

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

Reserved on : 15.05.2020.

Pronounced on : 19.05.2020.

EMG-WP(C) No. 12/2020,
EMG-CM No. 23/2020.
In
EMG-WP(C) No. 17/2020
EMG-CM No. 33/2020

Pankaj Mangotra and others

.....Petitioner (s)

Through :- Mr. Ashok Sharma, Advocate in
EMG-WP(C) Nos. 12/2020 & 17/2020
(on Video Call from residence in Jammu)

V/s

Union Territory of Jammu & Kashmir and
others

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG for respondent
Nos. 4 & 5 and Mr. Vishal Bharti, Dy.
AG for respondent No. 2 in EMG-
WP(C) Nos. 12/2020 & 17/2020
respectively.

Mr. Abhinav Sharma, Advocate for the
Intervenors in EMG-WP(C) No.
12/2020.

Mr. Jagpal Singh, Advocate for
Caveator in EMG-WP(C) No. 17/2020.
(on Video Call from residence in Jammu)

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

JUDGEMENT

EMG-WP(C) No. 12/2020

(Pankaj Mangotra and others Vs UT of J&K and others)

01. The petitioner Nos. 1 to 11 belong to SC Category, whereas
petitioner Nos. 12 to 21 belong to ST Category. The National Board of

Examination (NBE) had issued notification for conducting the NEET-PG-2020 for admission to MD/MS/PGD Courses for academic session-2020, in which the last date for online submission of the application forms was 21.11.2019. The petitioners applied for participation in the NEET-PG-2020 Examination that was held on 05.01.2020 and result was declared on 30.01.2020. The petitioners were declared successful in the said exam. It is further case of the petitioners that SO-69 of 2020 was issued whereby it was provided that benefit of reservation under this clause shall be made only in respect of those Institutions where the intake capacity of the seats has been increased by the competent authority. It is further averred that respondent No. 7 vide order dated 29.04.2020 enhanced 67 seats against the requisition of 76 seats in Government Medical Colleges of J&K for academic year 2020-2021. Vide Order No. SO-127 dated 20.04.2020, the Rule 15 of J&K Reservation Rules, 2005 (hereinafter referred to as "Rules, 2005) the reservation for SC Category has been enhanced to 8% and for ST Category to 10%, which as per the un-amended Rule 15 was 4% and 5% for SC and ST Category respectively. The petitioners through the medium of instant writ petition seek the enforcement of the order No. SO-127 dated 20.04.2020 and also for adopting the running roster of 30 seats as per amended Rule 15 on the ground that as the seats have been enhanced and the selection process is continuing so the J&K Board of Professional Examination (hereinafter referred to as "BOPEE") is under obligation to implement the SO-127 dated 20.04.2020. The petitioners also seek the parity for enhancement of the reservation percentage on the analogy of the reservation provided to EWS Category candidates for MDS Courses.

02. The respondent No. 2 has filed objections in which it has been categorically stated that the amendment in the Rule 15 of Rules, 2005 by virtue of notification No. SO-127 dated 20.04.2020, cannot have retrospective effect.

03. The respondent Nos. 4 & 5 have also filed objections, in which they have stated that the selection process is to be conducted as per the rules prevalent at the time of initiation of selection process. Also allowing the benefit of SO-127 dated 20.04.2020 for the purpose of distribution of seats amongst various categories would clearly amount to change of criteria in the middle of selection process. Further there is no prescription of any provision of retrospectivity in said SO-127 dated 20.04.2020. It is also stated that with the issuance of select list on conclusion of first round of counseling vide notification dated 03.05.2020, the selection process is deemed to be concluded. Further, it is stated by the respondent Nos. 4 & 5 that the petitioners cannot seek parity vis-à-vis MDS candidates falling in EWS Category, as for the purpose of reservation benefits to the candidates under EWS Category, SRO-518 of 2019 dated 02.09.2019 has been issued and the said SRO is to be applied only where intake capacity of the seats of institution is enhanced. Moreover, for the candidates of MDS separate process of selection has been undertaken and the BOPEE has deferred the consideration of EWS Category candidates for MDS Courses pending clarification from the Government of India. It is also stated that the petitioner No. 2, 4, 5, 6, 7, 8, 9, 10, 12, 14, 16, 17, 18, 19 & 21 have been selected against various courses as per the select list dated 03.05.2020. The select list was published as per the preferences of the candidates of various seats and merit of the candidates read with reservation rules particularly Rule 15 unamended, that provides reservation of 4 % and 5%

