

Dr. Ghanshyam Dev and anr. Vs. Dr. Ranbir Singh and ors.

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Court : Jammu and Kashmir

Decided On : Feb-10-2006

Reported in : 2006(2)JKJ1

Judge : B.A. Khan, C.J. (A) and; J.P. Singh, J.

Acts : Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 - Rule 24 and 24(1); ;Jammu and Kashmir Medical Education (Gazetted) Recruitment Rules, 1979 - Rule 13; ;Government Doctors (Relaxation of Restrictions on Private Practice) Rules, 1987 - Rule 4

Appeal No. : LPA(SW) Nos. 353 and 366/99

Appellant : Dr. Ghanshyam Dev and anr.

Respondent : Dr. Ranbir Singh and ors.

Advocate for Def. : U.K. Jalali, Sr. Adv. for Respondent No. 1,; D.K. Khajuria, Adv. for Respondent No. 2,;

Advocate for Pet/Ap. : A.V. Gupta, Sr. Adv.,; K.R. Gupta and; Y.E. Tak, Adv

Disposition : Appeal allowed

Judgement :

J.P. Singh, J.

1. Aggrieved by judgment dated 16.07.1999 of the Writ Court and the interpretation of learned Single Judge of Rule 24(1Kb) of Jammu & Kashmir Civil Services (Classification, Control & Appeal) Rules 1956, Dr. Ghanshyam Dev has filed LPA(SW) No. 353/99 and Dr. Manju Gupta has filed LPA(SW) No. 366/99. Writ Court vide judgment impugned in these appeals, has issued directions in SWP Nos. 1591/97,575/99,1682/97,731/99,1100/97, 999/97 & 169/96.

2. Facts necessary for the resolution of the issues raised in these appeals may be summarized, thus:

3. Six persons namely Dr. Ranbir Singh, Dr. Gurcharan Lal Sharma, Dr. Ghanshyam Lal Sharma, Dr. Manju Gupta, Dr. Sunita Malhotra & Dr. Ghulam Jeelani Gurku were appointed as Lecturers in 'Radio Diagnosis and Imaging' in the pay scale of Rs. 1400-4000 on regular temporary basis in the J&K; Medical Education (Gazetted) Service against available vacancies vide Government Order No. 537-GR/H&ME; of 1991 dated 27.06.1991. This Government Order reads as under:

Government of Jammu and Kashmir

Civil Sectt. Health and Med. Education.

Subject:- Appointment of Lecturers in Radio Diagnosis and Imaging in the Medical Education Service.

Government Order No. 537- GR/H&ME; of 1991

Dated 27-6-1991

In pursuance of the recommendations of the J&K; Public Service Commission, sanction is accorded to the appointment of the following doctors as Lecturers (Rs. 1400-4000) in Radio Diagnosis and Imaging on regular temporary basis in the Medical Education Service against the available posts:

1. Dr. Ranbir Singh S/O Hira Singh.

2. Dr. Gurcharan Lal Sharma C/O S-6, Medical College, Enclave, Jammu.

3. Dr. Ghanshyam Lal Sharma S/O Tej Ram Sharma.

4. Dr. Mannu Gupta W/O Dr. Udhvir Gupta.

5. Dr. Sunita Malhotra W/O Alok Gupta.

6. Dr. Gh. Jeelani Gurkha S/O Khazir Mohd Gurkha.

Their appointments shall be subject to the following conditions:

(a) They shall be on probation for 2 years and their confirmation in the service shall be regulated under the provisions of Classification, Control and Appeal Rules, 1956 as required under Rule 13 of the J&K; Medical Education (Gazetted) Recruitment Rules, 1979, and;

(b) They shall not undertake private practice in terms of Rule 4 of the Government Doctors (Relaxation of Restrictions on Private Practice) Rules, 1987.

Consequent upon the above appointment, the following postings are hereby ordered:

(1) Dr. Ranbir Singh)(2) Dr. Gurcharan Lal Sharma) Medical College(3) Dr. Ghulam Jeelani Ghurkha) Srinagar.(4) Dh. Ghanshyam Lal Sharma)(5) Dr. Manju Gupta) Medical College(6) Dr. Sunita Malhotra) Jammu.They shall report to the respective Principals within a period of 15 days failing which their appointment shall be cancelled without further notice. By order of the Governor.

Sd/-

Commr I Secretary to Govt.

Health and Med. Education.

