

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT JAMMU**

**SWP No. 446/2008**

**Deeraj Singh**

**...petitioner**

Through: -Mr.C.M.Koul Sr. Advocate with  
Mr. A.R.Bhat Advocate

Vs.

**State of J&K and ors**

**...respondents**

Through: - Mr. Raman Sharma AAG  
Mr. Aakash Kotwal Advocate

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT(ORAL)**

1           The petitioner has challenged order No. 214/NRHM of 2008 dated 10.03.2008 issued by respondent No.2 to the extent of engagement of respondent No.4 as Laboratory Assistant under NRHM. A direction has also been sought by the petitioner upon the official respondents seeking his engagement as Laboratory Assistant in CHC, Marwah.

2           Form a perusal of the pleadings of the parties, it appears that a Notification No.02 dated 16.10.2007 was issued by respondent No.2 whereby applications were invited for contractual appointments in various categories at different levels in the erstwhile District Doda. Six posts of Laboratory Assistants were also advertised vide the said notification which was published in a Newspaper on 17.10.2007. A corrigendum to the said notification, was issued vide

No.NRHM/DDC/9954 dated 24.10.2007 whereby, besides increasing the number of posts advertised, it was provided that the advertisement of the posts should be read for Districts Doda, Kishtwar and Ramban instead of the erstwhile District Doda. It was further provided that the candidates should be the residents of the erstwhile J&K State and that preference will be given to local candidates. It was also provided that number of posts advertised for the position of Laboratory Assistant would be six (two each) and as per the corrigendum, number of such posts was increased to (12).

3 It seems that, in response to the aforesaid notification, the petitioner, who was eligible for the post of Laboratory Assistant, applied for the said post, but after participating in the selection process, he was not selected. Instead, respondent No.4, in terms of the impugned order dated 10.03.2008, was selected as a Laboratory Assistant for CHC, Marwah.

4 The petitioner has challenged the action of the official respondents relating to his non-selection and selection of respondent No.4 primarily on the ground that he is a resident of District Kishtwar where CHC Marwah is located, whereas, respondent No.4, who has been appointed as a Laboratory Assistant, is a resident of Bhaderwah which falls in District Doda. Therefore, the official respondents have acted illegally, inasmuch as, they were obliged to give preference to a local candidate- in this case, the petitioner. It has been further contended that, as per the Advertisement Notice, two posts of

Laboratory Assistant were earmarked for each of the three Districts viz. Doda, Ramban and Kishtwar. Therefore, for the posts earmarked for District Kishtwar, it is the petitioner and not respondent No.4 who could have been engaged as a Laboratory Assistant.

5 The official respondents have taken a stand that, at the time of issuance of the Advertisement Notice, there was only one District Rural Health Society headquartered at Doda, whereas, at the time of the interview, Doda District had been divided into three Districts viz. Doda, Kishtwar and Ramban. It has been submitted that a policy decision was taken wherein the selection was decided to be made by treating the three Districts as one erstwhile District as the District Health Societies in other two Districts were not functional at the relevant time. Accordingly, as per the said policy decision, any candidate belonging to the erstwhile District Doda was treated as a local candidate, and 10 additional marks were awarded to each of such candidates. It has been submitted that the petitioner as also respondent No.4, who belong to the erstwhile District Doda, were awarded 10 additional marks, but while assessing the overall merit, the petitioner secured only 57.00 points, whereas respondent No.4 secured 65.40 points, out of 100 points, thus, stealing a march over the petitioner. It has been submitted that, on the basis of superior merit of respondent N.4, he has been engaged, whereas the petitioner because of his inferior merit has not been found fit for selection.

7 Respondent No.4 has also contested the writ petition by filing his objections in which he has submitted that there is no condition in the Advertisement notice that would suggest that two posts of Laboratory Assistants were specified for District Kishtwar. It has been contended that the petitioner does not even figure in the waiting list, as such, he cannot claim selection to the advertised post because of his inferior merit.

8 I have heard learned counsel for the parties and perused record of the case.

9 So far as the facts pleaded by the parties are concerned, the same are not in dispute, except to the extent of earmarking of posts for the three Districts. While the petitioner claims that, in terms of the advertisement notice, two posts of Laboratory Assistants were earmarked for each of the three Districts, namely Doda, Kishtwar and Ramban, respondents, on the other hand, contend that there was no such earmarking of posts District-wise, but two posts each were earmarked for various Health Centers located in erstwhile District Doda.

