

**(2000) 05 J&K CK 0015**

**Jammu & Kashmir High Court**

**Case No:** Service Writ Petition (SWP) No. 423 of 2000

Abhineet Sayal

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** May 8, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Constitution of Jammu and Kashmir, 1956 - Section 103
- Drugs and Cosmetics Rules, 1945 - Rule 122G

**Citation:** (2001) 4 SCT 1118

**Hon'ble Judges:** Arun Kumar Goel, J

**Bench:** Single Bench

**Advocate:** H.A. Siddiqui, K.S. Johal, Advocates appearing for the Parties

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**Judgement**

Arun Kumar Goel, J.

By means of this writ petition following reliefs have been claimed by the petitioners :

Writ Petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir State for issue of an

appropriate writ, direction or order in the nature of writ of certiorari quashing the order No. PRB/BBT/1026782 dated 25.11.1999 issued by the

respondent No. 2 in so far as it allows the petitioners only 3 months' Blood Bank and Blood Transfusion Training Course in the Department of

Blood Transfusion, Government Medical College, Jammu instead of 1 year;

and

ii. for issuance of further appropriate writ, direction or order in the nature of mandamus commanding the respondents to allow the petitioners to

continue with the training of Blood Bank and Blood Transfusion Training Course in the Department of Blood Transfusion, Government Medical

College, Jammu till the expiry of one year;

and

iii. for issuance of further appropriate writ, direction or order in the nature of writ of prohibition restraining the respondents from the relieving the

petitioners from the Blood Bank and Blood Transfusion Training Course till they complete the training in the Department of Blood Transfusion,

Government Medical College, Jammu for one year;

with

iv. such other additional or alternative relief as this Hon'ble court deems fit and proper in the facts and circumstances of the case.

2. As per their own showing petitioner No. 1 was working as Assistant Surgeon, Government Hospital Sarwal, Jammu; whereas petitioner No. 2

was working in the said capacity in Community Health Centre, Ramnager. Vide order issued by Director Health Services on 25.11.1999

(Annexure ""A"" ) both the petitioners alongwith four other persons were deputed to undergo three months Blood Bank and Blood Transfusion

Course in the Department of Blood Transfusion, Government Medical College, Jammu with effect from 1.12.1999 to 29.2.2000. This period was

extended by one month by the order of Director Health Services on 28.2.2000. Thus this training period was to come to an end on 31.3.2000.

3. It appears that vide Annexure ""C"" petitioner alongwith one Abhineet Sayal respondent on 8.3.2000 taking shelter under Government of India,

Ministry of Health and Family Welfare (Department of Health) Notification dated 5th April, 1999, whereby GSR 245(E) was issued. By means of

this GSR amongst other provisions, in Rule 122G of the Drugs and Cosmetics Rules certain changes were made. What is relevant for the present

purpose is extracted hereinbelow :

(b) for condition (i) the following shall be substituted, namely :

(i) The operation of Blood Bank and/or processing of whole human blood for components shall be conducted under the active direction and

personal supervision of competent technical staff consisting of at least one person who is whole time employee and who is Medical Officer, and

possessing

(a) Postgraduate degree in Medicine M.D. (Pathology/Transfusion Medicines) or;

(b) Degree in Medicine (M.B.B.S.) with Diploma in Pathology or Transfusion Medicines having adequate knowledge in blood group serology,

blood group methodology and medical principles involved in the procurement of blood and/or preparation of its components; or

(c) Degree in Medicine (M.B.B.S.) having experience in Blood Bank for one year during regular service and also adequate knowledge and

experience in blood group serology, blood group methodology and medical principles involved in the procurement of blood and/or preparation of

its components.

the degree or diploma being from a university recognised by the Central Government.

4. Thus it is obvious that Annexure ""C"" was made keeping an eye on the above extracted provisions of law. This representation was forwarded by

the Professors and Head, Blood Transfusion Department, Government Medical College, Jammu to the Principal. Latter returned the same to the

Professor and Head for making separate recommendations in the matter. Vide Annexure ""D"" dated 24.3.2000 Professor and Head forwarded the

matter to Principal, Government Medical College, Jammu and what has been extracted hereinabove was reproduced in the said communication.