ME-GM-59/91 27.6.1991 Copy to the:

1. Principal Medical College, Srinagar/Jammu.

2. Director, Health Services, Sgr/Jammu.

3. Concerned doctors for compliance.

4. Personal files of the doctors.

5. Govt. order file.

3. A Corrigendum was issued to this Government Order on 03.10.1991, which reads as under:

Government of Jammu & Kashmir Health and Medical Education Department;

Sub: Selection of the candidates for the posts of Lecturers in

Radio-Diagnosis in the Deptt. of Medical Education.

Corrigendum to Govt. Order No: 537 GR (HME) of 1991

Dated: 27-06-1991

Please read:

1/ Dr. Ranbir Singh S/O Hira Singh H. No. 570, Nai Basti Jammu.

2/ Dr. Ghanshyam Dev S/O Tej Ram Gupta, 92- Mohalla Partap Garh, Jammu.

3/ Dr. Gurcharan Lal Sharma, S-6 Medical College, Enclave, Opp. K. C. Theatre, Jammu.

4/ Dr. Manju Gupta W/O Dr. Udhvir Gupta, E-7 Medical Enclave, Jammu.

5/ Dr. Sunita Malhotra W/O Alok Gupta 566-A Gandhinagar Jammu.

6/Dr. Ghulam Jeelani Gurku S/O Khazir Mohd Gurku, Malchimar Maharaj Gunj Srinagar.

instead of:

1/ Dr. Ranbir Singh S/O Hira Singh.

2/ Dr. Gurcharan Lal Sharma C/O S-6 Medical College Enclave Jammu.

3/ Dr. Ghanshuam Lal Sharma S/O Tej Ram Sharma.

4/ Dr. Mannu Gupta W/O Udvir Gupta.

5/ Dr. Sunita Malhotra W/O Alok Gupta

6/Dr. Ghulam Jeelani Gurkha S/O Khazir Mohd Gurkha appearing in para 1st of Govt. Order No. 537- GR (HME) of 1991 dated 27.06.1991.

By order of the Government of Jammu & Kashmir.

Sd/-Under Secretary to Govtt.Health & Medical Education Deptt.No. ME-GM-59/91
Dated 3.10.1991.Copy to the:

1/ Principal Medical College, Jammu/Srinagar.

2-5/

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NO : JMC/ESTT/GO/101/847 dt. 26.10.1991 Copy for information forwarded to the:

1/ HOD of Radio Diagnosis & Imaging, Govt. Medical College, Jammu.

2/ Accounts Officer, Govt. Medical College, Jammu.

3/ Personal files of doctors.

Sd/-

Administrative Officer,

Govt. Medical College,

Jammu.

4. Dr. Ranbir Singh did not join Government Medical College, Srinagar, where he had been offered appointment as Lecturer in 'Radio Diagnosis and Imaging'

against available vacancy. He instead, initially filed SWP No. 598/91 in Jammu Wing of this Court and thereafter SWP No. 1022/91 in Srinagar Wing of this Court. Art interim order was passed in SWP No. 1022/91, which for facility of reference is reproduced hereunder:

Mr. Bilal Naziki.

Mr. Naziki learned Counsel for the petitioner at the outset submitted that this petition virtually pertains to Jammu wing of the High Court as the parties belong to Jammu. However, according to him, the petition has been presented before this Court under extra ordinary circumstances because the lawyers at Jammu were on strike and the petitioner had to come a long way to Srinagar for processing his grievances through the medium of this petition.

Heard. Issue notice to the respondents returnable within six weeks. Issue notice in the CMP also returnable within same period with the direction, subject to the objections, to (of) the respondents that if any post is lying vacant at Jammu in the discipline the petitioner has qualified the respondents 1, 2, 3 and 4 are at liberty to adjust him on that post making alternative arrangements for the post the petitioner was initially appointed under order impugned Annexure P-A dated 27.6.1991. This direction is, however, subject to the risk and cost of the petitioner.

The file be sent to the Jammu wing of the Court and the Deputy Registrar of that wing will place the file before the appropriate bench after the notices are served.

5. This interim order was questioned by the State of Jammu & Kashmir and its functionaries in LPA (SW) No. 134/91. The Letters Patent Bench disposed of the appeal on the basis of a consent order, which reads as under.-

The learned Single Judge of this Court in CMP (SW No. 1025/1999) filed in writ petition No. 757/1991 has issued a direction on October 3rd. 1991, requiring Principal, Medical College Jammu, to adjust Dr. Ranbir Singh respondent No. 1 herein in the department of Radio Diagnosis and Imaging, against any of the available vacancies. This LPA has been filed against the said order by Principal, Medical College Jammu and others, showing inability of the Principal, Medical

