

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 25.02.2025

Pronounced on 20.03.2025

LPA No.244/2023

c/w

LPA No.51/2024

Dr. Majid Farooq, aged 39 years.

S/o Mr. Mohammad Farooq Bhat

R/o Millat Lane, Lal Nagar, Chanapora, SrinagarAppellant(s)

Through:- Mr. Jahangir Iqbal Ganai, Sr.
Advocate with Mr. Junaid Malik,
Advocate

V/s

1. Dr. Mushtaq Ahmad S/o Late Abdul Salam Hakim
R/o Khrew, Pampore, District Pulwama
.....Contesting Respondents

2. SKIMS Soura, Srinagar through
Chairman Governing Body, SKIMS Soura
3. Director SKIMS & (Ex-Officio Secretary to Govt.)
SKIMS Soura, Srinagar.

4. Dr. Mudasir Sharief Banday
C/o Director SKIMS & (Ex-Officio Secretary to Govt.)
SKIMS Soura, Srinagar.

.....Proforma Respondents

Through:- Mr. M.Y.Bhat, Sr. Advocate with
Mr. R.A.Bhat, Advocate for R-1

LPA No.51/2024

1. SKIMS Soura, Srinagar , through Chairman Governing Body
SKIMS Soura Srinagar

2. Director SKIMS and Ex-officio Secretary to Government,
SKIMS Soura Srinagar

.....Appellant(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG with
Ms. Rahella Khan, Advocate

V/s

1. Dr. Mushtaq Ahmad S/o Late Abdul Salam Hakeem R/o Khrew Pampore District Pulwama.
2. Dr. Mudasir Sharief Banday c/o Director SKIMS and Ex-officio Secretary to Government, SKIMS Soura Srinagar

Through:- Mr. M.Y.Bhat, Sr. Advocate with
Mr. R.A.Bhat, Advocate for R-1

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Sanjeev Kumar J

1. This *intra Court* appeal by the appellant-Dr. Majid Farooq is directed against an order and judgment dated 4th October, 2023 passed by the learned Single Judge of this Court ["Writ Court"] in WP(C) No.2749/2022 titled *Dr. Mushtaq Ahmad Vs. SKIMS Soura Srinagar and others*, whereby the Writ Court has allowed the petition of respondent No.1 and directed respondent Nos. 2 to 4 (official respondents) to consider the case of respondent No.1 against the post of Assistant Professor (non-medical) in the department of Clinical Pharmacology retrospectively with effect from the date respondent No.4 herein was given the appointment under medical stream strictly in conformity with the directions passed in SWP No.2523/2018 decided on 30.10.2018.

2. Before we advert to the grounds of challenge urged by Mr. Ganai, learned senior counsel appearing for the appellant, we deem it appropriate to give brief factual background leading to the filing of this appeal.
3. Respondent No.1 is M.Sc Pharmacology and has done his Ph.D in medical pharmacology from a recognized University. Respondent No.1 was appointed as Demonstrator in SKIMS Medical College, Srinagar on 8th May, 2003 and continued as such up to 26th July, 2007. As is pleaded by respondent No.1 in the writ petition, the SKIMS, Soura, Srinagar vide Advertisement Notice No.01 of 2012 dated 10th January, 2012, invited applications for various faculty positions of Professor and Assistant Professor by way of direct recruitment. The notified posts included four posts of Assistant Professor in Clinical Pharmacology. The respondent-Institute filled only two posts of Assistant Professor in Clinical Pharmacology leaving two posts unfilled.
4. Fresh process of recruitment was initiated by the respondent-Institute in terms of the Advertisement Notification No.07 of 2013 dated 30.09.2013. This time, the recruitment was restricted to only one post of Assistant Professor (Non-Medical) in the department of Clinical Pharmacology. The recruitment process initiated in terms of Advertisement Notification No.07 of 2013 (supra) ended up selecting no person, as none of the candidates, who participated in the selection

