

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

SWP No. 1512/2017

*Reserved On: 28th of July, 2021
Pronounced On: 2nd of August, 2021.*

Dr. Manzoor Ahmad Gattoo

..... Petitioner(s)

Through: -

Mr J. A. Kawoosa, Senior Advocate with
Mr Atir Javed Kawoosa, Advocate.

V/s

State of JK & Ors.

..... Respondent(s)

Through: -

Mr B. A. Dar, Sr. AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

(JUDGMENT)

01. In this Petition, the Petitioner has sought the indulgence of this Court in granting him the following relief(s):

“a.) Issue an appropriate writ, order or direction including one quashing the impugned communication No. SIMS-302 07(XXXVI)/2015-2940 dated Nov 01, 2016;

b.) Issue an appropriate writ, order or direction including one quashing the prescribed qualification “M. Sc (Biochemistry) and 05.09.2016 for the post of Assistant Professor in cl. Biochemistry as the same are not in tune with the MCI regulations;

c.) Issue an appropriate writ, order or direction including one directing the respondents to call and conduct the interview of the Petitioner for the post of Assistant Professor in Cl. Biochemistry rescheduled on 03.08.2017 at 05:00 PM and subsequently select and appoint the Petitioner as per his merit and eligibility;

d. Issue an appropriate writ, order or direction including one directing the respondents not to make any appointment in terms of the Advertisement Notice dated 10.07.2015 and 05.09.2016 for the Post of Assistant Professor in cl. Biochemistry and re-advertise the same with the qualification as per the MCI guidelines and AIIMS pattern; and

e. Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the attendant facts and circumstances of the case may be issued in favour of the Petitioner and against the respondents."

02. The precise case of the Petitioner is that he, having M. Sc Biotechnology and Ph. D in Biochemistry qualification, applied for the post of Assistant Professor Cl. Biochemistry in pursuance to advertisement notice No. 07 of 2016 dated 5th of September, 2016 issued by the Respondents. It is submitted that the Petitioner had more than 05 years of teaching and Research experience, including 03 years of Sr. Resident-ship in the subject of Biochemistry, to his credit. In addition, the Petitioner claims to have more than 15 international as well as national publications. Upon receipt of application form of the Petitioner, it is claimed that the Petitioner, vide communication No. SIMS:302 07(XXXVI)/2015-2940 dated 1st of November, 2016 issued by the Respondent No.2, was informed that his qualification/ degree (M. Sc) is not recognized and, as such, his candidature stands rejected. The Petitioner, as stated, claims to have immediately filed a representation before the Respondents stating therein that he has pursued/ completed Master's Degree as well as Ph. D from the Aligarh Muslim University which is a recognized University, however, no decision was taken on the representation so filed by the Petitioner. Thereafter, the Petitioner states that he, on 1st of August, 2017 through the official Website

of the Respondents, came to know that the interview for the post in question has been fixed on 29th of July, 2017, which was later on rescheduled to 3rd of August, 2017, however, his name did not figure in the shortlisted candidates purportedly on the aforesaid ground of his qualification of M. Sc not being obtained from a recognized University. It is pleaded that the Petitioner, immediately, filed another representation before the Hon'ble Chief Minister as well as Respondent No.1 on 1st of August, 2017 and that the office of the Hon'ble Chief Minister forwarded the representation of the Petitioner to the Respondent No.2 in terms of communication dated 1st of August, 2017 for appropriate action. When no action was taken on the representations so submitted by the Petitioner, the Petitioner has knocked at the portals of this Court through the medium of the instant Petition for the relief as detailed out in 1st Paragraph of this Judgment hereinabove.

03. Mr J. A. Kawoosa, the learned Senior Counsel, representing the Petitioner, submitted that the impugned action of the Respondents in declaring the Petitioner ineligible to participate in the selection process for the post of Assistant Professor, Cl. Biochemistry pursuant to Advertisement notice dated 5th of September, 2016 smacks of *malafides* on part of the Respondents aimed at accommodating some of their blue-eyed candidates. It is further submitted that the Respondents have declared the Petitioner ineligible to participate in the selection process on the ground that the M. Sc. degree of the Petitioner is not recognized, when the fact of the matter is that

the Petitioner has obtained the M. Sc. degree from the Aligarh Muslim University which is duly recognized.