College Jammu, to adjust respondent No. 1, having no authority for the said purpose. Mr. Bhardwaj learned Counsel appearing for the appellants has pointed out that the Principal Medical College Jammu, having jurisdiction only over Medical College Jammu, cannot transfer a person from Medical College Srinagar, As Dr. Ranbir Singh has been posted under the orders of the Government at Srinagar as Lecturer. His further contention in this regard is that the Principal, Medical College Jammu, has another difficulty in view of the fact that one more candidate Dr. G. L. Sharma is also required to be adjusted in Medical College Jammu, for which the Principal has already made recommendation to the Commissioner- cum-Secretary to Government, Health and Medical Education Department. Mr. Johl learned Counsel appearing for respondent No. 1 has, however, pleaded that there are four vacancies of Lecturers in Medical College Jammu, and respondent No. 1 can easily be adjusted against one of these vacancies, by the Principal in light of the order of the learned Single Judge.

After discussing the matter, the learned Counsel for both the sides have agreed for the disposal of this Letters Patent Appeal with a direction that Commissioner- cum-Secretary to Government, Health and Medical Education Department Jammu, shall consider the adjustment of Dr. Ranbir Singh, respondent No. 1 and also similarly situated other candidates, who have been appointed as Lecturers in Radio Diagnosis and Imaging against the available vacancies in Medical College Jammu, as such, consideration shall be made within a period of one month positively. We order accordingly.

6. Dr. Ranbir Singh and Dr. Gurcharan Lal Sharma were adjusted at Government Medical College, Jammu, against posts other than those against which they had been appointed. This is evident from Government Order No. 19 HME of 1992 dated 21.02.1992, which was issued after the order of the Division Bench. This order reads as follows:

Government of Jammu & Kashmir

Health & Medical Education Department.

Subject: Appointment/Adjustment of Lecturers in the discipline of Radio-Designing & Imaging.

Govt. Order No : 19- HME of 1992

Dated: 21- 02- 1992.

Dr. Ranbir Singh and Dr. G. L. Sharma appointed as Lecturers in Radio Diagnosis vide Government Order No: 537- HME of 1991 dated 27.6.1991 and are under orders of posting in the Medical College Srinagar shall no report in the Medical College, Jammu for duty where their salaries shall be drawn against the available posts of Assistant Professors Radio Diagnosis and Lecturers in Radio-Therapy respectively.

By order of the Govt. of Jammu and Kashmir.

Sd/-

Deputy Secretary to Govt.

Health & Medical Education Deptt.

7. These two persons joined on 22.02.1992 pursuant to the aforesaid Government Order. A revised seniority list of members of the department of Radio Diagnosis and Imaging was issued vide Government Order No. 40-HME of 1996 dated 18.01.1996, which placed first respondent, Ranbir Singh, at No. 1, appellant - Ghanshyam Dev at No. 2, second respondent - Gurcharan Lal Sharma at No. 3 and appellant - Manju Gupta at No. 4, and rest of the members of Radio Diagnosis and Imaging Department were shown thereafter. This Government Order was questioned by the appellant in Writ Petition No. 169/96. It appears that the seniority list of the members of the J&K; Medical Education (Gazetted) Service in the department of Radio Diagnosis and Imaging, was re-fixed by Government Order No. 572-HME of 1997 dated 19.06.1997, placing appellant- Dr. Ghanshyam Dev at No. 1 and first respondent, Dr. Ranbir Singh, at No. 2 of the seniority list, issued earlier vide Government Order No. 40-HME of 1996 dated 18.01.1996. First respondent, Dr. Ranbir Singh, questioned the re-fixation of seniority in SWP

No. 999/97. Dr. Manju Gupta and Dr. Sunita Malhotra questioned the placement of Dr. Ranbir Singh at No. 2 in the seniority list, in SWP No. 1100/97. It appears that the placement of the members of J&K; Medical Education (Gazetted) Service in the department of Radio Diagnosis and Imaging was again re-fixed vide Government Order No. 852-HME of 1997 dated 03.10.1997, placing appellants Dr. Ghansham Dev and Dr. Manju Gupta at No. 1 & 2 respectively and Dr. Sunita Malhotra at No. 3 and first & second respondents, Dr. Ranbir Singh & Dr. Gurcharan Lal Sharma, at Nos. 5 & 6 respectively. Position No. 4 was allotted to one Dr. Ghulam Jeelani Gurku. First respondent, Dr. Ranbir Singh, questioned this order in SWP No. 1591/97.

8. Before proceeding further, it would be advantageous to refer to the disposal of SWP No. 598/91, which was the first petition filed by First respondent, Dr. Ranbir Singh, in Jammu Wing of this Court. This petition was dismissed as withdrawn vide order dated 22.07.1991. For facility of reference, this order reads as follows:

Mr. K.S. Johl.