process was found eligible. Vide Advertisement Notification No.04 of 2015 dated 10th July, 2015, the respondent-Institute again invited applications from eligible candidates for filling up various faculty positions including two posts of Assistant Professors in Clinical Pharmacology. It is submitted by the respondent No.1 in his writ petition that even the process of selection initiated in the year 2015 was not taken to its logical end. However, in terms of the fresh Advertisement Notice bearing No.07 of 2016 dated 05.09.2016, applications were once again invited from eligible candidates for filling up of various posts of Professor and Assistant Professor by way of direct recruitment, which *inter alia* included the posts of Assistant Professor in Clinical Pharmacology also.

5. It is in response to this Advertisement Notification issued on 5th September, 2016, respondent No.1 submitted his application for the post of Assistant Professor in Clinical Pharmacology as a Non-Medical candidate. His application was entertained and he was called for interview. Upon completion of the selection process, the select list was uploaded on the official website of the respondent-Institute on 4th October, 2018. Respondent No.4 was shown selected for the post of Assistant Professor (Medical) in the department of Clinical Pharmacology, however, nobody was shown selected for the post of Assistant Professor (Non-Medical) in the discipline of Clinical Pharmacology. Respondent No.1 claiming to be the only candidate in the fray from non-medical category, filed SWP No.2523/2018 before

this Court for seeking *inter alia* a direction to the respondent-Institute to complete the process of selection initiated vide Advertisement Notification No.07 of 2016 dated 5th September, 2016 in respect of the post of Assistant Professor (Non-Medical) in the department of Clinical Pharmacology and also prayed for his selection and appointment against the said post being the only non-medical candidate having responded to the Advertisement Notification. Respondent No.1 also sought a direction to the respondent-Institute not to re-advertise the vacant post of Assistant Professor (Non-Medical) in Clinical Pharmacology.

6. The Writ petition was contested by the respondent-Institute and was disposed of by a Bench of this court vide order dated 12th May, 2022 thereby directing the respondent-Institute to declare the result of respondent No.1(petitioner in the writ petition) for the post of Assistant Professor (Non-Medical) in Clinical Pharmacology notified vide Advertisement Notification No.07 of 2016. It was further provided that if respondent No.1 would make the grade, necessary follow up action shall be taken for interviewing him. There was a further direction to give effect to the appointment of respondent No.1 from the date, a candidate belonging to medical category stood selected and appointed by the respondent-Institute in reference to the aforesaid Advertisement Notification.
7. The order passed by the learned Single Judge on 12th May, 2022 was not initially complied with by the respondent-Institute resulting into

filing of a contempt petition by respondent No.1 being CCP(S) No.342/2022. The Contempt petition was contested by the respondent-Institute by filing statement of facts/compliance report. In the compliance report, it was the stand taken by the respondent-Institute that the judgment passed by the Court stood complied with the issuance of a detailed consideration order bearing No.SIMS/30(P) of 2022 dated 30.07.2022. It seems that accepting the consideration order passed by the respondent-Institute, proceedings in the contempt petition were closed by the learned Single Judge.

8. Feeling dissatisfied and aggrieved by the consideration order dated 30.07.2022 and the fresh Advertisement Notification No.02 of 2021 dated 17.04.2021 issued by the respondent-Institute for filling up one post of Assistant Professor in Clinical Pharmacology under open merit category, respondent No.1 filed WP(C) No.2749/2022, which petition after contest by respondent Nos. 2 to 4 has been decided vide order and judgment impugned in this appeal. The appellant claims to have participated in the selection process initiated in terms of the Advertisement Notification No.2 of 2021 dated 17.04.2021, impugned in the writ petition and, therefore, a person aggrieved by the directions contained in the impugned judgment passed by the Writ Court. This appeal is, therefore, filed with the leave of this Court.
9. The appellant challenges the judgment impugned inter alia on the following grounds:-

