

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

LPA No. 323/2019

C/w

LPA No. 324/2019

LPA No. 126/2020

Reserved on: 24.11.2023

Pronounced on: 21. 12 .2023

LPA No. 323/2019

Dr. Nazir Ahmad Khan, Aged about 54 years
S/o Abdul Rehman Khan
R/o Mohalla Hathi Khan,
Near Central Jail, Srinagar

.....Appellant(s)

Through:

*Mr. R. A. Jan, Sr. Advocate with
Mr. M. Syed Bhat, Advocate*

Versus

1. Dr. Jameel Ahmad Mir S/o Abdul Gani Mir
R/o 15-A Rawalpura Colony Sanatnagar, Srinagar
2. Dr. Ghulam Mohammad S/o Gh. Qadir Haji
R/o Nigeeen View Colony, Lalbazar, Srinagar

(Contesting respondents)

3. Secretary to Government,
Health and Medical Education Department,
Civil Secretariat, Jammu/Srinagar.
4. Jammu and Kashmir Public Service Commission,
through its Chairman, Jammu/Srinagar.
5. Jammu and Kashmir Public Service Commission,
Through its Secretary, Jammu/Srinagar.
6. Principal/Dean Government Medical College/
associated Hospitals, Srinagar/Jammu.
7. Dr. Yashpal Sharma,
S/o Durga Dass Sharma,
R/o Udampur, Jammu

8. Dr. Mushtaq Ahmad Rather,
S/o Haji Sonaullah Rather,
R/o Mattan Anantnag.
9. Dr. Nazir Hussain,
S/o Galib U Din,
R/o Mandhu Poonch
10. Dr. D. K. Sharma,
Senior Faculty Member
Department of Hospital Administration
AIIMS New Delhi

.....Respondent(s)

Through:

Mr. Sajad Ashraf, GA for 3&6
Mr. M. Y. Bhat, Sr. Advocate with
Mr. Hamza Prince, Advocate for 8
Mr. Shah Aamir, Advocate 4 and 5
Mr. Jameel Ahmad, respondent 1 in person

LPA No. 324/2019

Dr. Nazir Ahmad Khan, Aged about 54 years
 S/o Abdul Rehman Khan
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 Near Central Jail, Srinagar

.....Appellant(s)

Through:

Mr. R. A. Jan, Sr. Advocate with
Mr. M. Syed Bhat, Advocate

Versus

- 1 State of J&K through Commissioner Secretary to Government,
Health and Medical Education Department,
Civil Secretariat, Jammu/Srinagar.
2. Jammu and Kashmir Public Service Commission,
Through its Secretary, Jammu/Srinagar.
3. Principal Government Medical College, Srinagar
4. Dr. Mohammad Khalil,
Deputy Medical Superintendent,
Maternity Hospital, Sanatnagar, Srinagar.

5. Dr. G. M. Khan,
Deputy Medical Superintendent,
SMHS, Srinagar.
6. Dr. P. M. Syed,
Deputy Medical Superintendent
Bone and Joint Hospital, Barzulla, Srinagar.
7. Dr. M. K. Chalotra,
Deputy Medical Superintendent
Government Medical College, Jammu

.....Respondent(s)

Through:

Mr. Sajad Ashraf, GA 1&3
Mr. Shah Aamir, Advocate 2
Mr. Salih Pirzada, Advocate for 7

LPA No. 126/2020

J&K Public Service Commission,
Through Additional Secretary,
Jammu/Srinagar.

.....Appellant(s)

Through:

Mr. Shah Aamir, Advocate

Versus

1. Dr. Jameel Ahmad Mir S/o Abdul Gani Mir
R/o 15-A Rawalpura Colony Sanatnagar, Srinagar
2. Dr. Ghulam Mohammad S/o Gh. Qadir Haji
R/o Nigeeen View Colony, Lalbazar, Srinagar

(Contesting respondents)

3. UT of J&K through Secretary,
Health and Medical Education Department,
Civil Secretariat, Jammu/Srinagar.
4. Principal/Dean Government Medical College Jammu/Srinagar
5. Dr. Yashpal Sharma,
S/o Durga Dass Sharma,
R/o Udampur, Jammu
6. Dr. Mushtaq Ahmad Rather,

S/o Haji Sonaullah Rather,
R/o Mattan Anantnag.