Mr. Johl prays that this petition be dismissed as withdrawn. The petition is therefore dismissed as withdrawn.

9. The second writ petition, after having been filed at Srinagar Wing of the Court and numbered as SWP No. 1022/91 (renumbered as SWP No. 757/91 at Jammu), too was dismissed as infructuous vide order dated 07.12.1992, which reads as follows:

Mr. K. S. Johal.

Mr. M. K. Bhardwaj.

Mr. Johal, learned Counsel for the petitioner submits that due to the supervening events the writ petition has become infructuous and may be disposed of as such. I order accordingly.

10. On the basis of the aforementioned facts, learned Single Judge of this Court held as follows:

In view of the above discussion, it is held:

(i) that under R.24(1)(b), the merit as determined by the Selecting Authority is to determine the seniority;

(ii) that a person would lose his seniority if he does not join the vacancy offered to him;

(iii) that in this case, the concept mentioned at si. No. (ii), would apply because in the latter order issued on 21st Feb '92, two doctors were offered vacancies in continuation of earlier order issued on 27th June '91. As this was in continuation of the original order, therefore, the interpretation as indicated at si. No. (i) would apply to the facts of these cases;

(iv) that the petitioner Dr Ranbir Singh approached this Court. In the litigation initiated by him, a consent order was passed. The State Government agreed to the stand taken by Dr. Ranbir Singh. It was in pursuance of that a vacancy was offered. This offering of vacancy at a latter date was in continuation of the order issued on 27th June '91 and this contention was found justifiable by the State Government;

(v) that if the State Government was of the view that the petitioner Dr Ranbir Singh has not joined the vacancy offered to him, then the proper course was to not to offer any job to him. The State Government should have relied upon the last lines in the original order dt. 27th June '91. Having not resorted to the clause referred to above and having offered a vacancy in continuation of the original order, petitioner Ranbir Singh would be deemed to have offered the vacancy in order of merit determined by the Public Service Commission.

In view of the above, Dr. Ranbir Singh and Dr. G. L. Sharma are entitled to their seniority in terms of merit determined by the Public Service Commission;

(vi) that so far as inter se seniority of Dr. G. L. Sharma and Dr. Ghanshayam Dev is concerned, this would be settled by looking into the records as maintained by the Public Service Commission at the time of issuance of original order dt. 27th June '91.

The writ petitions preferred by Dr Ranbir Singh i.e. SWP 1591/97, 999/97 and SWP No. 1682/97 preferred by Dr G. L. Sharma are disposed of accordingly.

(vi) that so far as writ petition preferred by Dr Manju Gupta and Dr Sunita Malhotra i.e. SWP 1100/97 is concerned, the same shall stand dismissed.

11. Learned Single Judge further directed that dispute regarding further promotion covered by SWP No. 575/99 and SWP No. 731/99 would be decided in view of the interpretation given by the Court in SWP No. 1591/97 and SWP No. 1682/97, after the State Government gave a fresh look to the matter in accordance with the decision referred to above.

12. Dr. Ghansham Dev and Dr. Manju Gupta are aggrieved by the judgment of Writ Court and have filed two appeals being LPA(SW) No. 353/1999 and LPA(SW) No. 366/1999 respectively.

13. Sh. A.V. Gupta, learned senior counsel appearing for the appellants, submits that the appellants and the respondents were offered appointment as Lecturers in 'Radio Diagnosis and Imaging' on regular temporary basis in J&K; Medical Education (Gazetted) Service against available vacancies and had to report to the Principal of the respective Medical Colleges within a period of fifteen days, failing which their appointment was to be cancelled without further notice. According to learned Counsel, non-joining of any of these persons on any day within a period of fifteen days, would not affect seniority of these persons, which was to be determined according to the merit of these persons determined as such at the time of their selection by the Public Service Commission and reflected in Government Order No. 537-GR/H&ME; of 1991 dated 27.06.1991. This position, however, argues the learned Counsel, would not survive in case any of these persons did not join their respective places of posting within the period fixed in the appointment order and in which case the candidate joining first would rank senior to the other joining after the period prescribed in the order regardless of the merit determined by the Public Service Commission at the time of selection of lecturers. Learned Counsel submits that order passed by the Division Bench in LPA(SW) No. 134/91 and Government Order No. 19-HME of 1992 dated 21.02.1992, would not come to the rescue of those candidates who had opted not to join their offered vacancies at

the respective Medical Colleges. This, according to the learned Counsel, is the true and correct spirit behind Rule 24 (1Kb) of the J&K; Civil Services (Classification, Control and Appeal) Rules, 1956.