- i) That the challenge by respondent No.1 to the Advertisement Notification No.2 of 2021 and consideration order dated 30.07.2022 is not tenable, in that, the post of Assistant Professor in Clinical Pharmacology was notified in terms of the Advertisement Notification No.2 of 2021 for both Medical and Non-Medical candidates and respondent No.1 did not participate in the selection process.
- ii) That the appellant, who had responded to the impugned notification, was interviewed and the duly constituted Apical Selection Committee recommended his name for the post notified and, therefore, in the absence of appellant being impleaded as party respondent, the writ petition of respondent No.1 could not have been decided by the Writ Court.
- iii) The Writ Court has not appreciated the fact that the post notified by the respondent-Institute was not meant for non-medical stream and, therefore, there was no merit in the contention of respondent No.1 that the only post of Assistant Professor in Clinical Pharmacology notified should be given to the non-medical stream.

10. *Per contra*, learned counsel appearing for respondent No.1 has supported the judgment on all fours.

11. Having heard learned counsel for the parties and perused the material on record, we need to first notice few admitted facts emerging from the pleadings of the parties.
12. Vide Advertisement Notice No.1 of 2012 dated 10.01.2012, the respondent-Institute invited applications *inter alia* for filling up four posts of Assistant Professor in Clinical Pharmacology and in the selection process that was conducted pursuant to the aforesaid notification, two posts came to be filled up and the two posts remained unfilled. Thereafter, couple of advertisement notifications were issued, however, for one reason or the other, two vacant posts of Assistant Professor in Clinical Pharmacology could not be filled up. In the year 2016, the respondent-Institute invited applications *inter alia* for the post of Assistant Professor in the department of Clinical Pharmacology. Six candidates responded to the Advertisement Notification in reference to the vacancies of Assistant Professor in Clinical Pharmacology. The selection process was conducted by the Apical Selection Committee, in which Dr. Mudasir Sharief Banday-respondent No.4 with 70.00 points out of 100 was found to be the most meritorious candidate. He was, thus, recommended for the post of Assistant Professor notified under Open Merit Category. Respondent No.1 had even failed to secure the minimum benchmark points. The post of Assistant Professor, which, as claimed by the SKIMS, was earmarked for Scheduled Caste category remained

unfilled due to non-availability of candidates belonging to the said category.

13. Feeling aggrieved by the selection of respondent No.4 and his exclusion, respondent No.1 filed SWP No.2523/2018, which was disposed of by a Bench of this Court vide order dated 12th may, 2022.

The operative portion of the judgment reads thus:-

“.....Accordingly, the writ petition is disposed of by directing the respondents to declare the result of the petitioner for the post of Assistant Professor (Non-Medical) in the Department of Clinical Pharmacology, SKIMS Soura, advertised vide Notification No.07 of 2016 dated 05.09.2016 and if the petitioner has made the grade, necessary follow up action be taken for interviewing the petitioner.

In the event the petitioner is declared to have emerged successful in the selection process, the respondents shall consider the claim of the petitioner for giving effect to the order of his appointment from the same date, when the candidates belonging to Medical Category have been selected and appointed by the respondents against the post of Assistant Professor (Medical) in the Department of Clinical Pharmacology, SKIMS, Soura, Srinagar, in accordance with rules. ”

14. In compliance with the aforesaid direction, the respondent-Institute considered the case of respondent No.1 and passed a detailed consideration order i.e. Office Order No.130(P) of 2022 dated 30.07.2022. The claim of respondent No.1 for being selected as Assistant Professor was rejected on two grounds:-

- a) That the Apical Selection Committee had fixed 50 points as benchmark for selection in the open merit and respondent No.1 had obtained only 48.00 points.

