

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

Reserved on : 05.03.2024.

Pronounced on : 02.04.2025.

Case:- **RP No. 87/2022 in
WP(C) No. 802/2022**

**J&K Public Service Commission
Through its Secretary,
Resham Ghar Colony, Jammu.**

.....Petitioner

Through: Mr. F. A. Natnoo, Advocate

Vs

- 1. Dr. Rajeev Gupta,
S/o Mohan Lal Gupta,
R/o H. No. 160, Basant Vihar, Ext. Sec-3, Trikuta Nagar, Jammu.
Tehsil and District, Jammu.**

....Respondent

- 2. U.T. of Jammu & Kashmir
Through Commissioner Secretary to Government
Health & Medical Education Department,
Civil Secretariat,
Jammu.**

- 3. Dr. Atul Sharma, Professor, Deptt. of Medical Oncology,
AIIMS, New Delhi.**

- 4. Dr. S. P. Kataria, Consultant and HOD,
Medical Oncology Deptt.
Safdarjung Hospital, New Delhi.**

- 5. Mohd. Hussain Mir,
S/o Gh. Qadir Mir,
R/o Dalwatch Gagasund Doru, Anantnag.**

..... Proforma - Respondents

Through:

**Coram: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGMENT**Rahul Bharti - J**

01. Heard learned counsel for the petitioner – Jammu & Kashmir Public Service Commission (“J&K PSC” in short).

02. The petitioner-J&K PSC came to prefer a writ petition WP(C) No. 802/2022 thereby seeking judicial review of a judgment dated 03.02.2022 passed by the Central Administrative Tribunal, CAT, Jammu Bench, Jammu in T. A. No. 61/6606/2020 titled “**Dr. Rajeev Gupta Vs State of J&K and Others**” and thereby sought quashment of said judgment.

03. Vide its said judgment dated 03.02.2022, the Central Administrative Tribunal, CAT, Jammu Bench, Jammu while allowing a petition filed by Dr. Rajeev Gupta-the respondent No. 1 herein, came to set aside selection of Dr. Mohd Hussain Mir- the proforma respondent No. 5 herein, as Lecturer Super Specialty (Medical Oncology), Govt. Medical College & Hospital, Jammu and simultaneously directed the petitioner-J&K PSC as well as the State of Jammu & Kashmir to consider the candidature of the respondent No. 1 – Dr. Rajeev Gupta for the post of Lecturer, Super Specialty (Medical Oncology), Govt. Medical College & Hospital, Jammu.

04. Against said judgment dated 03.02.2022, the proforma respondent No. 5 – Dr. Mohd. Hussain Mir, whose selection and

prospective appointment suffered negation on account of the effect of the said judgment, chose not to challenge it by any mode much less by filing a writ petition. Even the Govt. of Jammu & Kashmir, which figured as the respondent No. 1 in the case before the Central Administrative Tribunal, CAT, Jammu Bench, Jammu, had chosen not to challenge said judgment dated 03.02.2022 of the Central Administrative Tribunal, CAT, Jammu Bench, Jammu.

05. It is the petitioner – J&K PSC, purportedly acting through its Secretary, which came forward with the institution of a writ petition WP(C) No.802/2022 thereby seeking quashment of judgment dated 03.02.2022 of the Central Administrative Tribunal, CAT, Jammu Bench, Jammu.

06. Said writ petition came to be heard by this Bench and the same came to be dismissed in limine by virtue of a judgment dated 05.05.2022 holding the lack of *locus-standi* of the petitioner – J&K PSC to feel aggrieved of said judgment dated 03.02.2022 of the Central Administrative Tribunal, CAT, Jammu Bench, Jammu so as to challenge it in the manner as it was intended to be challenged in the context of the averments made in the writ petition.

07. This Court dealt with the very maintainability of the writ petition so filed by the petitioner – J&K PSC in the light of the fact that Dr. Mohd. Hussain Mir, whose selection and recommendation

for appointment was set aside did not come forward to salvage his impugned and quashed selection and recommendation for prospective appointment.

08. By reference to the averments as made in the writ petition sounding as if Dr. Mohd. Hussain Mir was the writ petitioner, we had come to observe that there was no elementary level pleading as to the *locus-standi* of the petitioner – J&K PSC in assailing the said judgment of the Central Administrative Tribunal, CAT Jammu Bench, Jammu which was not affecting or meaning to affect any legal/statutory/constitutional right and status of the petitioner - J&K PSC or for that matter involving no interpretation of any rule/regulation governing the working and functioning of the petitioner – J&K PSC in carrying out the selection process which resulted in the challenged selection of Dr. Mohd. Hussain Mir.

09. It is against said judgment dated 05.05.2022 that the petitioner- J&K PSC came forward with the institution of present review petition filed on 07.06.2022 by coming up with the repeat of the averments as made in the writ petition with addition of new averments which otherwise were not there in the writ petition.

