

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) No. 1611/2021; CM No. 5413/2021

Dated: 31st of August, 2021.

Abdul Wahid Khan & Anr.

... Petitioner(s)

Through:

Mr M. Y. Bhat, Senior Advocate with
Mr Furqan Yaqoob, Advocate.

Versus

Union Territory of JK & Ors.

... Respondent(s)

Through: -

Mr Shah Aamir, AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

(JUDGMENT)

01. In the instant Petition, the grievance of the Petitioners, who claim to have applied for the post of Principal, SKIMS Medical College, Srinagar, as put to advertisement in terms of Advertisement Notice No. 01 of 2021 dated 7th of January, 2021, is that the selection process for the aforesaid post is being carried on by the Respondents in violation of the mandate of recruitment rules governing the subject as well as against the scope of Clauses (b) and (c) prescribed in the Advertisement Notice.

02. Mr M. Y. Bhat, the learned Senior Counsel representing the Petitioners, while elaborating the claim of the Petitioners so made on the strength of the pleadings on record, submitted that the selection process for

the post of Principal, SKIMS, Medical College/ Hospital, Bemina is governed by the mandate of Recruitment Rules of 2012, as notified by the Government vide Government Order No. 118-SKIMS of 2012 dated 6th of November, 2012. In this behalf, Mr Bhat has referred to Clauses (II) and (III) of Rule 7 of the aforesaid Rules. It is further submitted that in addition to the aforesaid Recruitment Rules of 2012, clauses (b) and (c) of the advertisement notice are supplement to the Recruitment Rules aforementioned which have not been adhered to by the selection Committee in the process of selection. It is contended that the selection Committee has not assessed the competing candidates on the basis of the criteria as laid down in Clauses (II) and (III) of Rule 07 of the Rules of 2012, which envisaged assessment of the credentials of the competing candidates and, on the basis of such assessment, preparation of a panel of upto three candidates in the order of merit to be placed before the Chairman, Governing Body for making selection/ appointment. It is urged that no such assessment of the competing candidates was made by the selection Committee on the strength of the laid down criteria and that, without such assessment, the selection Committee has prepared the panel beyond the mandate of Rules of 2012, thereby making the entire process of selection as *void ab initio* and illegal. With regard to the objection raised by the other side *qua* maintainability of the Writ Petition at this stage, Mr Bhat has referred to and relied upon two judgments rendered by the Hon'ble Supreme Court *viz.* **'(2020) AIR SC 2060'** titled **'Ramjit Singh Kardam & Ors. v. Sanjeev Kumar & Ors.'**; and **'(2016) AIR SCW 3373'** titled **'Veerendra Kr. Gautam & Ors.**

v. Karuna Nidhan Upadhyay & Ors. '. The learned Senior Counsel has further drawn the attention of the Court to notification dated 23rd of March, 2021, enclosed with the Objections so filed by the Respondents; whereby the competing candidates were informed to present themselves before the selection Committee along with original documents, credentials and reprints of publications at the time of interview, and submitted that the same was mere information and not notice of interview, besides reiterating that only five candidates were required to be called for interview in tune with the mandate of rules governing the subject.

03. Objections stand filed on behalf of the Respondents, resisting the averments made by the Petitioners in their Petition. Besides, Mr Shah Aamir, the learned Additional Advocate General, appearing for the Respondents, submitted that the Writ Petition is not maintainable on the ground that no final selection has been made by the Respondents, which would have violated any of the rights of the Petitioners. It is further submitted that the Respondents are, in due adherence to the recruitment rules governing the subject, in the process of completing the selection and that the Petitioners, in these circumstances, cannot, by any stretch of imagination, challenge the said ongoing process, that too on flimsy grounds which have no substance. It is contended that Clauses (b) and (c) of the advertisement notice restricting the number of candidates to five (05) or the panel to (03) have no statutory force as it is only the rules of 2012 which are applicable. In support of his submissions, the learned

Additional Advocate General has referred to the law laid down by the Hon'ble Apex Court in case titled '*S. B. Mathur & Ors v. Chief Justice of Delhi High Court and Ors: 1989 Supp (1) Supreme Court Cases 34*'.

04. When this matter was taken up for consideration on the very motion hearing, i.e., on 17th of August, 2021, the Respondents were directed to submit the relevant selection records before the Court, which direction was again reiterated vide Order dated 23rd of August, 2021. Today, when the matter came up for consideration, Mr Shah Aamir, the learned Additional Advocate General, produced the relevant selection records in a sealed envelope.

05. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter. I have also gone through the relevant selection records made available before the Court.

06. On the strength of the pleadings of the parties, coupled with the reference of the rules and the law made on the subject by the parties, the Court is of the considered opinion that, at this stage, none of the fundamental, legal or constitutional rights of the Petitioners stand violated by any action or inaction on the part of the Respondents, which would have formed a ground for this Court to show indulgence in the instant case. The Respondents are on record to make it clear that due adherence is made to the mandate of the recruitment rules in the entire process of selection, which are the primary and

basic source for making selection against the post of Principal, SKIMS Medical College & Hospital, Bemina. Besides, the Respondents have also produced the relevant records before the Court, which, on perusal, too, substantiate the stand taken by the Respondents that they are strictly following the mandate of the rules governing the field while taking the process of selection to its logical conclusion. Given this position, there is hardly any scope left for the Court to go deep into the matter while exercising jurisdiction under Article 226 of the Constitution. In that view of the matter and without making any further observations or recording any finding at this stage, which may otherwise prejudice the cause of either of the parties on culmination of the process of Selection, the Court is unable to accept the contentions of the petitioners *qua* violation of the mandate of the relevant recruitment rules on the part of the Respondents in the ongoing process of selection against the post of Principal, SKIMS, Medical College & Hospital, Bemina.

07. The case law cited by the learned Senior Counsel representing the Petitioners has its genesis to different set of facts and circumstances, as such, same is not applicable to the case of the present Petitioners.

08. In the above background, I do not find any merit in this Petition, which is, accordingly, ***dismissed***, along with any connected CM pending therewith. Interim direction(s), if any, subsisting as on date, shall stand vacated.

09. The relevant selection records, as produced before the Court in a sealed envelope, are returned to Mr Shah Aamir, the learned Additional Advocate General, in the open Court after their proper re-sealing by the Bench Secretary of this Court.

10. As prayed for, let a copy of this Order be provided to Mr Shah Aamir, the learned Additional Advocate General, under the seal and signatures of the Bench Secretary, today itself.

(Ali Mohammad Magrey)
Judge

SRINAGAR

August 31st, 2021

"TAHIR"

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| i. | <i>Whether the Judgment is reportable?</i> | <i>Yes/ No.</i> |
| ii. | <i>Whether the Judgment is speaking?</i> | <i>Yes/ No.</i> |