14. Finding of the learned Single Judge has, thus, been questioned by the learned Counsel appearing for appellants on the above premise. Learned Counsel refers to 'C.V. Raja Rao and Anr. v. Mirza Basheer Baig and Ors.' reported as : (1996)9SCC209 ; 'Dr. Paradeep Kumar Khajuria v. State and Ors.' reported as 1997 KLJ 135; 'Dr. Mrs. Madalsa Bargotra v. State of J & K and Ors.' reported as 1995 SLJ 11; and 'Union of India and Ors. v. Sh. Somasundaram Viswanath and Ors.' reported as AIR 1988 SC 2255.

15. Sh. U. K. Jalali, learned senior counsel appearing for first respondent, Dr. Ranbir Singh, and Sh. D. K. Khajuria, learned Counsel appearing for second respondent, Dr. Gurcharan Lal Sharma, submit that the consent order passed by the Letters Patent Bench followed by Government Order No. 19-HME of 1992 dated 21.02.1992, modifies Government Order No. 537-GR/H&ME; of 1991 dated 27.06.1991 in so far as it directs the posting of first and second respondent at Government Medical College, Srinagar. Learned Counsel submit that after having implemented consent order of the Division Bench, the State Government is not justified in depriving respondents of their seniority position, which they had earned because of their higher merit determined by the Public Service Commission and their entitlement to senior position in the seniority list in terms of Rule 24(1)(b) of J&K; Civil Services (Classification, Control and Appeal) Rules, 1956. Whereas Sh. Jalali refers to 'Chairman, Puri Gramya Bank and Anr. v. Ananda Chandra Das and Ors.' reported as : (1994)6SCC301 . Sh. D.K. Khajuria refers to 'Abdul Rashid Mir v. State and Ors.' reported as 2005 (1) SLJ 124.

16. We have considered the submissions of learned Counsel for the parties, the finding of learned Single Judge as also Rule 24(1Kb) of J&K; Civil Services (Classification, Control and Appeal) Rules, 1956. We have also gone through the judgments referred to by learned Counsel in support of their respective contentions.

17. Before proceeding to resolve the issue raised by learned Counsel, we would refer to Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, which reads, thus:

24. Seniority.- (1) The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.

Note. 1. - The rule in this clause will not effect the seniority on the date on which these rules come into force of a member of any service, class, category or grade as fixed in accordance with the rules and orders in force before the date on which these rules come into force. Interpretation.- The words 'date of first appointment' occurring in the above rule will mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment on probation on a clear vacancy, confirmation in the latter case being subject to good work and conduct and/or passing of any examination or examinations and/or tests:

Provided that the inter se seniority of two or more person appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being posted to different stations, be determined-

(a) in the case of those promoted by their relative seniority in the lower service, class, category or grade:

(b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections:

(c) as between those promoted and recruited direct by the order in which appointments have to be allocated for promotion and direct recruitment as

prescribed by the rules.

Note: 2. -Any substantive appointments or permanent promotions made in any department prior to 15th May, 1953, will not be disturbed if otherwise in order unless such appointments or promotions are already the subject of any appeal, review or revision or otherwise pending decision.

(2) A member of a service, class, category or grade, unless he is reduced in seniority as a punishment shall retain seniority in such service or grade as determined by Sub-rule (1) notwithstanding any delay in the completion of his probation or his appointment as a member of such service, class, category or grade. (3) Where a member of any service, class, category or grade reduced to a lower service, class, category or grade he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall rank in such lower service, class, category or grade next below any specified member thereof.

18. Rule 24(1), quoted above, provides that seniority of a person, governed by the Jammu & Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956, is to be determined by the date of his first appointment to such service, class, category or grade as the case may be.

The expression 'date of first appointment' has been interpreted as the date of first substantive appointment or the date of first appointment on probation on a clear vacancy.

Proviso appended to Rule 24(1), in its sub-division, inter alia lays down:

(i) the method of determination of seniority in case of those who are promoted from the lower service, class, category or grade; and

(ii) determination of inter-se seniority of those recruited direct.

19. Rule 24(1)(b) lays down that seniority of those recruited direct is to be fixed on the basis of positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purposes of making selection.

20. There is, however, an exception carved out in regard to the determination of the seniority of those who are recruited direct and that exception is regarding those candidates who do not join their duties when the vacancies are offered to them.

21. This exception is precisely the bone of contention between the parties, interpretation whereof will govern the determination of seniority between the appellants and the respondents.