7. Dr. Nazir Hussain,
S/o Galib U Din,
R/o Mandhu Poonch
8. Dr. D. K. Sharma,
Senior Faculty Member
Department of Hospital Administration
AIIMS New Delhi
9. Dr. Nazir Ahmad Khan, Aged about 54 years
S/o Abdul Rehman Kha
R/o Mohalla Hathi Khan, Rainawari, Srinagar.

.....Respondent(s)

Through:

Mr. Sajad Ashraf, GA 3&4
Mr. M. Y. Bhat, Sr. Advocate with Mr. Prince Hamza, Adv.
For 6
Mr. Jameel Ahmad, respondent 1 in person

CORAM:

HON'BLE, MR JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T

Per Javed Iqbal, J

1. The issues involved in the instant appeals are akin and analogous to each other and as such are decided hereunder in the following manner and order:-

2. Dr. Nazir Ahmad Khan, appellant herein has preferred this Letters Patent Appeal (LPA) against Judgment dated 24.10.2019, passed in case titled as ***Dr. Jameel Ahmad Mir Vs. State of J&K and Ors.***, being SWP No. 585/2007, which petition has been disposed of by the learned Single Judge as follows:-

- “(i) The selection of respondent Nos. 5 to 7 shall remain intact and is not interfered with.***
- (ii) The petitioners shall also be entitled to be appointed as Deputy Medical Superintendents in the Health and Medical Education Department, with effect from the date respondent Nos., 5 to 7 have been appointed retrospectively with all consequential benefits minus***

the monetary benefits. However, the petitioners shall be entitled to the monetary benefits from the date of their actual appointment.

- (iii) *The respondent No. 1 is directed to take note of the observations made herein above and to take immediate remedial measures to set right the Rule prescribing qualification for the post of Deputy Medical Superintendents so that un-necessary litigation on the subject is avoided and the posts of Deputy Medical Superintendents are filled up in time.*
- (iv) *It shall be appropriate for the respondent No. 1 to do away with the practice of making temporary/adhoc or contractual appointments against the posts of Deputy Medical Superintendents and instead fill up the same by way of deputation of Chief Medical Officers/Medical Superintendents or equivalent from the Department of Health as provided in the existing Recruitment Rules.”*

3. The controversy in the instant matter revolves around the eligibility qualification for the post of Deputy Medical Superintendent regulated and governed by J&K Medical Education (Gazetted) Services Recruitment Rules, 1979 (for short Rules of 1979), wherein following has been prescribed as requisite qualification:

29	Administration of colleges and Hospital	(b) Medical Superintendent of Teaching Hospital	(i) Same as given for item (i) against S. No. 27 above; and (ii) Post Graduate qualification in Surgery/Gynecology/or Medicine and other clinical subjects/hospital administration	At least 5 years' experience as Dy. Medical Superintendent
		(b) Dy. Medical Superintendent of Teaching Hospital	-do-	3 years working experience of running a hospital after Post Graduation

Method of Recruitment

II	Deputy Medical Superintendent	750-1350	By direct recruitment or by deputation from CMOs cadre of J&K Medical (Gazette) Service.
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4. The respondent 3 herein, being Health and Medical Education Department (for short H&ME) vide letter No. ME/GM-193/961 dated 21.06.2005 read with letter No. ME/Legal/43/2005 dated 07.09.2005 and 26.09.2005, referred as many as eight posts of Deputy Medical Superintendents

to respondent 4 herein, being J&K Public Service Commission (for short PSC) for making recruitments with the following breakup: -

i.	Open:	03
ii.	RBA:	02
iii.	SC:	01
iv.	ST:	01
v.	PHC:	01

5. The PSC consequently issued an advertisement notice bearing No. 16-PSC of 2005 dated 13.10.2005, and invited applications for the said posts, in response to which, the PSC received 51 applications, out of which only five candidates were found to be in possession of the prescribed eligibility criteria, provided by the Rules of 1979 and the said candidates were called for interview, which was scheduled to be held on 22.04.2006. Besides the said five candidates, the PSC also called respondents 1 and 2 herein and candidates namely Mohan Singh Soodan, Jatinder Singh and Mohammad Ashraf on the strength of the Court orders passed in various petitions, filed by the respondents 1 and 2 herein and the aforesaid candidates.

6. The PSC could not conduct the interview on the scheduled date, as some of the candidates, who had been declared ineligible by the PSC represented for re-determining their eligibility and the PSC, accordingly, took up the matter with the H&ME Department, whereupon the H&ME Department vide communication No. ME-GM-193/96-II dated 14.03.2007, issued a clarification with regard to the working experience of running the Hospital by the Registrar and also provided category wise breakup of the posts notified for Government Medical Colleges Jammu and Srinagar for short GMC Jammu and GMC Srinagar respectively.