- b) That there was only one post of Assistant Professor in the open merit and respondent No.4 with the highest points of 70.00 was recommended for appointment under open merit category and the other post, which was reserved for Scheduled Caste category remained unfilled due to non-availability of a candidate belonging to the said category.
15. It is true that by the time the consideration order (supra) came to be passed, the respondent-Institute had issued Advertisement Notification No.02 of 2021 dated 17.04.2021 notifying *inter alia* one post of Assistant Professor in the department of Clinical Pharmacology without indicating the stream medical or non-medical. Respondent No.1 for reasons best known to him did not respond to the aforesaid notification. It is only when his claim in reference to advertisement notification No.07 of 2016 was rejected by the respondent-Institute in terms of consideration order dated 30.04.2022 (supra), respondent No.1 approached the Writ Court by way of WP(C) No.2749/2022 in which respondent No.1 *inter alia* challenged the advertisement notification No.2 of 2021 as well as consideration order dated 30.07.2022.
16. The writ petition was contested, amongst others, by the respondent-Institute. With regard to the advertisement notification No.7 of 2016, it was contended by the respondent-Institute that, though respondent No.1 had participated in the selection process, which was carried for two posts of Assistant Professor in Clinical Pharmacology (OM-1,

SC-1), yet he could not make the grade. Respondent No.1 not only had failed to obtain the benchmark points, but was also far inferior in merit than the candidate selected and appointed against open merit category. It was reiterated that one post of Assistant Professor earmarked for Scheduled Caste remained unfilled due to non-availability of candidates belonging to the said category. The detailed consideration order passed by the respondent-Institute was, thus, sought to be justified on the aforesaid grounds.

17. It is submitted that, though, the post available with the respondent-Institute after the selection of 2016, was the one earlier earmarked for Scheduled Caste category but due to the issuance of revised roster in terms of S.O.127 dated 20.04.2020, same was de-reserved and notified for the open merit in terms of Notification No.2 of 2021 dated 17.04.2021. Respondent No.1 has staked his claim on the post of Assistant Professor notified vide advertisement notification No.2 of 2021 on the ground that this post ought to be filled up from the non-medical category. The claim is sought to be justified on the ground that right from the year 2013 till date, not even a single post has been filled up from non-medical stream. Reliance has been placed by respondent No.1 on the norms of Medical Council of India prescribing that the faculty of Clinical Pharmacology must have faculty in the ratio of 70:30 medical and non-medical respectively.
18. With a view to analyze rival contentions, we deem it necessary to first set out the relevant extract of “Minimum Qualification for

Teachers in Medical Institutions Regulations, 1998” as amended up to 8th June, 2017, which reads thus:-

“1. **Short title and commencement:** (1) These regulations may be called the “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998

(2) They shall come into force on the date of their publication in the Official Gazette.

2 Objectives: Appointment of medical teachers, with minimum qualification and experience in various departments of medical colleges and institutions imparting graduate and post-graduate medical education is a necessary requirement to maintain a standard of teaching.

3. Minimum qualifications for appointment as a teacher: Minimum qualifications for appointment as a teacher in various departments of a medical college or institution imparting graduate and post-graduate education shall be as specified in the Schedules I and II annexed with these regulations:

SCHEDULE –I

Every appointing authority before making an appointment to a teaching post in medical college or institution shall observe the following norms:

1. All Medical teachers must possess a basic University or equivalent qualification included in any one of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956). They must also be registered in a State Medical Register or Indian Medical Register.

1-A

2. In the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total number of the posts in the department. A non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post a candidate must possess the Ph.D. degree in the subject. The Heads of these departments must possess recognized basic university medical degree qualification or equivalent qualification. However, in the department of Biochemistry, non-medical teachers may be appointed to the extent of 50% of the total number of posts in the department. In case of the

paucity of teachers in non-clinical departments relaxation upto the Head of the Department may be given by the appointing authority to the nonmedical persons if suitable medical teacher in the particular non-clinical specialty is not available for the said appointment. However, such relaxation will be made only with the prior approval of the Medical Council of India. A non-medical person cannot be appointed as Director or Principal or Dean or Medical Superintendent. In the departments of Community Medicine and Pharmacology, Lecturers in Statistics and Pharmacological Chemistry shall possess M.Sc. qualification in that particular subject from a recognized University.