10. In its review petition, the petitioner – J&K PSC is meaning to defend the selection of Dr. Mohd. Hussain Mir when he himself never felt aggrieved of upsetting of his selection by the judgment

dated 03.02.2022 of the Central Administrative Tribunal, CAT Jammu Bench, Jammu.

11. In the review petition, the petitioner – J&K PSC is meaning to plead that the institution of the writ petition by the petitioner – J&K PSC against judgment dated 03.02.2022 of the Central Administrative Tribunal, CAT, Jammu Bench, Jammu was on the basis of a communication No. PSC/LIT/153/2018/P-1 dated 15.02.2022 which was passed on but not pleaded and annexed with the writ petition itself during the course of hearing of the matter in the writ petition so as to show that there was an approval granted by the competent authority of the petitioner- J&K PSC for filing the writ petition.

12. In the review petition, the review is being sought on the following grounds:-

- i. Because admittedly the petitioner-Commission is a creation of Article 315 of the Constitution of India and being a Constitutional body has been entrusted with the task of selection of various gazetted posts in the state of J&K (now UT) and being aggrieved of the judgment dated 03-02-2022 passed by the Hon'ble Central Administrative Bench whereby the selection made by the petitioner-Commission was directed to be set aside, has invoked the extraordinary writ jurisdiction of this Hon'ble Court with specific averment regarding the status/locus standi of the petitioner-Commission in very opening paragraph i.e. para-1 of the writ petition. However, this Hon'ble Court due to some miscommunication has observed as if no averment in the writ petition regarding the locus standi of

the Petitioner-Commission for filing the writ petition has been taken. It is thus submitted that the judgment under review to the extent of this observation thus runs contrary to the averments of Para-1 of the writ petition, as such there being mistake apparent on the face of the record, the judgment is thus required to be reviewed.

- ii. That the selections are made by the Commission as a constitutional body and not by the experts in their private capacity. The experts involved in the process, no doubt being eminent in their field, after becoming part of the interview panel, the selections made become that of the Commission and not of the experts. So the Commission has every right and authority to defend its decisions/selections which includes filing and defending of court cases involving such decisions /selections.
- iii. That while selecting the experts, the Commission ensures that only those who are eminent in the field are selected. Same has been done in the instant case as well. The experts cannot be supposed to defend the cases for selections made by the Commission as it is the Commission which has to defend the selections. Moreover, if the experts would have to appear before the Hon'ble Courts to defend the selections made then no expert would ever want to become part of the selection process.
- iv. Because the judgment under review more particularly observation as reproduced above to the extent of filing of writ petition without any approval also requires to be reviewed as in presence of the approval of the competent authority of the petitioner-Commission on due consideration, which fact was brought to the knowledge of this -,Hon'ble Court by referring to communication dated 15-02-2022 during the course of submissions/hearing, however the same has also escaped consideration of this Hon'ble Court, the judgment under review to this extent is also required to be reviewed.
- v. That in the facts and circumstances of the case, it is submitted that the present case falls within the ambit of Order 47 Rule 1 of the Civil Procedure Code read with Rule 65 of the High Court Rules.

- vi. That there is an error apparent on the face of the record for the reason that the petitioner had in para 01 of the writ petition stated as under:

"That the petitioner being a constitutional body entrusted with the job of making selection to the various Gazetted posts of the Union Territory of Jammu and Kashmir as such is competent to invoke the extra ordinary writ Jurisdiction of this Hon'ble Court"

The Hon'ble Court while deciding the case with regard to the locus has observed in para 15, 17 and 25 (quoted above) that no averment has been made as to the locus of the petitioner which is 'not correct. The petitioner being a constitutional autonomous body has a locus to sue and be sued of its own in its own capacity.

- vii. That in addition to the averments made above, the petitioner otherwise has sufficient reason in terms of order 47 rule 1 of the CPC for filing the instant petition.
- viii. That it was submitted that the judgment dated 03.02.2022 of the Hon'ble Tribunal requires to be set aside because on the one hand the Hon'ble Tribunal has held that there was likelihood of bias and on the other hand has plainly directed to select the respondent no. 1. That even for the sake of arguments, it is assumed that there was some bias then the Tribunal could have directed to re-conduct the interview but could not have directed to select the respondent no. 1 in any case.
- ix. Because even otherwise, as per the records, the competent authority of the Commission, as per the Business Rules, has accorded approval for filing of writ petition on due consideration of the case. However, the sad fact i.e. the name of the approving authority could not be brought to the notice of this Hon'ble Court as learned counsel was not aware about the decision taking authority at the time of consideration of the matter at its threshold on preliminary issues/query raised by this Hon'ble court. Therefore judgment impugned is required to be reviewed.