7. With regard to the clarification vis-à-vis the issue of qualification of experience, it was provided that the experience of running the Hospital be considered only for such Doctors, who have been assigned the charge for running the Hospital by a formal order. As per the breakup provided by the Department, 01 post in Open Merit category, and 01 post in SC category were earmarked for GMC, Jammu, whereas, 02 posts in Open Merit category, 02 posts in RBA category and 01 post in ST and PHC category respectively were earmarked for GMC, Srinagar.

8. The aforesaid clarification, however, added confusion rather than addressing the same, as the meaning of term **formal order** as also the **authority**, which was competent to issue such order remained un-cleared and instead of seeking further clarification, the PSC proceeded ahead with the selection process and conducted provisional interview of 15 candidates, including those, who had obtained Court orders in their favour and five over-aged candidates, who were interviewed in terms of letter of respondent 3, bearing No. ME (GAZ) 177/2005 dated 28.03.2007, whereafter the PSC finally recommended respondents 7 to 9 herein for appointment against the post of Deputy Medical Superintendent on the basis of their eligibility and overall performance in the interview vide letter No. PSC/DR/Medical Supt/05 dated 05.04.2007 and the candidates, who were found ineligible by the PSC were served with rejection orders, arrived at by the PSC in terms of decision dated 05.04.2007.

9. Being aggrieved of the cancellation of their candidature as also the selection and consequent appointment of respondents 7 to 9 herein, the respondents 1 and 2 herein along with another candidate namely Sheikh

Mushtaq filed SWP No. 585/2007 supra before this Court, praying therein following reliefs:-

- “ i. **Certiorari**, thereby quashing the recommendations made by respondents 2 and 3 to respondent No. 1 requesting therein to appoint the persons mentioned in the said recommendations as Deputy Medical Superintendents bearing No. PSC/DR/Medical Suptd/05 dated 5.4.2007 and the Government order No. 258-H&ME of 2007 dated 10.4.2007 (Annexure A and B) of the writ petition.
- ii. **Mandamus**, commanding the respondents 1 to 3 to consider and appoint the petitioners to the post of Deputy Medical Superintendents with consequential benefits including the promotions to the next higher post.
- iii. **Quo-Warranto**, directing removal of respondents 5 to 7 from the post of Dy. Medical Superintendents and declare them vacant available posts with further directions to respondents 1 to 3 to select and appoint the petitioners as Dy. Medical Superintendents with all consequential benefits.

10. The petitioners 1 and 2 in the said writ petition being respondents 1 and 2 herein sought the aforesaid reliefs primarily on the ground that they were possessed of similar experience certificates as were being held by the selected and appointed candidates being respondents 7 to 9 herein, as they were allowed by the PSC to submit fresh experience certificates issued by the competent authority pursuant to the decision taken on 05.04.2007 and further pleaded that if the certificates possessed by them were not in accordance with the Rules of 1979, in that case the experience certificates possessed by respondents 7 to 9 herein ought not to have been entertained as well and thus it was averred that the selection and appointment of respondents 7 to 9 herein amounted to usurping of the posts by incompetent and ineligible persons and as such, liable to be removed from holding the posts by issuance of writ of *quo warranto*. It was also pleaded by the respondents 1 and 2 herein, in the petition supra that in view of fresh experience certificates issued by the competent authority-Principal GMC, Srinagar, certifying them to be in possession of working experience of more than three years in running of the Hospital, coupled with

the merit as evaluated by the PSC, they were entitled to be selected and appointed to the posts in question in their respective categories, i.e., Open and ST categories respectively. The respondents 1 and 2 herein, also questioned the appointment of respondent 7 herein, on the ground of bias, alleging that the expert associated in the selection process was not only the batch mate of said respondent in the MD course, but had also co-authored a book with respondent 7, however, no specific challenge to the eligibility of said respondent 7 was raised in the petition supra.

11. The H&ME Department and the PSC filed their respective responses to the petition supra, justifying the selection and appointment of respondents 7 to 9 herein by stating that the said respondents 7 to 9 herein, were the only eligible candidates conforming to the eligibility prescribed in the Rules of 1979 and that in the light of the Rules of 1979, as also upon examination of their certificates, coupled with the clarification issued by the H&ME department, the petitioners/respondents 1 and 2 herein were found ineligible precisely on the ground of not possessing the requisite experience of three years in running the administration of the Hospital.