04. Objections stand filed on behalf of the Respondents. It is stated that while scrutinizing the application form of the Petitioner, it was observed by the Screening Committee that the Petitioner is in possession of M. Sc. Biotechnology having Ph. D in Clinical Biochemistry, while as, in terms of the advertisement notice, the requirement was M. Sc. in Biochemistry and, as such, the Screening Committee came to the conclusion that the Petitioner is lacking the basic qualification, i.e., M. Sc. Medical Biochemistry making his candidature liable to be rejected.

05. I heard learned counsel for the parties and perused the pleadings on record. I have also gone through the relevant record as made available before the Court by the Respondents through Mr B. A. Dar, the learned Senior Additional Advocate General.

06. When this matter was taken up for consideration on motion hearing, i.e., on 3rd of August, 2017, the Court, while issuing notice to the Respondents, directed that the interview for the post of Assistant Professor in Clinical Biochemistry shall not be conducted till further orders from the Court. Thereafter, on the motion filed by the Respondents, the aforesaid Order dated 3rd of August, 2017 was modified vide Order dated 21st of August, 2017, by providing that the Petitioner shall be admitted to interview and selection process concluded, but result shall not be declared until further

orders from the Court. It was also directed that the selection of the Petitioner and other candidates will remain subject to outcome of the Writ Petition.

07. From the bare perusal of the impugned communication dated 1st of November, 2016, what transpires is that the sole ground on which the candidature of the Petitioner for the post of Assistant Professor, Clinical Biochemistry, has been rejected is that the M. Sc. degree of the Petitioner is not recognized. The Respondents, in the impugned communication, have recorded that since the Screening Committee constituted by the Government for screening of applications did not find the Petitioner eligible for the post in question on account of lack of requisite qualification of M. Sc. degree, as such, his candidature was rejected and he was not allowed to partake in the selection process.

08. Pertinent to note here that the *prima facie* satisfaction of the Court formed a ground for directing the Respondents to conduct the interview of the Petitioner, along with other eligible candidates in terms of Order dated 21st of August, 2017, which, as stated by the learned Senior counsel representing the Petitioner, stands complied with by the Respondents. In these circumstances, the Court has to only consider the ground for rejection of the candidature of the Petitioner which, as discussed hereinabove, has reference to non-recognition of the M. Sc degree certificate of the Petitioner and nothing more. The documents on record supported with the pleadings of the parties make it clear that the Petitioner's degree of M.

Sc. Biotechnology is from a recognized and famous University, i.e., Aligarh Muslim University, Aligarh, therefore, the Respondents have, without there being any basis/ material, declared the said degree of the Petitioner as not recognized.

09. Mr Dar, learned Senior Additional Advocate General, was pointedly asked to supply any material or make reference to any record(s) which became the basis for rejection of the candidature of the Petitioner by the Screening Committee constituted by the Respondents for the purpose, which he could not. That apart, the Court also perused the relevant records which revealed that there was no such material before the Screening Committee which would have necessitated it to come to the conclusion that the M. Sc. degree of the Petitioner is not recognized. That being the position, there is no need to go into any further ground *qua* the challenge made to the impugned communication.

10. In the above background, the Petition of the Petitioner is ***allowed*** and, by a '*Writ of Certiorari*', the impugned communication dated 1st of November, 2016 is hereby quashed. The Respondents, by a '*Writ of Mandamus*', are directed to take the selection process in question to its logical conclusion by considering all the eligible candidates, including the Petitioner, in tune with the merit position obtained by the said candidates.

11. Writ Petition ***disposed*** of as above.

SWP No. 1512/2017

12. Pending application(s), if any, shall also stand *disposed* of accordingly.

13. Bench Secretary of this Court to return the record to Mr Dar, the learned Senior Additional Advocate General, against proper receipt.

(Ali Mohammad Magrey)
Judge

SRINAGAR

August 2nd, 2021

"TAHIR"

- | | | |
|-----|-------------------------------------|----------|
| i. | Whether the Judgment is reportable? | Yes/ No. |
| ii. | Whether the Judgment is speaking? | Yes/ No. |

