical Education Department,
Civil Secretariat, Srinagar/Jammu

2. Financial Commissioner to Government
Health & Medical Education Department
Civil Secretariat, Srinagar/Jammu
3. Principal/Dean Government Medical College
Bakshi Nagar, Jammu
4. Director Health Services, Jammu

..Respondents
(Mr. Amit Gupta, Additional Advocate General, Mr. Sudesh Magotra and Mr. Rajesh Thapa, Deputy Advocates General)



O.A. No.1225/2020

Dr. Manpreet Kour, age 29 years
D/o Sh. Amrik Singh
r/o Basti New Bhantin Railway Patri
Post Office Miran Sahib, Jammu

..Applicant

(Mr. Rupinder Singh, Advocate)

Versus

1. UT of Jammu & Kashmir
Through Commissioner-Secretary to Govt.,
Health & Medical Education Department,
Civil Secretariat, Srinagar/Jammu
2. Financial Commissioner to Government
Health & Medical Education Department
Civil Secretariat, Srinagar/Jammu
3. Principal/Dean Government Medical College
Bakshi Nagar, Jammu
4. Director Health Services, Jammu

..Respondents
(Mr. Amit Gupta, Additional Advocate General, Mr. Sudesh Magotra and Mr. Rajesh Thapa, Deputy Advocates General)

O.A. No.1228/2020

Dr. Seema Rani, age 30 years
d/o Sh. Babu Ram
r/o H.No.41-A Hazipura Last Morh
Gandhi Nagar, Jammu

..Applicant

(Mr. Abhinav Sharma, Senior Advocate)

Versus

1. Union Territory of Jammu & Kashmir
Through Financial Commissioner
Health & Medical Education Department,
Civil Secretariat, Jammu
2. Principal
Government Medical College, Jammu
3. Director, Health Services, Jammu
4. Block Medical Officer
Community Health Centre, Ramgarh



..Respondents
(Mr. Amit Gupta, Additional Advocate General, Mr. Sudesh Magotra and Mr. Rajesh Thapa, Deputy Advocates General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

In this batch of O.As., common questions of law and fact arise. Hence, they are disposed of through a common judgment.

2. In the Medical Department of Jammu & Kashmir, there exist two Gazetted Services; one is the Jammu & Kashmir Medical (Gazetted) Service and the other is Jammu & Kashmir Medical Education (Gazetted) Service. The Recruitment Rules (RRs) for both of the Services are framed in 1970 & 1979 respectively. The post of Assistant Surgeon (since designated as Medical Officer) occurs in category '2' of the Medical (Gazetted) Service. Appointment to this is 100%, by direct recruitment. In the Medical Education (Gazetted) Service, the posts of Registrars/Demonstrators (for short 'Registrar') occur in the

Teaching Wing at Sr. No.VI. The recruitment to this is by way of deputation from Medical (Gazetted) Service. The qualifications stipulated for the post is that a candidate must possess post-graduate degree qualification in the concerned subject. In addition to that, the experience of one year as House Officer or equivalent recognized experience is stipulated.



3. The posts of Registrar were mostly in the Medical Colleges. The applicants herein were appointed to the post of Medical Officer, by way of direct recruitment. Advertisements were issued by the Government Medical College, Jammu in the months of August, 2020 and November, 2020, for the posts of Registrar, in different specializations. The applicants intended to apply for the posts. However, their applications were not forwarded by the competent authority. The reason is that a policy was framed by the Government, vide circular dated 27.05.2019, directing that only such of the Medical Officers, who have completed the probation, or three years of service, would be issued the 'No Objection Certificate' (NOC), to enable them to apply.

4. In this batch of O.As., the applicants challenge the Advertisement Notices, insofar as they insisted that the applications shall be forwarded only with the permission of the Administrative Department. They have also challenged the order dated 20.01.2020. According to them, the conditions stipulated therein are in conflict with the Government order issued on

02.03.2012. They further challenge the circular dated 27.05.2019, which too, has incorporated similar conditions.

5. The applicants contend that the various steps taken by the respondents amount to modification of the RRs for the post of Registrar, and once the Government framed the RRs in exercise of the power conferred in proviso to Section 124 of the Constitution of Jammu & Kashmir, which is on par with the Article 309 of the Constitution of India, the Administrative instructions cannot be permitted to override such RRs. Mention is also made to the judgment of Hon'ble High Court of Jammu & Kashmir on the issue. It is also stated that in a batch of SWPs, the Hon'ble High Court of Jammu & Kashmir rendered a judgment on 31.10.2008, quashing an order dated 20.12.2007 issued by the Government enhancing the period of experience to two years, and that the impugned orders are liable to be set aside for the same reason. Reliance is also placed upon the following judgments of Hon'ble Supreme Court:

- (i) **Paschim Banga Khet Mazdoor Samity & others v. State of W. B. & another**, (1996) 4 SCC 37,
- (ii) **Vincent Panikurlangara v. Union of India & others**, (1987) 2 SCC 165; and
- (iii) **Association of Medical Superspeciality Aspirants and Residents & others v. Union of India & others**, (2019) 8 SCC 607





6. On behalf of respondents, detailed counter affidavits are filed in the respective O.As. According to them, the Medical Officers are appointed mostly to provide the health service in rural areas, whereas the posts in Medical Education Service, are on the teaching side. It is stated that the impugned orders do not have the effect of modifying the RRs of Medical Education Service and that the purpose of the impugned orders is only to adopt objective criteria, while issuing the 'NOC' to the Medical Officers, who intend to apply for the post of Registrar.

