



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 11.08.2025
Pronounced on: 12 .08.2025

WP(C) No.2138/2025

Dr. Mushtaq Ahmad Rather, Age 59 years
Director, Coordination, New GMC
Directorate of Family Welfare Near Sainik School Nagrota, Jammu.

...Petitioners(s)

Through:- Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Ahtsham Hussain, Advocate

Versus

1. Dr. Poonam Sethi
D/o Late Shri K.D.Sethi,
R/o 194, Sector- A, Sainik Colony, Jammu

.....Contesting Respondent

2. Union Territory of Jammu and Kashmir
Through Secretary,
Health and Medical Education Department,
Civil Secretariat, Jammu/Srinagar.

...Respondent(s)

Through:- Mr. Sunil Sethi, Sr. Advocate with
Mr. Kunal Saini, Advocate for R-1
Mr. Raman Sharma, AAG for R-2

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar “J”

1. An order and judgment dated 26th March, 2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu [“the Tribunal”] in O.A. No.61/73/2025 titled Dr. Poonam Sethi v. UT of



J&K and others is subject matter of challenge in this petition filed by the petitioner-Dr. Mushtaq Ahmed Rather under Article 226 of the Constitution of India.

2. The impugned judgment of the Tribunal is assailed primarily on the ground that the Tribunal has failed to appreciate that respondent No.1 had no *locus standi* to challenge the Government Order No.893-K(HME) of 2024 dated 23.12.2024 [“the impugned order in the OA”] for the reason that she was herself not eligible to be appointed as Director, Family Welfare, MCH & Immunization, J&K and that the discretion of the Government to post an appropriate person to run the affairs of the Directorate of Family Welfare, MCH & Immunization ought not to have been interfered with by the Tribunal and that, too, at the instance of a person, who lacked basic eligibility to hold the post.

3. Before we advert to the grounds of challenge urged by Mr. Jehangir Iqbal Ganai, learned senior counsel, appearing for the petitioner, we deem it appropriate to notice few relevant facts. The petitioner substantively holds the post of Medical Superintendent borne on the Jammu & Kashmir Medical (Gazetted) Service constituted by the J&K Medical (Gazetted) Service Recruitment Rules, 1970. The petitioner is presently posted as Director, Coordination New Medical Colleges, a post not traceable to the Medical (Gazetted) Service. Vide Government Order impugned in the OA, the petitioner was assigned the additional charge of the Director Family Welfare,



MCH & Immunization, J&K till further orders. Respondent No.1, who was earlier posted as ADMO, Labour Department vide Government Order No.966-JK(HME) of 2023 dated 29.11.2023, was at the time of filing of the OA, posted as Deputy Director (Schemes), Jammu vide Government Order No.914-JK(HME) of 2024 dated 29.12.2024. The post of Deputy Director, which is held by the respondent No.1, though in officiating capacity, is in the feeding cadre to the post of Director, Health and Director, Family Welfare, MCH & Immunization.

4. Feeling aggrieved by the assignment of additional charge to the petitioner, in terms of the Government Order impugned in the OA, the respondent No.1 approached the Tribunal through the medium of OA No.61/73/2025 in which respondent No.1, apart from throwing challenge to the Government order impugned in the OA, also sought a direction to the Government to post/adjust/assign the charge of the post of Director, Family Welfare, MCH & Immunization, J&K to an eligible member of the J&K Health and Family Welfare (Gazetted) Service. The petition was contested by the petitioner as well as respondent No.2-Government of UT of J&K in the department of Health. Apart from taking a preliminary objection to the maintainability of the OA at the instance of respondent No.1, an ineligible candidate, the OA was also contested on merits. It was the stand taken by respondent No.2 that the post of Director, Family Welfare is an HOD cadre post and, therefore, required to be manned by an experienced person holding HOD position. It was submitted that



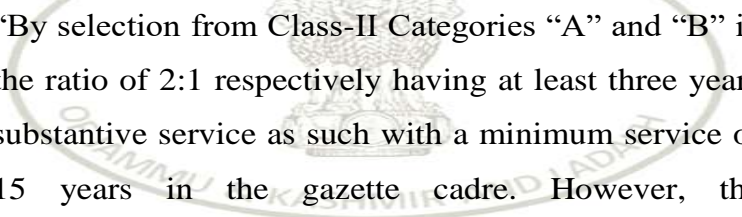
the petitioner having worked as Director, Health Services, Kashmir, Director, Aids Control Society as well as Director, Coordination New Medical Colleges was found to be the most suitable person to man the post of Director, Social Welfare MCH and Immunization J&K. With regard to respondent No.1, it was submitted that she was substantively holding the post of Assistant Director and figures at Serial No.16 of the seniority list issued by respondent No.2 vide Government order dated 26th September, 2023. It was specifically pleaded in the reply affidavit that there were in as many as three serving officers, who were senior to respondent No.1 and, therefore, her posting as Director was out of question. To the similar effect was the reply affidavit filed by the petitioner.

5. The Tribunal having considered the rival contentions and material on record, in particular, the Rule position obtaining on the subject, came to the conclusion that the petitioner was not even a member of J&K Health and Family Welfare (Gazetted) Service and, therefore, could not have been assigned the additional charge of the post of Director, Family Welfare, MCH & Immunization, J&K. By a writ of certiorari, the Tribunal quashed the Government Order dated 23rd December, 2024, impugned in the OA, and directed the Government to assign the charge of the post of Director, Family Welfare, MCH & Immunization J&K to the senior most and eligible member of the J&K Health & Family Welfare (Gazetted) Service. It is



this order, which is called in question by the petitioner on the grounds which we have taken note of herein above.