12. The respondents 5 to 7 herein had also filed their respective replies to the petition supra almost on the similar lines it had been filed by the official respondents.

13. The writ Court upon hearing the parties, decided and disposed of the petition in terms of impugned Judgment dated 24.10.2019 with the directions referred in the preceding para 2 herein.

14. The appellant herein, has assailed the impugned Judgment dated 24.10.2019 in the instant appeal *inter alia* on the ground that the writ Court has accepted that the petitioners/respondents 1 and 2 herein, lacked the experience of running the Hospital, as they were not assigned the charge of running the Hospital by a formal order and, therefore, the petitioners/respondents 1 and 2 herein not being possessed of the requisite qualification, could not have been ordered to be appointed by the writ Court that too against the non-existent vacancies.

Heard learned counsel for the parties and perused the record.

15. Perusal of the record in general and impugned Judgment of the writ Court in particular would reveal that the writ Court upon detailed examination of the Rules of 1979 supra, being in tune with the qualifications prescribed in the Indian Medical Council Act, 1956 (for short Act of 1956) came to the conclusion that the same were vague inasmuch as silent with regard to the nature of Hospital, Government or Private and the standard and size of the Hospital and that the clarification issued by the department vide letter dated 14.03.2007, did not address the said issue, but dealt with the claim of Registrars claimed to be involved in running the administration of the Hospital during their Registrarship and while dealing with the said claim of Registrars instead of clarifying the same, created further confusion as regards the authority competent to issue the formal order as provided in the said letter dated 14.03.2007.

16. In the aforesaid backdrop, there emerge two important aspects of the matter, *first* being the authority competent to issue formal order in favour of the

Registrars to look after the administration of a teaching Hospital and *second* being the meaning of working experience of running the Hospital.

With regard to the first aspect, i.e., the competent authority to issue formal order, the writ Court has observed that no authority other than the H&ME Department could be said to be authority competent in this regard and the said observation of the writ Court seemingly is correct. The Deputy Medical Superintendent has a duty to supervise the management of the Hospital, which causality Medical Officer looking after emergency in the Hospital or Resident Medical Officer managing the Board cannot do, who would be the best person to man the post of Medical Superintendent and Deputy Medical Superintendent is not clear either in the Rules of 1979 or in the clarification issued by the department and in view of this hazy situation and vagueness, the PSC seems to have enjoyed free hand in determining, who is eligible and who is not and that same has happened in the instant case. The respondents 1 and 2 herein had similar experience to that of selected and appointed candidates, yet, some candidates were dropped as ineligible and some candidates were selected and consequently appointed and in this kind of situation, the PSC could not have adopted a different yardstick vis-à-vis the case of respondents 1 and 2 herein and the selected candidates-respondents 7 to 9 herein.

17. In view of vagueness of Rules of 1979, ambiguity in the clarification issued by the department and keeping in view the nature of the post as also the fact that the selected candidates-respondents 7 to 9 herein, had been continuously working for more than a decade and having earned promotion to the post of Medical Superintendent, the approach adopted by the writ Court in the Judgment under challenge seemingly is correct and proper.

18. The appellant herein, has also contended that the writ Court in the impugned Judgment has ordered the appointment of the petitioners/respondents 1 and 2 herein against the non-existent posts as the PSC had advertised eight posts, 03 in Open category, 02 in RBA, 01 in SC, 01 in ST and 01 in PHC category and that the respondent 7 herein stands appointed against the open merit category in GMC, Jammu, respondent 8 herein appointed against the post of ST category in GMC, Srinagar, and respondent 9 stands appointed against open merit category post in GMC, Srinagar, thus leaving behind 01 post in open merit category, 02 posts in RBA, 01 post in SC and 01 post in PHC category and that the petitioners/respondents 1 and 2 herein had laid a claim upon and came to be ordered to be appointed by the writ Court against 01 post in open merit category and 01 post in ST category, which were vacant, thus rendering the aforesaid plea of the appellant that the respondents 1 and 2 herein came to be ordered to be appointed against the non-existent posts factually incorrect and not tenable.