8. According to the respondents, the stipulation as to the completion of probation or three years of service has a nexus with the obligation of the Government to provide the medical services to the people and thereby, to comply with the fundamental rights of the citizens and the Directive Principles of State Policy.

9. We heard Mr. Abhinav Sharma, learned senior counsel, Mr. Rupinder Singh & Mr. Mudasir Bin Hassan, learned counsel for applicants; and Mr. Amit Gupta, learned Additional Advocate General, Mr. Sudesh Magotra & Mr. Rajesh Thapa, learned Deputy Advocates General on behalf of respondents, at length, through video conferencing..

10. The issue involved in this batch of O.As. is about the entitlement of the applicants to be issued the 'NOC', to enable them to apply for the post of Registrar. The qualifications for the

post of Registrar are stipulated under the Medical Education (Gazetted) Service Recruitment Rules, 1979, which read:

“Demonstrators

(i) For medical persons:

Possession of recognized medical qualification included in the First or Second Schedule (other than Licentiate qualifications) to the Indian Medical Council Act, 1956.

Holders of educational qualifications included in Part-II of the Third Schedule should fulfil the conditions stipulated in sub-section 3 of section 13 of the Indian Medical Council Act, 1956.

Post-graduate degree qualification in the concerned subject will be preferred.”

11. It is not in dispute that the applicants hold those qualifications. They have also the experience of one year to their credit. In the Advertisements, a condition is stipulated to the effect that the applications must be accompanied by ‘NOC’, to be issued by the concerned Head of Department. The relevant clause of the Advertisement Notices reads as under:-

“(2) The in-service doctor shall be allowed to participate in the selection process only with the prior permission of the Administrative Department as per circular No.02-JK (HME) of 2020 dated 20-01-2020 read with Govt. order No.03-HME of 2019 dated 27-05-2019. For the purpose, they should route their application forms through the Administrative Department. No advance copy shall be entertained.”

12. The condition stipulated in Advertisement is, in turn, referable to the order dated 20.01.2020. Clause 1 (a) thereof reads:



“(a) The concerned HoD shall not forward / recommend any case of doctor intending to appear in the selection process by NEET or Senior Residency/Registrarship/ Demonstratorship/PG/Diploma etc. unless or until concerned doctor has completed prescribed period of probation or 3 years of service, whichever is later and is intending to undergo such course for the first time during his/her service for which a categoric certificate shall be furnished by the concerned HoD.”



A similar clause was contained in an order dated 27.05.2019.

13. The applicant in O.A. No.880/2020 submitted his application in this behalf. The Head of Department gave a reply on 14.09.2020, which reads as under:-

“i. Convey regrets of the Administrative Department for considering forwarding of Application form in respect of Dr. Seema Rani, Medical Officer, as she has not completed her record of probation/3 years of service and has not been given NOC/permission for the Calendar year 2020.

ii. Besides, you are asked to explain as to how case of the said doctor has been forwarded to the Administrative department when she not eligible.

iii. You are asked to furnish latest status of Court cases viz. SWP No.189/2017 titled Dr. Radhika Gupta & Ors V/s State & ors. Besides you are asked to explain as to why these facts were not brought the notice of Administrative Department earlier while considering their NOCs.”

14. According to the applicants, the condition extracted above amounts to modification of the Jammu & Kashmir Medical Education (Gazetted) Service Recruitment Rules, 1979.

15. A subtle distinction needs to be maintained in this behalf. The RRs stipulate the eligibility criteria for a candidate to be considered for permission. The impugned circular dated 20.01.2020 and other similar orders on the other hand, prescribe

the guidelines for processing the applications of in-service candidates. They do not at all tell upon the eligibility of the candidates to apply. The objective is only to provide guidance in the context of forwarding the applications.



16. If a person, employed in a Department intends to apply for another post or intends to improve his qualifications, the Department would certainly have a right to keep in view, its requirement and interests, before according such permission. A decent balance needs to be struck, between the need of the Department on the one hand and the right of the candidate on the other. The second aspect is about the number of candidates to be accorded permission. Even where the in-service candidates fulfil the requirements under the RRs as well as the conditions incorporated in the circular, the Government must ensure that indiscriminate grant of permissions would not result in complete shutdown of the services in the hospitals in the rural areas. The Hon'ble Supreme Court held that a right of citizen to avail medical services is a part of right to life. The State is placed under obligation, in terms of Directive Principles of State Policy, to provide adequate amenities to the citizens. Therefore, the guidelines framed by the respondents, through circular dated 02.01.2020, etc. cannot be treated as unconstitutional or amounting to modification of the RRs.

17. It is true that the Hon'ble High Court has struck down a circular dated 20.12.2007, vide its judgment dated 31.10.2008,



when it was proposed to increase the experience from one year to two years. It was a clear case of modification to RRs and that could have been done only through the amendment to the RRs and not by way of an Executive order. In the instant case, no attempt is made to re-define the eligibility criteria prescribed under the RRs. As observed earlier, the stipulations were only for proper guidance and objective processing of the applications, and thereby, to balance of interests of the State at large, on the one hand, and that of the concerned applicants, on the other.

18. We do not find any merit in the O.As. and accordingly, dismiss them. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 1, 2021
/sunil/