22. Reference to the reliefs sought by the first respondent in SWP No. 598/91 and SWP No. 757/91 may also be necessary for appreciating the controversy raised by the parties. Reliefs sought in these two petitions read as under:

SWP No. 598/91.

It is, respectfully, prayed that for the reasons stated, herein above and others to be urged at the time of arguments, issue:

(a) an appropriate re-direction or order in the nature of writ of Certiorari quashing the Government order No. 537.GR/HME of 1991 dated 27.6.1991 in so far as it makes the posting of the respondents No. 5 to 7 as Lecturers in Radio Diagnosis and Imaging in Medical College at Jammu and posting the petitioner as Lecturer in the Medical College Srinagar;

(b) a further re-direction or order in the nature of 'writ of Mandamus' commanding the respondents Nos. 1 and 2 to post the petitioner as Lecturer in the Medical College at Jammu instead of Medical College at Srinagar;

(c) such other appropriate order which this Hon'ble Court deems fit in the facts and circumstances of the case, in favour of the petitioner. SWP No. 757/91.

It is, respectfully prayed for the reasons stated, hereinabove and others to be urged at the time of arguments, issue:

(a) an appropriate re-direction or order in the nature of writ of Certiorari quashing the Government order No. 537/Gr/HME dated: 27.6.1991 in so far as it makes the posting of the respondents No. 4 to 6 as Lecturers in Radio Diagnosis and Imaging

in Medical College at Jammu and posting the petitioner as Lecturer in the Medical College, Srinagar;

(b) a further re-direction or order in the nature of writ of Mandamus commanding the respondent No. 1 to post the petitioner as Lecturer in the Medical College at Jammu instead of Medical College, at Srinagar;

(c) such other appropriate order which this Hon'ble court deems fit in the facts and circumstances of the case, in favour of the petitioner.

23. These writ petitions have been dismissed, one as withdrawn and the other as having been rendered infructuous.

24. It would, thus, mean that relief of modification of Government Order No. 537-GR/H&ME; of 1991 dated 27.06.1991 sought by the first respondent, stands withdrawn and denied to the first respondent. The consequence of withdrawal and dismissal of these writ petitions is that Government Order No. 537- GR/H&ME; of 1991 dated 27.06.1991, remains intact and without any modification.

25. Effect of order passed by the Letters Patent Bench and the Government Order passed pursuant thereto, may now be examined.

26. Order passed by the Letters Patent Bench is an interim order though passed with the consent of the parties.

27. This interim order loses its effect, if it had one, (which question we will be dealing later) on the culmination of proceedings in SWP No. 1022/91 (renumbered as SWP No. 757/91 at Jammu).

28. Interim orders passed during the currency of a lis, lose significance and effect, and merge in the final order, which is passed in such a lis.

29. This position of law is settled in 'C. Kamatchi Ammal v. Kattabomman Transport Corporation Ltd. and Ors.' reported as : AIR1987 Mad173 ', and 'C. Kamatchi Ammal v. Kattabomman Transport Corporation Ltd. and Ors.' reported as : AIR1985 Mad295 . A Division Bench of the High Court of Madras, while affirming the view taken in : AIR1985 Mad295 , held as follows:

9 ...Even otherwise, all interlocutory orders made in the course of a proceeding in the nature of a suit must necessarily lapse with the decision of the suit itself, unless, of course, the suit is one for permanent injunction, and the interim injunction is made permanent as a part of the decretal order made by the Court....

30. First and second respondents, therefore, cannot derive benefit of the order passed by the Letters Patent Bench and the Government Order.

31. This apart, even if the order passed by the Letters Patent Bench and the Government Order were to be given effect to, the position of seniority of the parties as determined vide Government Order No. 572-HME of 1997 dated 19.06.1997 would remain the same because of the following reasons:

(i) Order passed by the Letters Patent Bench proceeds on the premise that the vacancies of lecturers in the Radio Diagnosis and Imaging in Government Medical College, Jammu, were available against which the Government had been directed to consider the adjustment of first and second respondent. This is apparent when we read the statement of learned Counsel for the first respondent, who is reported to have conveyed to the Letters Patent Bench that four vacancies of lecturers in the discipline of Radio Diagnosis and Imaging were available in the Government Medical College, Jammu. This statement, we find, was not based on correct factual position. This is apparent from Government Order No. 19-HME of 1992 dated 21.02.1992, whereby first and second respondent were permitted to report in Medical College, Jammu, where their salary was allowed to be drawn against the available posts of Assistant Professor Radio Diagnosis, and Lecturer in Radio Therapy respectively. This position has been affirmed by the State counsel that only two posts of lecturers were available in Government Medical College, Jammu, against which the appellants had joined pursuant to their selection vide Government Order No. 537-GRIHME of 1991 dated 27.06.1991 and started discharging their functions as such. This is also admitted by the parties that first and second respondents started discharging their functions of Lecturers in the Medical College, Jammu, only after issuance of Government Order No. 19- HME of 1992 dated 21.02.1992.