In the above clause the words “The Heads of these departments must possess recognized basic university medical degree qualification or equivalent qualification” shall be substituted with the following as amended in terms of Notification published on 24.07.2009 in Gazette of India .

“Heads of the departments of pre and para clinical subjects must possess recognized basic University degree qualification i.e. MBBS or equivalent qualification”.

In the above clause the words “In the departments of Community Medicine and Pharmacology, Lecturers in Statistics and Pharmacology Chemistry shall possess M.Sc. qualification in that particular subject from a recognised University” shall be substituted with the following as amended in terms of Notification published on 24.07.2009 in Gazette of India.

“In the department of Community Medicine, Lecturers in Statistics shall possess M.Sc. qualification from a recognized University”.

19. From a reading of the Regulation No.3 reproduced above, it clearly transpires that the minimum qualification for appointment as Teacher in various departments of Medical Colleges/Institutions imparting Graduate and Post-graduate education is as specified in Schedule-1 and Schedule-II annexed to the Regulations. Article 1 of Schedule-1

clearly prescribes that all medical teachers must possess a basic University or equivalent qualification included in any one of the Schedule of the Indian Medical Council Act, 1956 and that they must also be registered in a State Medical Register or Indian Medical Register. **Article 2, also reproduced above, is by way of an exception to Article 1 and provides that in the department of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, the appointment of non-medical teachers to the extent of 30% of the total number of posts in the department is permissible.** The word “may” used in Article-2 clearly indicates that it is in the discretion of the Medical Institution to appoint non-medical teachers also in some of the departments like, Anatomy, physiology, pharmacology etc. However, while making appointment of non-medical teachers even in the aforesaid departments, Medical Institute shall ensure that number of such non-medical teachers appointed in the aforesaid departments does not exceed 30% of the total number of posts in the department. A fortiori, there is no mandate upon the medical institute to recruit necessarily 30% of the total number of posts in the department of Anatomy, Physiology, Biochemistry, Pharmacology etc. by appointing non-medical teachers.

20. Even if, a medical Institute appoints, in the department of Anatomy, Physiology, Biochemistry, Pharmacology etc, all teachers from the medical category, it cannot be said that the Institute has violated 30% norm laid down in the Regulations. 30% recruitment from non-

medical teachers is only an extent to which the non-medical teachers may be appointed in some of the departments of the medical institute like pharmacology etc. The contention of respondent No.1, which has also found favour with the Writ Court, that the respondent-Institute was under an obligation to necessarily recruit 30% of the posts of Assistant Professor in the department of Pharmacology from non-medical stream is without any basis and is not supported by a plain language of the Regulations, we have extracted above. The extent of 30% provided in the Regulations is in respect of the total posts in the department and not in a particular discipline. All the teachers in the department of Pharmacology could be from medical stream and there is no mandate of the Regulations to necessarily and mandatorily appoint 30% of the total posts of the department from non-medical students. It is only where non-medical teachers, in view of their merit, are appointed in the department, it is to be ensured by the medical institute concerned that their number does not exceed 30% of the total posts in the department. Viewed thus, the entire edifice of the case of respondent No.1 built on this mis-interpretation of the Regulations would come crumbling down.

21. As we have found, there are in all four posts of Assistant Professor in the department of Clinical Pharmacology in SKIMS, two were filled up in the selection process conducted in the year 2012. No selection could be made pursuant to the advertisement notification of 2013 for the reason that no candidate was found eligible to participate in the

selection process. As noticed above, the selection processes initiated in the year 2015 and in the beginning of 2016 were abandoned and not taken to the logical end. It is only in pursuance of the advertisement notification No.2 of 2016, the process initiated by the SKIMS was taken to its logical end.