6. Having heard learned counsel for the parties and perused the material on record, it is necessary to give a quick look to the Rule position. The post of Director, Health Services/Director, Family Welfare is borne on the J&K Health & Family Welfare (Gazetted) Service constituted by J&K Health and Family Welfare (Gazetted) Service Recruitment Rules, 2013 [“Rules of 2013”]. Total sanctioned strength of Director, Health Services and Director, Family Welfare is three and the posts are required to be filled up in the following manner:-



“By selection from Class-II Categories “A” and “B” in the ratio of 2:1 respectively having at least three years substantive service as such with a minimum service of 15 years in the gazette cadre. However, the requirement of minimum service of 15 years shall not apply to Category B.”

7. Indisputably, the petitioner, who is a member of J&K Medical (Gazetted) Service is neither an officer from Category “A” or Category “B” of Class-II of the J&K Health and Family Welfare (Gazetted) Service. Following posts fall under Class-II Category “A”:-

- i. Dy. Director Health Services/Medical;
- ii. Medical Superintendents;
- iii. State Malariologist; and
- iv. ADMO Labour (ESI)



In Class-II Category “B” Senior Consultants of various disciplines are indicated. There is no dispute that the petitioner is neither a senior consultant in any of the discipline mentioned in Class-II Category “B” of Schedule-II of the Rules of 2013 nor does he holds the post of Deputy Director, Health Services, Medical Superintendent/ State Malariologist/ADMO Labour. It is, thus, a foregone conclusion that the petitioner is absolutely not entitled to be posted as Director, Family Welfare, MCH & Immunization J&K.

8. At this juncture, we deem it appropriate to set out Rule -5 of the Rules of 2013 herein below:-

“5. Qualification and method of recruitment.—(1) No person shall be eligible for appointment or promotion to any post in any class, category or grade in the service unless he/she possesses the qualification as laid down in Schedule-II and fulfills other requirements of recruitment as provided in the rules and orders for time being in force.

(2) The appointment to a post in the service may be made by:-

- (a) direct recruitment ; or
- (b) promotion;
- (c) partly by (a) and partly by (b) in the ratio and in the manner mentioned against each posts in Schedule-II :

Provided that all the posts under direct recruitment shall be filled through J&K Public Service Commission as per the rules/orders of the Government issued for the purpose :

Provided further all posts to be filled by promotion shall be filled through Departmental Promotion Committee/ Jammu and Kashmir Public Service Commission, unless any post/category of posts is exempted from the purview of the Public Service Commission in terms of J&K Public Service Commission (Limitation of Functions) Regulations, 1957 by the Government by specific order;



(3) The Department shall refer vacancies in the direct/promotion quota to Jammu & Kashmir Public Service Commission and Departmental promotion Committees, as per SRO-166 dated 14-06-2005 as amended from time to time.”

9. From a reading of Rule 5(1), it is abundantly clear that no person is eligible for appointment or promotion to any post in any class, category or grade in the service unless he/she possesses the qualification as laid down in Schedule-II and fulfills other requirement of recruitment as provided in the Rules. Similarly, Sub Rule (2) of Rule 5 clearly provides that appointment to a post in the service can be made only in the following manner:-

(a) direct recruitment, or;

(b) promotion;

(c) partly by (a) and partly by (b) in the ratio and in the manner mentioned against each posts in Schedule-II

The appointment by transfer is not one of the modes prescribed in the Rules. There is no provision in the Rules of 2013 for relaxation of the prescribed qualifications and mode of recruitment.

10. In view of the aforesaid legal position, the petitioner, who belongs to a different service and does not fall in the feeding cadre to the post of Director in question, is absolutely not eligible to hold the post even in officiating capacity. We understand the difficulty respondent No.2 may be facing in posting an eligible person under the Rules as Director, Family Welfare, MCH & Immunization but that



does not give absolute discretion to respondent No.2 to pick up any person from any service and impose it on the Health and Family Welfare (Gazetted) Service. If for some reasons beyond the control of respondent No.2, the working of the office of Director, Family Welfare, MCH and Immunization is required to be carried out by giving temporary charge to an ineligible person, it would be in the fitness of the things to pick up such person from within the service.

11. We can visualize that this difficulty has arisen because of failure of respondent No.2 to convene the meetings of DPC/PSC for making regular promotions in different gazette cadres of the service periodically. This failure of respondent No.2 to convene DPC on regular basis and make promotions in time has created a situation where not even a single candidate in the service is eligible to hold the post of Director. In such a situation, the Government may be justified in giving temporary charge of the post even to an ineligible person. We, however, fail to understand that when the Government has picked up an ineligible person to manage the post of Director, Family Welfare, MCH & Immunization, why it could not do so by picking up such person from within the service. May be on officiating posts, there are candidates including respondent No.1, who is holding the post of ADMO Labour/Deputy Director (Schemes) since 2023. These officers like respondent No.1, who have now reached to the level of Deputy Director, have long experience of decades at their back to run the administration in different capacities in the department of Health and



Family Welfare. The petitioner is already holding the position in the Department of Medical Education and, therefore, importing him to the department of Health and Family Welfare smacks of an act of favouritism.

12. We are well aware that ordinarily a person who himself is not eligible to hold the post cannot throw challenge to the appointment of another candidate. However, in a case where one ineligible person is ignored at the cost of another ineligible person without reasonable basis or rationale, ineligible person, who has been ignored, can raise his voice and approach the Court to find out the reasons for his/her exclusion and rue the inclusion of another ineligible candidate that, too, who does not even belong to the service.

13. For all these reasons and also elaborate reasons given by the Tribunal in its judgment, we find no merit in this petition and the same being devoid of any merit is dismissed in *limine*.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
12.08.2025
Vinod,PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes