

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Video Conference)

Date of Decision: 24.04.2020

EMG-WP(C) No. 6/2020,
EMG-CM No. 7/2020

Gurleen Kour Randhawa

.....Petitioner (s)

Through :- Mr. Anil Sethi, Advocate

V/s

Union Territory of Jammu & Kashmir and
others

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG for respondent
Nos. 1 to 3
Mr. S. S. Nanda, Sr. AAG for
respondent No. 4

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

01. Through the medium of instant writ petition the petitioner has prayed for following reliefs:-

- i) *Writ of mandamus commanding the respondents to treat the petitioner as a domicile in terms of Section 3(A) of the Jammu & Kashmir Civil Services (Decentralization and Recruitment Act).*
- ii) *Writ of mandamus commanding the Tehsildar/ respondent No. 4 to immediately and forthwith issue a certificate of petitioner being a Domicile Under Section 3(A) of the Jammu & Kashmir Civil Services (Decentralization and Recruitment Act).*
- iii) *Writ of mandamus commanding the respondent No. 3 to allocate the disciple/stream/college to the petitioner in keeping*

with her merit and preference as indicated in the application form of the petitioner.

02. Brief facts, those are necessary for consideration of the instant writ petition are that the petitioner qualified her MBBS examination from Acharya Shree Chander College of Medical Science in the year 2017 and thereafter in the year 2019, her candidature for seeking admission to MD/MS/PG Courses under the Non-Permanent Resident Doctors Category (hereinafter referred to as “NPR”) under SRO 158 of 1995, was not considered by the Jammu & Kashmir Board of Professional Entrance Examinations (hereinafter referred to as “BOPEE”) and that necessitated her to file the writ petition bearing WP(C) No.1639/2019 and the interim order dated 03.05.2019 was passed by this Court directing the Respondents therein, to consider the claim of the petitioner under NPR Doctors Category under SRO 158 of 1995 in the mop-up Counselling.

03. The petitioner has further stated that despite interim order issued in the writ petition supra, she was not considered under NPR Doctors Category. The record of the said petition was summoned and was also perused by this Court.

04. The petitioner has further stated that the State has undergone a constitutional change and has been converted into the Union Territory. As such, the earlier provisions governing the admission/selection have been superseded and replaced by new set of Acts and rules. It is further the case of the petitioner that insofar as admission to MBBS/MD/MS/PG Courses is concerned, in place of word “State Subject”, the word “Domicile” has been replaced and the petitioner is entitled to be treated as a domicile in terms of Section 3(A) of the

Jammu & Kashmir Civil Services (Decentralization and Recruitment Act) (hereinafter referred to as “Act”), as her mother has been serving with the Jawahar Novodya Vidyalaya for the last more than 20 years.

05. It is further stated that along with the change of nomenclature of the State to Union Territory, the BOPEE has issued a fresh advertisement inviting applications for admission to MD/MS Courses and the petitioner after noticing the provisions of the Act, immediately approached the respondent No. 4, i.e., Tehsildar, Mara Mandriyan, Tehsil Mara Mandriyan, District Jammu for issuance of domicile certificate. The respondent No. 4 is reluctant to issue the certificate on the ground that he has not been given appropriate instructions by the superiors and also the proforma on which the domicile certificate is to be issued. The petitioner thereafter has personally gone to the office of BOPEE and met all the concerned officials and conveyed to them that the petitioner is entitled to be treated as domicile in terms of the new Act and her candidature should be considered in accordance with her merit for allotment of the discipline/stream/college as per the merit obtained in the entrance examination and because of non-issuance of the said domicile certificate, the petitioner is not in a position to participate in the counselling being conducted by the BOPEE for allotment of discipline/stream/college.

06. The petitioner has placed on record the notification No. 07-BOPEE of 2020 dated 06.03.2020, notification No. 008-BOPEE of 2020 dated 06.03.2020, notification No. 012-BOPEE of 2020 dated 19.03.2020, notification No. 013-BOPEE of 2020 dated 21.03.2020, representation dated 10.02.2020 and photocopy of the e-mail addressed to District Magistrate, Jammu dated 14.04.2020.

07. The respondent Nos. 1 to 3 have filed their objections, wherein it is stated that the reliance placed by the petitioner upon the amendment taken place in the Act (supra) for purposes of claiming relief against the answering respondents is misplaced, as the amendments relates to appointment and recruitment in the Union Territory of Jammu & Kashmir against the various posts and not for admission to Professional Courses. The respondent Nos. 1 to 3 have further stated that the amendments have not taken place on the date of registration of the candidates before BOPEE after the declaration of the result of the National Board of Examination. As such, no cause of action can be said to have accrued to the petitioner against the BOPEE. It is further stated that they have filed the objections to the earlier writ petition as well, filed by the petitioner seeking implementation of SRO 158 of 1995 and the present petition is not maintainable.

08. The respondent Nos. 1 to 3 further stated that only the permanent residents of the UTs are eligible to appear in the entrance test for the professional course in the Medical Colleges in J&K and there is no provision of admission for any Non-Permanent Resident Doctor. It is further stated that as per the latest decision of the Administrative Council, UT does not contribute to All India quota, therefore, granting admission to any candidate outside the Union Territory of J&K would amount to allowing the admissions contrary to the directions of the Administrative Council, an Apex decision making body.

09. The respondent Nos.1 to 3 have placed on record a copy of the notification No. 001-BOPEE of 2020 dated 25.02.2020, the letter dated 11.02.2020 and the notification No. 003-BOPEE of 2020 dated 26.02.2020.

10. Mr. S. S. Nanda, learned Sr. AAG, who has appeared on behalf of respondent No. 4 stated that the petitioner has not filed any application before respondent No. 4 for issuance of domicile certificate and also there is nothing on record in the form of any copy of the application that was made by the petitioner to the respondent No. 4, that could have been considered by the respondent No. 4.

11. Heard learned counsel for the parties and have also perused the record meticulously.

12. During the course of arguments, learned counsel for the petitioner has reiterated that with the amendment incorporated in the Act (supra), the petitioner is required to be treated as domicile and she has every right to participate in the counselling process and it is but for the domicile certificate to be issued by the respondent No. 4, the petitioner has not been able to participate in the counselling/selection process.

13. Mr. Natnoo, learned AAG has argued that the Act pertains to appointments and recruitment only and not for the purpose of selection in the professional courses and also that he has filed objections in the earlier writ petition as well regarding the implementation of SRO 158 of 1995, that has become redundant after the issuance of Reservation Act, rules made there under and the BOPEE rules. It is further argued by Mr. Natnoo that SRO 158 of 1995 does not find mention in any notification, as also in the notices issued by the BOPEE including the issuance of Information Brochure of 2020 containing all information about the eligibility and procedures to be allowed for filling-up the seats in the Government/Private Medical Colleges in the J&K for the session 2020.

14. The notification No. 003-BOPEE of 2020 dated 26.02.2020 that supplemented the notification No. 001-BOPEE of 2020 dated 25.02.2020 provided that :-

“Further, any other NEET PG-2020 appeared candidate whose Roll Number does not figure in the Annexure "A, B, C & D" to the above Notification and Notice but belongs to the UT's of J&K and Ladakh may represent before the Board in its office at Srinagar/ Jammu upto 2nd March, 2020 (4:00 p.m.) during working days.”

15. The perusal of the notification No. 07-BOPEE of 2020 dated 06.03.2020 would reveal that the candidates were asked to upload/submit the residence proof of J&K or Ladakh as the case may be.

16. The very purpose of the notification dated 25-2-2020 and 26-2-2020 was to enable any candidate, who belonged to UTs but whose name never figured in the List, to bring to the notice of BOPEE of his/her non-inclusion for subsequent inclusion (if entitled to) but the petitioner in response to the notification dated 26.02.2020 never made any representation with the BOPEE up to 2nd March, 2020 (4:00 p.m.) that clearly shows that she never intended to participate in the Counselling/Selection process being resident of UT of J&K. But the learned counsel for the petitioner has tried to overcome this objection by taking a refuge under the representation dated 10.02.2020. However, in the said representation, it was categorically stated by the petitioner that her case clearly falls in category of item 2(ii) clause b(ii) of SRO 158 of 1995, that deals with the NPR Doctors and not with the Residents of UT of J&K. The para-7 of the representation dated 10.02.2020 is reproduced as under:

“My Mother Sukhraj Kour is working as Principal in Jawahar Navodaya Vidyalaya of JK(UT) which are run by Department of Education, Ministry of HRD, Government of India since January 2004 without any gap or break and hence I clearly fall in category of item 2(ii) clause b(ii) of SRO 158 of 1995.”

17. It was not the case of the petitioner that she was the resident of Union Territory of Jammu & Kashmir, that was the essential condition at Sr. No. 7 as per the notification dated 06.03.2020 issued by the BOPEE, for participation in the Counselling/Selection process. An amendment was made in the Act and the word “Domicile” was defined in Section 3(A) of the Act, which is reproduced as under:-

- “3(A) (1) Any person whole fulfils the following conditions shall be deemed to be a domicile of the Union Territory of Jammu and Kashmir for the purposes of appointment to any post carrying a pay-scale of not more than Level-4 (25500) under the Union Territory of Jammu and Kashmir or under a local or other authority (other than cantonement board) within the Union Territory of Jammu and Kashmir:-*
- (a) who has resided for a period of fifteen years in the Union Territory of Jammu and Kashmir or has studied for a period of seven years and appeared in Class 10th/12th examination in an educational institution located in the Union Territory of Jammu and Kashmir; or*
 - (b) who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) in the Union Territory of Jammu and Kashmir.*
- (2) Notwithstanding anything contained in sub-section (1). Following persons shall be deemed to be domicile under sub-Section (1):-*
- (a) children of those Central Government Officials, All India Services Officers, Officials of Public Sector Undertaking and Autonomous body of Central Government, Public Sector Banks, Officials of Statutory*

bodies, Officials of Central Universities and recognized Research institutes of Central Government who have served in Jammu and Kashmir for a total period of ten years; or

(b) Children of parents who fulfill any of the conditions in sub-section(1); or

(c) children of such residents of Union Territory of Jammu and Kashmir as reside outside Union Territory of Jammu and Kashmir in connection with their employment or business or other professional or vocation reasons but their parents fulfil any of the conditions provided in sub-section(1).”

18. The petitioner has done nothing even after the issuance of notifications dated 25.02.2020 (*Annexure-I to the objections*) as well as notice dated 26.02.2020 (*Annexure-III to the objections*) and rather it is evident that she had a change of heart to participate in the selection process only after the amendment was made in the Act (*supra*). The bare perusal of the Section 3(A) of the Act would reveal that the concept of domicile is meant for the purpose of recruitment /appointment to any post as mentioned in the Section only and the concept of domicile has no application so far as selection to any professional courses such as MD/MS/PG Courses are concerned.

19. Assuming for the sake argument that the concept of domicile applies for the purpose of selection to the professional Courses such as MD/MS/PG, even then, in the instant case the same would not come to the rescue of the petitioner because of the reason that the process for selection for the MD/ MS/PG Courses had commenced prior to the amendment that was made on 31.03.2020.

20. Lastly, Mr. Sethi, learned counsel for the petitioner has placed a reliance upon the judgment passed by this Court in case titled “**Tasneem**

Kounsar and others Vs State and others” reported in **2003(1) SriLJ 155**. In the said judgment it was held that:-

“A candidate must possess the requisite qualification on the cut-off date mentioned in the advertisement notice. A qualification, which is inherited such as being a member of scheduled caste or tribe category or resident of backward area is something, which is already possessed but is required to be demonstrated by producing the relevant documents – failure to produce certificate of such qualification on the cut-off date does not entitle the petitioner to seek consideration under such category.”

21. The abovementioned judgment is not applicable in the facts and circumstances of the case, as in the instant case the petitioner is trying to get the benefit of the non-existent provision for consideration of her case for participation in process for selection in MD/MS/PG Courses.

22. Independent of the controversy with regard to eligibility of the petitioner to participate in the Counselling/Selection Process, the petitioner cannot be deprived of her right to be considered for issuance of a domicile certificate, provided the petitioner fulfils the criteria as mentioned under Section 3(A) of the Act, but the petitioner has not placed anything on record in the form of any application that she approached the respondent No. 4 for issuance of domicile certificate and further Mr. Nanda, learned Sr. AAG has categorically stated that as on date, no application of the petitioner is pending before the respondent No. 4 for issuance of domicile certificate. The contention of Mr. Sethi, learned counsel for the petitioner that the mother of the petitioner had applied for issuance of domicile certificate to the District Magistrate, Jammu, requesting her to issue a domicile certificate is of no help to the

petitioner, as it is Tehsildar concerned, who is the competent authority for the issuance of the certificate under the Act.

23. In view of what has been stated above, the present writ petition is misconceived and deserves to be dismissed. Accordingly, the same is *dismissed* along with connected application. However, it shall not come in the way of the petitioner to apply for the issuance of domicile certificate and if any such application is made to the competent authority, that shall be decided on its own merit and as per rules without being influenced in any manner with regard to any observations made in the order.

24. Since the petitioner has confined her case with regard to her eligibility to participate in the selection process being a domicile candidate only and not with regard to her candidature pursuant to SRO 158 of 1995, as also there is no prayer with this regard., so any observation made in the order shall have no bearing upon the disposal of the writ petition bearing WP(C) No.1639/2019. The record of the said writ petition was summoned for perusal only and the same is returned back.

(RAJNESH OSWAL)
JUDGE

Jammu
24.04.2020
(Muneesh)

Whether the order is speaking : Yes

Whether the order is reportable : No