22. From a reading of Advertisement Notification No.7 of 2016, it clearly transpires that the SKIMS did not specify the number of posts thrown open for selection in terms of the aforesaid notification. However, having regard to the fact that two out of the four posts of Assistant Professor came to be filled up in the year 2012, it can safely be inferred that vide advertisement notification No.7 of 2016, the SKIMS had notified remaining two posts of Assistant Professor for selection. It is further evident from the qualification prescribed in the Notification that the posts of Assistant Professor Clinical Pharmacology were thrown open for both medical and non-medical streams. Respondent No.1 possessing qualification in non-medical stream participated in the selection process along with five more candidates. To be more clear, we would like to notice qualification prescribed for the post in the Advertisement Notification No.7 of 2016, which is reproduced hereunder

S.No.	Department	Name of the Post	Qualification

11	Cl. Pharmacology	Assistant Professor	Medical Candidates: M.D (Pharmacology)/ MBBS with Ph.D (Med. Pharmacology) <u>Non-Medical</u> <u>Candidates:</u> M.Sc. (Med. Pharmacology) with Ph.D (Med. Pharmacology)/ M.Sc. (Med. Pharmacology) with D.Sc (Med. Pharmacology)/ M.Sc. in Pharmacology with P.hD
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23. It is, thus, evident that the two available posts in the department of Clinical Pharmacology of SKIMS were thrown open for selection for the candidates possessing medical or non-medical qualification. It is because of this reason respondent No.1 applied and participated in the aforesaid selection. We are in agreement with the learned counsel for respondent No.1 that the advertisement notification No.7 of 2016 did not indicate anything in respect of the categories for which the notified posts of Assistant Professor Clinical Pharmacology were earmarked, though, it is the stand of the SKIMS that two available posts of Assistant Professor notified in terms of Notification No.7 of 2016 were earmarked Open Merit-1 and Scheduled Caste-1.
24. In the absence of clear stipulation in the Advertisement Notification, we are ready to go with the submission of learned counsel for respondent No.1 that there were two posts of Assistant Professor in Clinical Pharmacology available, which had been thrown open for

selection in terms of advertisement notification No.7 of 2016. Having said that we quickly go to the merit position of the six applicants, who had responded to the aforesaid notification. Apart from respondent No.1, five more candidates had participated in the selection process. One of the candidate, namely Dr. Semira, did not appear in the interview before the Apical Selection Committee. The merit of other candidates, as was assessed by the Apical Selection Committee of the SKIMS is reproduced hereunder:-

S.No	Name of the candidate	Score out of 100
1.	Dr. Mohammad Younis Bhat	61.75
2.	Dr. Muddasir Sharief Banday	70.00
3.	Dr. Nasreen Jan Chashoo	68.05
4.	Dr.Shakil-u-Rehman	56.00
5.	Dr. Semira	Absent
6.	Dr. Mushtaq Ahmad Hakeem	48.00

25. Dr. Mudassir Sharief Banday with score of 70 point out of 100 came to be selected against one of the two posts of Assistant Professor in Clinical Pharmacology and was appointed without any protest or objection from any candidate. The other post was not filled up and the reason put forth by the SKIMS is that the same, as per the revised roster issued in terms of Reservation Rules, 2005, was kept reserved for Scheduled Caste category and that no candidate from the said category was available for selection.

26. For the purpose of our discussion, we ignore that the post, which was not filled up, was earmarked for Scheduled Caste category and take as if it was to be filled up from general category, even in that situation Dr. Nasreen Jan Chashoo with score of 68.05 would have come in the selection zone. Respondent No.1 with the score of 48.00 was at the bottom of the merit list and, therefore, could not have been selected. The plea of respondent No.1 that one of the two posts ought to have been filled up from a candidate with non-medical qualification has already been dealt with herein above and needs no reiteration.
27. In the face of availability of more meritorious candidates, though with medical qualifications, the unfilled post could not have been filled up by appointing respondent NO.1, who was last in the merit, only for the reason that he possessed non-medical qualification. The contention of respondent No.1 that 30% of the posts of Assistant Professor in Clinical Pharmacology ought to have been mandatorily filled up from non-medical candidates is totally misconceived and contrary to the Regulations we have discussed elaborately herein above.
28. With a view to allay any doubt and to set at rest the controversy, we hold that in terms of the Regulations, it is not mandatory for a medical college/medical institution to necessarily fill up 30% of the total number of posts in a discipline or even in the department by appointing non-medical students. This lies in the discretion of the