19. Lastly, coming to the case set up by the appellant herein, it is an admitted fact that the appellant did not apply in response to the advertisement notice dated 13.10.2005, whereas the fact of the matter is that the appellant herein had responded to the advertisement notice No. 02-PSC of 2009 dated 30.01.2009, which, however, came to be subsequently withdrawn by the PSC vide notification No. PSC/Exam/09/15 dated 26.03.2009, which notification came to be challenged by the appellant herein in SWP No. 678/2009, having been decided by the writ Court by a separate order dated 24.10.2019. Thus once the appellant herein had not applied in response to the advertisement dated 13.10.2005, which was subject matter of SWP No. 585/2007 supra, wherein the impugned Judgment came to be passed by the writ Court, it can safely be said

that the appellant, in law, has no *locus standi* to question the impugned Judgment on any ground whatsoever, in that the same cannot be said to have caused any prejudice to him or infringed any of his rights.

20. Viewed thus, what has been observed, considered and analyzed hereinabove, the instant appeal is liable to be dismissed and is, accordingly, **dismissed.**

LPA No. 324/2019

1. The instant Letters Patent Appeal (LPA) has been filed by the appellant herein, challenging the order dated 24.10.2019, passed in SWP No.678/2009, titled *Dr. Nazir Ahmad Khan Vs. State of J&K and Ors.*, in terms whereof, the writ Court has dismissed the petition, filed by the appellant herein being petitioner before the writ Court.

2. The facts emerging from the record would reveal that the PSC vide advertisement notice No. 02/PSC of 2009 dated 30.01.2009, invited applications from eligible candidates for filling up the posts of Deputy Medical Superintendent in GMC, Srinagar/Jammu, fixing the last date for receipt of application forms as 16.03.2009.

3. The PSC, however, instead of proceeding ahead with the process of selection, issued notification No. PSC/Exam/09/15 dated 26.03.2009, whereunder the advertisement notice dated 30.01.2009, to the extent of post of Deputy Medical Superintendent, GMC, Srinagar came to be withdrawn.

4. The petitioner/appellant herein questioned the said withdrawal notification dated 26.03.2009 in the petition supra on the multiple grounds urged in the petition, including that the respondents could not have withdrawn

the advertisement notice qua the post of Deputy Medical Superintendent, GMC, Srinagar, without assigning any reasons.

5. The respondents impleaded in the petition did not file any reply to the petition despite availing opportunities granted to them whereupon the writ petition came to be finally heard and decided by the writ Court along with SWP No. 585/2007 supra and the writ Court while dismissing the said writ petition observed that since the selection of the candidates against the post of Deputy Medical Superintendent have been upheld in SWP No. 585/2007 as also the petitioners in the said petition, have been directed to be appointed, the claim of the petitioner/appellant herein that four posts of Deputy Medical Superintendent were withdrawn without any justification, does not survive while further observing that the said posts were advertised several times and petitioner-appellant herein failed to make the grade.

6. The impugned order dated 24.10.2019, is challenged by the appellant herein *inter alia* on the ground that the writ Court has been in misconception of the fact that the posts in question were re-advertised several times and that the appellant herein failed to make the grade, when the fact of the matter was that the posts in question were re-advertised once and the petitioner-appellant herein, having become over-aged by that time would not apply and that the writ Court failed to consider the petition on its merits, as the withdrawal of posts by the official respondents was arbitrary, capricious and discriminatory.

Heard learned counsel for the parties.

7. Before addressing the issue of legality or otherwise of the impugned order dated 24.10.2019, a cursory look on the petition filed by the appellant herein reveals that the petitioner-appellant herein, challenged the withdrawal of posts by the PSC primarily on the ground that withdrawal was activated with

malafide as the respondent department intended to conform ineligible candidates against the said posts.

This admission of the petitioner/appellant herein that the posts in question were advertised after their withdrawal itself contradicts his own stand that the respondent department intended to conform ineligible persons against the said posts. Had that been so, the posts in question would not have been referred to the PSC for making fresh selections. Further in absence of impleadment of the respondents in person in order to enable them to defend the allegation of malafide, the writ Court otherwise, could not have gone in the merits of the petition.