for SC and ST Category respectively. The respondent Nos. 4 & 5 as such prayed for the dismissal of the writ petition.

EMG-WP(C) No. 17/2020

(Bhumesh K. Angural and others Vs UT of J&K and others)

04. This writ petition has been filed by the petitioners (who are petitioners no: 3,1,11,13,15,19 and 20 in the writ petition titled “Pankaj Magotra & ors v/s U T Of J&K and Ors”) whereby they have challenged the select list dated 03.05.2020 issued by the BOPEE and has further sought the directions to the respondent No. 1 to 3, 7 & 8 to enhance the seats for MD/MS/PG Diploma Courses – 2020, required in furtherance of amendment in Rule 15 of Rules, 2005. Besides, the petitioners are also seeking the direction to the respondents to hold counseling for EWS Category on the basis of case processed for selection/allotment of seats jointly and in MD/MS/PG Diploma Courses-2020 only after completion of the case of the petitioners’ categories and other categories. The similar grounds have been raised in this writ petition, as have been taken in the earlier writ petition. As such, it is not required to reproduce the grounds those have been already mentioned above.

05. The respondent Nos. 4 & 5 have filed objections in which they have reiterated their stand that has been taken in the earlier writ petition mentioned above. The respondent Nos. 4 & 5 also satisfactorily explained the enhancement of seats from 494 in 2019 to 540 in the year 2020 and also the reasons for unfilled seats after first round of counseling. The respondent No. 2 has adopted the objections in the earlier writ petition mentioned above.

06. Heard learned counsel for the parties and I have also gone through the documents relied upon by the respective parties.

07. Mr. Ashok Sharma, Advocate has reiterated the grounds taken in the writ petitions and Mr. F. A. Natnoo, learned AAG and Mr. Vishal Bharti, learned Dy. AG too have adhered to their respective stands taken in their objections. Mr. Abhinav Sharma, Advocate has primarily laid a stress that SO-127 being a subordinate legislation cannot have a retrospective effect and the selection list dated 03.05.2020 has been rightly issued by the BOPEE on the basis of merit and as per the prevalent reservation rules.

08. **Points for consideration:**

(A) *Whether SO-127 dated 20.04.2020 can be implemented retrospectively for selection process that began in the month of November, 2019, in absence of any provision for its retrospective operation in SO-127?*

The admitted fact is that NBE invited online applications for conducting NEET-PG-2020 for admission to MD/MS/PGD Courses for academic session-2020 and the candidates were required to apply latest by 21.11.2019. The petitioners participated in the said examination on 05.01.2020 and the result was declared on 30.01.2020. The BOPEE issued roll number wise list of candidates of UTs of J&K Ladakh vide notice dated 25.02.2020 and 26.02.2020. By way of another notice dated 06.03.2020 bearing No. 008-BOPEE of 2020, the BOPEE called for online registration of eligible candidates for preparation of provisional merit list and on the basis of online registration of candidates, the provisional merit list of candidates was issued by virtue of notification dated 10.04.2020. Thereafter, vide notification dated 17.04.2020, online preferences for allotment of seats were called from the candidates and thereafter, after considering the preference of the candidates for

various seats and the merits of the candidates, the select list dated 03.05.2020 was issued by the BOPEE. This is undisputed fact that the selection process had commenced in the month of November, 2019 and SO-127 dated 20.04.2020 was issued when the selection process was reaching the stage of conclusion. As the un-amended Rule 15 of Rules, 2005, that provided 4% and 5% to SC and ST Category respectively was in vogue at the time of initiation of selection process, so the selection was to be made as per the un-amended Rule 15 of Rules, 2005 as it is settled law that the selection is to be made on the basis of rules those are in force at the time of initiation of selection process.