medical institution concerned and it is for the institution concerned to appoint even a non-medical student in some of the departments like Pharmacology but while doing so the institution concerned shall ensure that the number of non-medical teachers does not exceed 30% of total number of posts in the department. That is how the Regulations are required to be understood and appreciated. The judgment of the Writ Court, with respect, has proceeded on a total wrong premise that a medical college or medical institution like SKIMS is duty bound to fill up atleast 30% of the total number of posts in each discipline from non-medical candidates.

29. From a reading of the judgment impugned, it is evident that the the Regulations were perhaps not brought to the notice of the learned Single Judge. We are, therefore, of the considered opinion that respondent No.1 did not acquire any right to be selected and appointed against the post, which remained unfilled in the selection process initiated vide advertisement notification No.7 of 2016. Since respondent No.1 did not participate in the selection process initiated, vide advertisement notification No.2 of 2021 dated 17.04.2021 and, therefore, had no right to challenge the aforesaid notification. The very basis of throwing challenge to the advertisement notification No.2 of 2021 i.e. one of the four posts must necessarily be filled up from non-medical candidates in terms of the Medical Council of India Regulations, is built on a total wrong premise and clear misunderstanding of the relevant Regulations.

30. Whether or not the benchmark of 48 points in the selection process could have been fixed by the SKIMS after the commencement of the selection process in terms of notification No.7 of 2016 is a question that, in the given facts and circumstances of the case and for the reasons stated above, does not beg determination in this appeal.
31. Admittedly, the SKIMS had not framed any selection criteria prior to the commencement of the selection process. The selection criteria, which also included therein the benchmark eligibility for selection, was framed during currency of the selection process and therefore, it cannot be argued by respondent No.1 that by fixing the benchmark of 48 points the SKIMS changed the eligibility criteria or selection criteria midway or after the completion of the selection process. This issue is no longer *res integra* in view of the law laid down by a Constitution Bench judgment of the Supreme Court in the case of *Tej Parkash Pathak and others v. Rajasthan High Court and others*, [Civil Appeal No.2634/2013 decided on 07.11.2024], 2024 INSC 847.
32. In the context of factual matrix obtaining in the case, we hold that respondent No.1 never acquired any right to be selected and appointed as Assistant Professor in Clinical Pharmacology which remained unfilled in selection process initiated by the SKIMS vide advertisement Notification No.7 of 2016 and, therefore, respondent No.1, who had not participated in the selection process will have no

locus standi to challenge the advertisement notification No.2 of 2021 dated 17.04.2021 in which the appellant claims to have emerged successful candidate for the lone notified post.

33. For the foregoing reasons, we find merit in this appeal, the same is, accordingly allowed. The judgment passed by the Writ Court dated 04.10.2023, impugned in this appeal, is set aside and the WP(C) No.2747/2022 filed by respondent No.1 is without any merit and dismissed accordingly. The SKIMS may proceed to conclude the selection process initiated in terms of the advertisement notification No.2 of 2021 dated 17.04.2021 in accordance with law.

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34. In this appeal, the SKIMS is aggrieved of and has challenged the judgment dated 4th October, 2023 passed by the Writ Court in WP(C) No.2749/2022. The judgment is challenged on multiple grounds including the grounds, which we have considered while disposing of LPA No.244/2023.

35. On the analogy of the reasoning given while disposing of LPA No.244/2023, this appeal, too, is allowed in terms of the judgment passed in LPA No.244/2023.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
20.03.2025
Vinod,PS

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