- x. Because the petitioner-Commission being a selecting authority has undertaken the selection process with the assistance of experts and was party respondent in the writ petition (TA bearing No. 660912020 on transfer to CAT) through its Hon'ble Chairman as well Secretary, as such being selecting body and party respondent was within its right to challenge the outcome of the list. However, this aspect of the matter though apparent on the face of the record has not been considered in as much as appreciated by this Hon'ble Court, as such the judgment is required to be reviewed on this ground as well.
- xi. That the view taken by the Hon'ble Court in the instant case would leave the Judgment dated 03.02.2022 passed by CAT undisturbed which would have serious and unwarranted consequences as such the Hon'ble Court may kindly take a holistic view in the matter and review the judgment impugned.
- xii. That it was alleged by the respondent no. 1 in his basic writ petition that one of the experts (respondent No. 3) was a faculty in the AIIMS Delhi and another expert (respondent No. 4) is also a Consultant and HoD in Safdarjung Hospital Delhi. That AIIMS being one of the premier medical institutes of the country, there are thousands of students studying and researching there and that there are 100s of faculty members. The fact that an expert is a faculty in the institute wherein the aspiring candidate studies cannot by itself mean that the expert cannot be an examiner. Infact, in the present case, the selected candidate has only done his Post DM fellowship from AIIMS which is a research course and neither of the experts was a supervisor/guide of the selected candidate. Besides in order for an expert to be disabled from the panel, he must have a direct and non illusionary relation with the shortlisted aspirant. The relation cannot be too remote because then most of the experts would be disabled especially in the fields like the instant one (Medical oncology) where there are already limited number of experts in the country. The respondent no.1 has tried to assign his own under performance on the experts. Had he been honest in his allegations then he could have agitated

the matter right after the interview, instead he waited for the results, took a calculated chance then after being unsuccessful, he as an afterthought after around 05 months concocts a story and alleges he was malafidely failed. The Tribunal has not considered the said fact at all and that this Hon'ble Court could have considered the same only after entertaining the petition but due to the order impugned, an order which is against the law as well as the facts could be finalized. Therefore, when substantial justice and Technicalities are against each other, then it is always the substantial justice that prevails.

- xiii. That the petitioner has been able to make out the case which otherwise requires adjudication in terms of O-47 R-1 by taking into account the cumulative view of the case.
- xiv. That in view of the above facts and circumstances the judgment under review suffers from error apparent on the face of record, therefore, deserves to be reviewed to the extent submitted hereinabove.
- xv. That other grounds shall be submitted at the time of hearing with kind permission of the Hon'ble Court.

11. A bare perusal of the grounds of challenge on the basis of which the review petition is being sought would show that in meaning to seek review, the petitioner-J&K PSC is, in fact, missing wood for the trees, in the sense that this Court in dismissing the writ petition came to attend its attention to a very prominent fact that Dr. Mohd. Hussain Mir, whose selection being challenged by Dr. Rajeev Gupta before the Central Administrative Tribunal, CAT, Jammu Bench, Jammu never felt bothered to question said judgment adverse against him meaning thereby a latent admission on his part that in the viva-voce where he came to score over the

respondent No. 1 – Dr. Rajeev Gupta a favour was done to him on which count the Central Administrative Tribunal, CAT Jammu Bench, Jammu came to hold the selection of Dr. Mohd. Hussain Mir as an outcome of bias operating in his favour because of presence of Dr. Atul Sharma in the interview committee born out from the fact that Dr. Mohd. Hussain Mir happened to be the student of Dr. Atul Sharma.

12. The tone and tenor of the grounds of review petition is as if this Court dismissed the writ petition solely on the ground that institution of the writ petition was without any prior and proper decision the part of the petitioner-J&KPSC as a constitutional body to challenge the judgment of the Central Administrative Tribunal, CAT, Jammu Bench, Jammu for carrying forward which the Secretary of the time had come forward with the institution of the writ petition.

13. Even in the review petition, by reference to purported communication No.PSC/LIT/153/2018/P-1 dated 15.02.2022 addressed by the Assistant Law Officer of the petitioner – J&K PSC to Sh. F. A. Natnoo, Standing Counsel for the petitioner-J&K PSC, there is no mention therein as to vide which minutes of meeting the so referred approval of the competent authority for filing the writ petition against judgment dated 03.02.2022 of the Central Administrative Tribunal, CAT, Jammu Bench, Jammu was taken.

Said communication No. PSC/LIT/153/2018/P-1 dated 15.02.2022 by the Assistant Law Officer of the petitioner- J&K PSC to the Standing Counsel for the petitioner – J&K PSC could not be and cannot be taken by a constitutional court to be bearing the decision of a constitutional body to file a writ petition against an adjudication made in a selection related matter.

14. In view of the aforesaid, we, therefore, find that under the guise of writ petition, the petitioner-J&K PSC in fact is seeking to re-agitate the matter forming subject matter of the writ petition. We, therefore, held the petition as misconceived and dismiss it.

(RAHUL BHARTI)
JUDGE

(SINDHU SHARMA)
JUDGE

JAMMU
02.04.2025
Muneesh

Whether the judgment is speaking:

Yes / No

Whether the judgment is reportable :

Yes / No