This Annexure ""C"" was forwarded alongwith the remarks of Professor to Director Health Services by the Principal.

5. In the aforesaid circumstances petitioners claim that they be allowed to complete one year training in Blood Bank and Blood Transfusion in the

Government Medical College, Jammu and respondents may be directed as aforesaid.

6. Basis for making this claim is that action of the respondents is arbitrary, illegal and unjustifiable and also is violative of 245(E) (supra). Claim is

also based on Rule 122G, which is extracted hereinabove, so far it concerns the claim of petitioners. Petitioners claim that respondents promised

to extend the period for undergoing complete training of one year, as such they cannot be allowed to change their mind overnight. Doctrine of

Promissory Estoppel was also invoked in support of the relief claimed by them.

7. On the other hand stand of the respondents is that so far operation of Blood Bank and/or processing of whole human blood for components is

concerned, it has to be conducted under the active direction and personal supervision of competent technical staff consisting of one person, who is

whole time employee and is a medical officer possessed of the requisite qualifications as extracted hereinabove. It is further pleaded by the

respondents that the government has sanctioned at each District Hospital one post of BGrade Pathologist which is to be manned by a doctor with

PG Degree/Diploma in Pathology. Petitioners were deputed for the course in question which was aimed at creating a separate hand at district level

with a qualified doctor. Their deputation was further aimed to meet emergent situation in accidentprone areas where medical officers like

petitioners are able to manage the emergent situation arising out of any accident etc.

8. With a view to be selected to a PG Degree/Diploma Course, State Government has framed SRO 158/95, and selection according to Mr.

Siddiqui is made on the basis of entrance examination conducted by the competent authority. As such petitioners cannot be permitted to remain on

deputation for one year. It is further categoric case of the respondents that in no case there was an obligation on them to allow the petitioners to

complete one year training course without following selection process as also without considering other meritorious and eligible candidates.

9. Shri Johal, learned counsel appearing for the petitioners during the course of hearing forcefully urged that in case his clients are not allowed to

complete one year training course, then they will suffer for no fault of theirs. According to him there is a vested right in favour of his clients who

were made to change their position on the assurance of respondents that they would be allowed to complete one year training and thus become

eligible for obtaining one year diploma in Blood Transfusion under the relevant GSR, referred to hereinabove. This position has been seriously

contested by Shri Siddiqui.

10. After considering the respective submissions it is felt that the present petition is nothing but an abuse of the process of law and court by both

the petitioners, who first made a foothold by accepting their deputation for three months in Government Medical College, as aforesaid, which was

extended by one month and now by judicial process they want to complete one year training so that they are in a position thereafter to claim that

since they have completed one year training, as such they fulfill the requirement of GSR (supra) thereby they successfully are able to give a

complete go-by to SRO 158/95. In case the petitioners are eligible as per provisions of said SRO, then they have to compete with other eligible

candidates by appearing in entrance examination, and only then they can claim to be selected for undergoing diploma course in question. There is

no question of any assurance having been extended much less by the respondents. In this behalf it hardly needs to be clarified that the respondents

will not extend any assurance like two individuals. Whatever had to be said by them is to be in writing. Prima facie in my considered view

petitioners are trying to make back door entry without competing in the entrance test in joining a diploma course as in the present case. If this is

allowed to be done, it will have serious repercussions and would put other similarly situated persons out of fray. As already observed there is no

question of promissory estoppel and/or any assurance having been extended to the petitioners. It hardly needs to be clarified that unless the

petitioners possess the basic qualification for which they have to compete as per SRO (supra), they have no right to continue further for undergoing

training course.

No other point is urged.

11. In view of the aforesaid discussion there is no merit in this writ petition which is accordingly dismissed. Ex parte interim order passed on 3rd

April, 2000 is hereby vacated.