The petitioners cannot take the benefit of SO-127, as the same was issued much after the selection process was commenced but just before the conclusion of selection process. SO-127 does not contain any provision with regard to its retrospective operation. As such, the petitioners are not entitled to the benefit of SO-127 because subordinate legislation cannot have retrospective effect until or unless it's retrospective operation is provided in it. SO-127 is in the nature of subordinate legislation and without there being any provision of its retrospective operation in it, the same cannot be applied retrospectively. The respondent no:2 that has issued the SO-127, too has taken the similar stand. Reliance is placed upon decision of Apex Court in case titled "**N T Devin Katti v/s Karnataka Public Service Commission**" reported in **1990(3) SCC 157** in which it has been held:

"It is a well accepted principle of construction that a statutory rules or Government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection

should normally be regulated by the then existing rules and Government orders and any amendment of the rules or the Government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections”.

(B) Whether the petitioners can seek parity for enhanced reservation vis-à-vis MDS candidates falling under EWS Category?

For the application of principle of parity, it is to be established that a person seeking parity with other person is similarly placed. In other words, both should be similarly situated and then only similar treatment can be sought. It is mentionable here that separate notification for NEET–MDS is issued by the NBE and the whole selection process is entirely different from NEET-PG for admission to MD/MS/PGD Courses. SRO-518 dated 02.09.2019 that provides reservation to EWS Category candidates has not been made applicable to the selection for MD/MS/PGD Courses- 2020. It is evident from the letter dated 29.04.2020, written by Medical Council of India (MCI) to Secretary, Government of India, Ministry of Health & Family Welfare that for implementation of 10% EWS Quota in PG Courses, the seats were required to be enhanced. In the same letter it is mentioned that there is proposal of enhancement of 67 seats, so far as J&K is concerned but that proposal is yet to be considered by the Central Government and has not been finalized as yet. Further SO-67 of 2020 dated 28.02.2020 added proviso to Clause (f) of Rule 15 of Rules-2005 that provided that the benefit of reservation (EWS Category)

shall be available in respect of those Institutions where the intake capacity of the seats has been increased by the competent authority. Thus, no reservation to EWS Category has been provided to the candidates for admission to MD/MS/PGD Courses for academic session-2020. As such, it is evident that the case of the petitioners is entirely different vis-à-vis MDS candidates falling under EWS Category and also the consideration of EWS Category candidates for MDS Courses has been deferred by the BOPEE, pending clarification from the Government of India. Therefore, the petitioners cannot seek the parity vis-à-vis MDS candidates falling under EWS Category.

(C) *Whether the petitioners can seek the enhancement of seats for MD/MS/PG Diploma Courses, 2020?*

It is the prerogative of the competent authority to determine as to how many seats for a particular discipline are required and the petitioners cannot have any say in it and therefore have no right whatsoever to seek enhancement of seats.

09. **Conclusion:**

It is held that the SO-127 dated 20.04.2020, by virtue of which Rule 15 of J&K Reservation Rules, 2005 was amended and the reservation for SC Category was enhanced to 8% and for ST Category to 10% cannot have any retrospective operation and the selection process for MD/MS/PG Diploma Courses, 2020 has to be conducted as per the un-amended Rule 15 that provided 4% and 5% reservation for SC and ST Category respectively. Also, the petitioners cannot claim any parity vis-à-vis MDS candidate falling under

EWS Category, as the petitioners are not similarly situated like MDS candidates falling under EWS Category.

Viewed thus, both the writ petitions are without any merit and deserve to be dismissed. **Dismissed**, as such along with connected applications.

(RAJNESH OSWAL)
JUDGE

Jammu
19.05.2020
(Muneesh)

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