(ii) Neither the order of the Division Bench nor the Government Order has either directed or modified Government Order No. 537-GR/HME of 1991 dated 27.06.1991. In the absence of the modification of the aforementioned Government Order, the interim order of the Court cannot reverse the effect, which had come into operation because of the non joining of the first and second respondent within a period of fifteen days of the issuance of Government Order dated 27.06.1991.

(iii) The Division Bench's order directed the consideration of respondents against available vacancies of lecturers. First and second respondent could be adjusted in pursuant to the order of the Division Bench only if vacancies were available in Government Medical College, Jammu, in the discipline of Radio Diagnosis and Imaging, There being no vacancy available in Government Medical College, Jammu, the respondents cannot be said to have joined against available vacancies which would restore the loss of seniority of these respondents because of their joining later to the appellants. Nor can it be said that they were offered the vacancy of Lecturer in Radio Diagnosis & Imaging at Government Medical College Jammu, first time within the meaning of Rule 24(1)(b) to entitle them to the benefit of determination of seniority on the basis of merit position under this rule.

32. Rule 24(1Kb), as it so appears from its plain reading, carves out an exception to the proposition contemplated by this Rule that seniority of persons appointed pursuant to the holding of an examination would be determined on the basis of merit of the candidates in such selection. This Rule also provides that this position would not apply in respect of those candidates who do not join when the posts are offered to them. The expression 'except those who do not join their duties when vacancies are offered to them' is significant and disentitles those of its benefit who fail to join when vacancies were offered to them. It would loose its significance if non-joining of those offered appointments were to be treated at par with those who had joined at the time when the vacancies were offered to them. It is the prerogative of the employer to adjust the appointees against available vacancies at such place(s) where these vacancies are so available. Merit of a candidate at the time of the selection has absolutely no role to play while considering the adjustment and posting of the appointees against available vacancies. These respondents, therefore, did not have any option but to join their notified places of

posting within the stipulated period failing which the consequence contemplated by the exception occurring in Rule 24(1Kb) had to follow.

33. Non joining of first and second respondent to their notified places of posting at Srinagar, in our opinion, had, thus, allowed Rule 24(1)(b) barring its exception to operate only in respect of the appellants who had joined their notified places of posting at Jammu. Later joining of the respondents at Jammu and that too against non existent vacancies would not, in our opinion, be treated as their joining within the stipulated period in terms of Government Order dated 27.06.1991, nor can the subsequent Government Order No. 19- HME of 1992 dated 21.02.1992 be treated to have offered vacancies to the respondents in 1992 so as to attract the operation of Rule 24(1)(b) of the J&K; Civil Services (Classification, Control and Appeal) Rules, 1956, (barring its exception).

34. We are, thus, of the view that first simultaneous offer of appointment to the appointees i.e., the appellants and the respondents would put Rule 24(1)(b) in gear, which would operate for fifteen days and all those appointees who joined within these fifteen days would be assigned seniority according to the merit determined at the time of their selection. Thereafter the exception carved out by the Rule 24(1Kb) would come into operation and appointees joining later would not be entitled to claim seniority in terms of Rule 24(1)(b) of the J&K; Civil Services (Classification, Control and Appeal) Rules, 1956.

35. The view, which we are taking in these appeals, gets support from 'State of Haryana and Ors. v. Balwant Singh and Ors. reported as : (1996)9SCC209 , in which their Lordships of the hon'ble Supreme Court held as follows:

5. The question, therefore, is whether the respondents are entitled to seniority from 7th June, 1972 as per the gradation list prepared by the Selection Board Normally, the seniority of the candidates who are selected by the direct recruitment would be determined with reference to the merit list prepared by the Selection Board. But, unfortunately, in this case, they could not join the service due to the pendency of the writ petition. The respondents themselves have to be blamed for the laches since they did not take any action, namely impleading themselves in the pending writ petition nor filed any independent writ petition

claiming for their appointment. After the dismissal of the writ petition, letters of appointment came to be issued in 1985 and they joined the service. It is settled law that the seniority of the candidates has to be reckoned from the date on which they came to be appointed. In that view, since the respondents joined the service in 1985-86, seniority cannot be given with retrospective effect from the date of the selection to the candidates appointed from the list of merit prepared by the Selection Board.

