



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.1900/2021
SWP No. 2310/2018

This the 14th day of July, 2021

(Through Video Conferencing)

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

1. Dr. Qazi Najeeb Ahmad, Aged 39 years,
S/o Qazi Ghulam Nabi,
R/o Sheri Bhat, Alamgari, Bazar,
Srinagar
2. Dr. Shazia Nazir, aged 37 years,
D/o Nazir Ahmad,
R/o Sanat Nagar,
Srinagar
3. Dr. Pallavi Mahajan, Aged 35 years,
D/o Ravi Kumar Gupta,
R/o 154 A/D, Gandhi Nagar,
Jammu
4. Dr. Saima Mushtaq, aged 34 years,
D/o Mustaq Ahmad Banday,
R/o Baghat,
Srinagar
5. Dr. Mohammad Ubaid, aged 35 years,
S/o Nazir Ahmad Wani,
R/o Shivpora,
Srinagar
6. Sheikh Ishaq, Aged 45 years,
S/o Sheikh Abdul Majid,
R/o 55 Green Avenue,
Sector A, Peerbagh,
Srinagar

...Applicants



(Mr. Jahangir Ganai, Senior Advocate assisted by Mr. Mafad, Advocate)

Versus

1. State of Jammu and Kashmir,
Through Commissioner/Secretary,
Industries and Commerce Department,
Civil Secretariat,
Jammu.
2. J&K Service Selection Board
Through its Chairman
Sehkari Bhawan Panama Chowk
Jammu
3. Administrative Officer,
J&K Service Selection Board
Sehkari Bhawan Panama Chowk
Jammu

...Respondents

(Mr. Sudesh Magotra, Deputy Advocate General for Mr. Amit Gupta, Additional Advocate General for respondent No. 1, Mr. Azhar-ul-Amin, Advocate for respondent No.2, *Nemo* for respondent No.3, Mr. Hamza Prince, Advocate for respondent Nos. 4, 6 & 7 and Mr. Shah Faisal, Advocate for respondent Nos. 5, 8 & 9)

**ORDER (ORAL)**

Mr. Justice L. Narasimha Reddy:

The Jammu & Kashmir Public Service Commission (for short 'Commission'), the 2nd respondent herein issued notification for the post of Assistant Professor (Lecturer) Bio-Chemistry. The applicants, respondent Nos. 4 to 9 and several others applied. The qualifications are stipulated in terms of medical and non-medical candidates. A shortlist of 19 candidates was prepared for the purpose of interview vide notice dated 15.09.2018. The names of the applicants as well as private respondent Nos. 4 to 9 figured therein. The grievance of the applicants is that the respondent Nos. 4 to 9 ought not to have been included in the list, inasmuch as they do not hold the stipulated qualifications.

2. They filed SWP No.2310/2018 before the Hon'ble High Court of Jammu & Kashmir, with a prayer to declare the notice dated 15.09.2018, in so far includes the names of the private respondents, as illegal and arbitrary and to quash the same. A further direction is sought to direct the official respondents to undertake the process of selection against the post of Assistant Professor (Lecturer) Bio-Chemistry in accordance with the qualifications prescribed by the "Minimum qualification for



Teachers in Medical Institutions Regulations, 1998” framed by the Medical Council of India (MCI).

3. The applicants contend that once the MCI, the competent authority, has prescribed the qualifications, there was absolutely no basis for respondent No.2, to include the names of the candidates, who did not possess the qualifications. The Hon’ble High Court passed an interim order, directing that the respondent No.2 shall not proceed with process of selection for the post of Assistant Professor (Lecturer) Bio-Chemistry.

4. The respondent No.2 on the one hand and the respondent Nos. 4, 6 & 7 on the other, filed separate counter affidavits. According to them, the qualifications for the post of Assistant Professor (Lecturer) Bio-Chemistry are prescribed under the relevant Recruitment Rules and the advertisement was issued strictly in accordance with the Rules.

5. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.1900/2021.

6. Today, we heard Mr. Jahangir Ganai, learned senior counsel assisted by Mr. Mafad, learned counsel for applicants, Mr. Sudesh Magotra, learned Deputy Advocate General *vice* Mr. Amit Gupta, learned Additional Advocate General for respondent No. 1, Mr. Azhar-ul-Amin, learned counsel for



respondent No.2, Mr. Hamza Prince, learned counsel for respondent Nos. 4, 6 & 7 and Mr. Shah Faisal, learned counsel for respondent Nos. 5, 8 & 9. There is no representation for respondent No.3.

7. The applicants, respondents 4 to 9 and many other responded to the notification issued by the Commission for selection to the post of Assistant Professor (Lecturer), Bio Chemistry. The post is in a Medical College. Two sets of qualifications were stipulated for the candidates, coming from the medical stream and those coming from non-medical stream. They read as under:-

| Designation | Qualification |
|---------------|--|
| Bio-Chemistry | (i) For MBBS Degree Holders:- MD/MS MBBS with PhD, MS (Medical Bio-Chemistry), MS (Medical Bio-Chemistry with PhD), MS MBC with DSC in concerned discipline duly recognized by Medical Council of India (MCI). |
| | (ii) For Non-MBBS Degree Holders:- PhD in concerned discipline from a University duly recognized by University Grant Commission. |

8. It is not the case of the applicants that the qualifications mentioned in the notification do not accord with those mentioned in the concerned recruitment rules. The emphasis of the applicants is that the Medical Council of India stipulates



different qualifications for the post of Assistant Professor (Bio-Chemistry). They read as under:-

| Post | Academic Qualification |
|------------------------------|--|
| Assistant Professor/Lecturer | M.D. (Biochemistry)/MBBS with M.Sc (Med. Biochemistry) M.Sc (Med. Biochemistry)/M.Sc (Med. Biochemistry with D.Sc (Med. Biochemistry) |

Even from the perusal of those qualifications, it is evident that the candidates from medical as well as non-medical background are made eligible.

9. What is important is that the study must be in Medical (Biochemistry). Once the rule making authority had prescribed the qualification for a post, it is not for the aspirant of the post to contend otherwise.

10. There is a legal impediment for the applicants. In case the applicants had any reservation about the qualifications mentioned in the notification, they were supposed to challenge the same by instituting proceedings before they responded to the notification or participated in the process. They filed the Writ Petition only in the middle of the process, before conducting of the interview. Time and again, the Hon'ble Supreme Court held that a candidate, who applies for a post, cannot challenge the qualifications stipulating in the



advertisement, either when he is not selected or at any other stage.

11. Across the bar, it is stated that the recruitment rules also stipulate the ratio between the Assistant Professor appointed from medical and non-medical streams and it is being followed over the years. Strictly speaking, it is not the subject matter in the Writ Petition or this TA. At the same time, the respondents are expected to follow the recruitment rules in letter and spirit.

12. Therefore, we dispose of the TA, declining to interfere with the impugned notice dated 15.09.2018, but directing that the appointment and selection to the post of Assistant Professor (Bio Chemistry) shall be made strictly in accordance with the recruitment rules, which are in vogue. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/sunil/rk/daya