10 Without going into the question whether the posts of Laboratory Assistants were earmarked District-wise or Health Center-wise, when we have a look at the impugned order dated 10.03.2008, it shows that one candidate Sh. Sanjeev Kumar Sharma, who belongs to District Kishtwar, is figuring at S.No.3 of the waiting list, whereas, the petitioner does not figure even in the waiting list,

meaning thereby that he has secured less points than Sh. Sanjeev Kumar Sharma. Thus, if at all, preference was to be given to any local candidate belonging to District Kishtwar for engagement as Laboratory Assistant in CHC, Marwah which falls in District Kishtwar, it was Sh. Sanjeev Kumar Sharma, who was entitled to such preference because of his superior merit. Thus, even if the contention of the petitioner is accepted, it is Sh. Sanjeev Kumar Sharma, who is to be considered for selection as Laboratory Assistant in place of respondent No.4 and not the petitioner. On this ground alone, the claim of the petitioner deserves to be rejected.

11            Apart from the above, if we have a look at the Advertisement Notice, it does not debar the candidates from other Districts of erstwhile J&K State from participating in the selection process. It has been clearly laid down in the Advertisement notice that a person to be eligible for participating in the selection must be a resident of J&K State. Thus, anyone, who was a resident of erstwhile J&K State, was eligible to participate in the selection process. The criteria mentioned in the Advertisement notice provided for preference to local candidates. The expression 'preference in selection' has been a subject matter of discussion and debate before the Supreme Court in a number of cases. It would be apt to refer to some of these cases so as to understand the interpretation of 'preference clause'.

12            In the case of **Secretary, (Health), Department of Health & F.W vs Dr. Anita Puri and ors, (1996) 6 SCC 282**, the

Supreme Court, while holding that a preferential qualification does not, as of right, entitle a candidate to selection, observed as under:

*“Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is higher qualification than the minimum qualification required for the post and the Respondent No. 1 was having that degree. The question then arises/is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination, it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of a person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the Other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held; his general aptitude for the job to be ascertained in course of interview, extra-curriculum activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in*

*holding that a M.D.S. qualified person like Respondent No. 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed”.*

12 Again, in the case of **Secretary, A.P. Public Service Commission v. Y.V.V.R. Srinivasulu, (2003) 5 SCC 341**, the Supreme Court interpreted the word “preference” in the following manner:

*“The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involve, a qualifying test, a written examination and oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all round merit, if had to be adjudged in that manner only what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The rules do not provide for separate classification of those candidates or apply different norms of selection for them. The 'preference' envisaged in the rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through Public Service Commission, on the basis of merit performance but also would work great hardship and injustice to those who possess the required*

*minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority, merit wise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when anyone or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-a-vis others in the matter of actual selection”.*

13 From the foregoing analysis of the law on the subject, it is clear that concession of ‘preferential treatment’ is available to a candidate if the merit of the said candidate is at par with the merit of the other candidate who is not entitled to preference in terms of the criteria. In other words, the preference does not constitute a reservation but it only provides that in case all things are equal between two candidates, the preference would be given to a candidate, who, as per the criteria, is eligible for preference.

14 Coming to the facts of the instant case, even if we go by the logic of the petitioner that preference was to be given to the candidates belonging to District Kishtwar while considering the selection to the posts of Laboratory Assistant in CHC Marwah, which is located in District Kishtwar, the comparative merit of the petitioner and respondent No.4, after excluding (10) additional marks which were given by the selection committee to all the candidates belonging to erstwhile District Doda would show that rank of the petitioner was far below the rank of respondent No.4. Once the merit of the petitioner was



inferior to the merit of respondent No.4, the question of preference would not arise. As already stated, the preference clause in favour of the petitioner, being a local candidate of District Kishtwar, was to be resorted to only if his merit was equivalent to the merit of respondent No.4 which is not the case here. On this ground also, the claim of the petitioner deserves to be rejected.

15 For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. Interim direction, if any, shall stand vacated.

(Sanjay Dhar)  
Judge

**Jammu**  
08.11.2024  
"Sanjeev,"

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