36. Similar view has been expressed in case 'Dr. Mrs. Madalsa Bargotra v. State of J&K; and Ors.' reported as 1995 SLJ 11 and in case 'Dr. Pardeep Kumar Khajuria v. State and Ors.' reported as 1997 KLJ 135, where one of us (B.A. Khan-J, as Lord Chief Justice then was) held as follows:

6. All that remains to be seen is: whether petitioners appointment is liable to remain intact despite their non-joining in Srinagar Medical College in contravention of the terms of their appointment order and whether the condition incorporated in their appointment in their appointment order requiring them to join there within 21 days suffers from any illegality or infirmity ?

7. An examination of the appointment orders of the petitioners shows that all of them were appointed to the post of lecturer in various disciplines in Srinagar Medical College subject to certain terms and conditions including that they were require to be join there within 21 days from the date of issue of their respective appointment orders. Therefore, whatever right accrues to them, it springs from their respective appointment orders and such right is enforceable only in the context of the terms of these orders. Since they were appointed to the post of lecturer in the Srinagar Medical College with some conditions including that they were to join there within 21 days from the date of passing of the appointment order, it was for them to accept or reject this appointment. Once they accept it they had to do so alongwith the conditions contained in the order of appointment. They cannot be allowed to take the benefit of the order as regard their appointment to the post of lecturer and reject the condition laid down for such appointment. In other words they will have to sink or swim in accordance with the terms of their appointment. If they feel reluctant to abide by its terms, their appointment itself

comes under a cloud and cannot take effect.

8. Another aspect of the matter is that the petitioner's appointment would take effect on their joining the post of (*and*) their non-joining for whatever reasons renders their appointment order hollow and illusory which cannot be kept alive for all times to come. The order of appointment is only an offer which fructifies when the appointee joins on the post inhering (*in hearing*) rights in him to hold the post with all consequential benefits. But, where the appointee(s) fails to take benefit of the appointment order, no right accrues to him to keep his appointment order, (no right accrues to him to keep his appointment*) alive to the prejudice and detriment of the public interest and the interest of administration. Such an appointee cannot be allowed to have the best of both the worlds by not joining on the post to which he is appointed and by restraining the government-employer to cancel his appointment order and to declare the post vacant.

9. The impugned condition requiring the petitioners to join against the post of lecturer in Srinagar Medical College within 21 days, is an integral part of their appointment and as it is such a condition cannot be said to be suffering from any illegality or infirmity. If the petitioners are unable to join within the stipulated period, or for that matter, within the extended period, they cannot hang on to (*hing*) their appointment order and prevent its cancellation. After all they have no right to keep the post of lecturers blocked for all times to come till they may feel convenient to join at Srinagar Medical College. If it is impossible or inconvenient for them to join at Srinagar, the only inference that can be drawn is that they had failed to take the benefit of the appointment order and in that even offer of appointment would be revocable and the appointment order liable to cancellation. (Note: * as it so appears in the printed text.*)

37. Judgments cited by S/Shri U. K. Jalali and D. K. Khajuria do not deal with the issues raised in these appeals. 'Chairman, Puri Gramya Bank and Anr. v. Ananda Chandra Das and Ors.' reported as : (1994)6SCC301 , is not based on the interpretation of any such rule which is being interpreted by us in this judgment. This judgment lays down the general proposition in the following terms:

It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis.

38. This judgment, thus, does not advance the submission and case set up by the respondents.

39. Judgment cited by Sh. Dr. K. Khajurla in case 'Abdul Rashid Mir v. State and Ors.' reported as 2005 (1) SLJ 124, too does not deal with the issue in hand. It, on the other hand, reiterates the general proposition that seniority is required to be fixed according to the position attained by and assigned to the person appointed in the order of merit at the time of competitive examination. It holds that seniority cannot be fixed from the date of joining the service. This judgment does not deal with the effect of non joining when the vacancies are offered. This judgment rather specifically holds that the case in which the judgment was pronounced was not a case where respondents had not joined when the vacancies were offered to them. This judgment, therefore, does not advance the plea raised by learned Counsel for respondents.

40. We, therefore, hold that the view taken by the writ Court and the findings returned on misconception and misinterpretation of Rule 24, are wholly unsustainable and require to be set aside.

41. Consequently, the impugned judgment of learned Single Judge is set aside and these appeals allowed.

42. SWP Nos. 1591/97, 999/97, 575/99, 731/99 & 1682/97 shall stand dismissed.

43. SWP Nos. 100/97 & 169/96 are allowed. Writ petitioners in these petitions will be entitled to their position in the seniority list on the basis of what has been here

in these appeals.

There shall be no order as to costs.

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