8. Even if the plea of the petitioner/appellant herein is accepted, still the reliefs prayed in the writ petition were incapable of being granted to the petitioner/appellant herein, as no justiciable right had vested in the petitioner-appellant herein to question the decision of the respondents in withdrawing the posts in question on the basis of settled position of law that mere issuance of advertisement notice does not confer any substantial right on a candidate even if having applied pursuant thereto, either to be considered for the post advertised or to ask for finalization of selection process or the right to oppose the withdrawal of the posts advertised or the abandonment of the selection process, as law is settled that the advertisement is merely a notice to the general public made regarding availability of advertised vacancies in order to enable the candidates satisfying the eligibility criteria to submit their applications thereto. Issuance of advertisement notice, thus does not vest right for appointment to a candidate who responds to the same. It is equally settled that the Selection Body can at any time withdraw the advertisement notice, abandon the selection process or withdraw the advertised posts inasmuch as decide to

restrict the selection to only some of the posts and, as such, a candidate who may have applied for the advertised posts is not clothed with any right to restrain the Selection Body from withdrawing the advertised posts or abandoning the selection process thereof. A reference in this regard to the Judgment of the Apex Court passed in case titled as ***“Shankarsan Dash v. Union of India reported in 1991(3)SCC 47***, would be relevant, wherein at para 7 following has been laid down:-

“7. It is not correct to say that if a number vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it is not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Ors., (1974) 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Ors., (1986) 4 SCC 268 and Jitendra Kumar and Ors. v. State of Punjab and Ors., (1985) 1 SCR 899.”

A further reference to the Judgment of the Apex Court passed in case titled as ***State of Orrisa v. Bhikari Charan Khuntia, reported in 2003 (10) SCC 144***, would also be germane, wherein at para 8 following has been laid down:-

“8. As we observed by this Court in Government of Orrisa through Secretary, Commerce and Transport Department, Bhubaneswar v. Haraprasad Das and Ors. (1998) (1) SCC 487, whether to fill up or not to fill up a post, is a policy decision and unless it is arbitrary, the High Court or the Tribunal has no jurisdiction to interfere with such decisions of the Government and direct it to make further appointments in the present case even no selection was made and not even any select list was in existence. Even if there had been any such selection or inclusion of any of the names in the select list, same could not have given any right. Therefore, mere sending of name by the employment exchange could not have and in fact has not conferred any right. The writ applications worth thoroughly misconceived, and the Court misdirected itself as to the nature of relief to be granted.”

9. Having regard to the aforesaid position of law and the case set up by the petitioner/appellant herein, it is crystal clear that the petitioner/appellant herein have had been clothed with no justiciable right on account of merely having applied to the post in question advertised by the respondents, even if in a situation where the merit list or a selection panel may have had been drawn by the respondents.

10. Viewed thus, for the aforesaid reasons, the instant appeal is liable to be dismissed, as otherwise also the writ petition of the petitioner/appellant herein is found to be meritless. Resultantly, the instant appeal is **dismissed** and consequently, the writ petition being SWP No. 678/2009, of the petitioner-appellant herein, shall stand also **dismissed** for the reasons indicated hereinabove.

LPA No. 126/2020

1. In the instant Letters Patent Appeal (LPA) Judgment dated 24.10.2019, passed in SWP No. 585/2007, titled as ***Dr. Jameel Ahmad Mir Vs. State of J&K and Ors.***, has been thrown challenge to by J&K, Public Service Commission (for short PSC).

2. The matter pertains to the selection and appointment against the post of Deputy Medical Superintendent in the respondent Health and Medical Education Department. (H&ME) Department.

3. Perusal of the record would reveal that the writ Court while passing the impugned Judgment did not pass any direction against the appellant-PSC, however, directed the H&ME Department to appoint the

petitioners/respondents 1 and 2 herein against the post of Deputy Medical Superintendent in the department.

4. Having regard to the aforesaid position, if anyone could be heard to be having a grievance, it would have been the H&ME Department, on whose establishment the posts in question are borne and who came to be directed by the writ Court to appoint respondents 1 and 2 herein. Indisputably the appellant-PSC is merely a Selection Body, having a role to undertake the process of selection and upon its completion to make recommendations thereof to the intending department being in the instant case H&ME Department. If the impugned Judgment in the instant appeal is unworkable and the said plea was and is available to the intending department, i.e, H&ME and not the appellant-PSC, whose role otherwise also in the matter have had been over upon the recommendations made by it in favour of selected candidates being private respondents herein.

5. Be that as it may, since the impugned Judgment dated 24.10.2019, was also subject matter of challenge in LPA No. 323/2019 supra, wherein the same has been upheld, the instant appeal, as such, would not survive and thus is liable to be dismissed. Resultantly, the instant appeal is **dismissed**.

6. Registry to place copy of this Judgment separately on each of the files.

(JAVED IQBAL WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

Srinagar

21.12.2023

"Mohammad Yasin Dar"

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes/No.