

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- WP (C) No. 630/2024
CAV No. 184/2024

1. UT of J&K through Appellant(s)/Petitioner(s)
Commissioner Secretary,
Health & Education Department,
Civil Secretariat, Jammu.
2. Director, Indian System of Medicines
(ISM),
Indira Chowk, Jammu.
3. Principal,
Govt. Ayurvedic Medical College,
Jammu.

Through: Mr. Raman Sharma, AAG

Vs

Dr. Poonam Gupta,
W/o Sh. Sanjeev Gupta,
R/o 160/3, Extn. Trikuta Nagar,
Jammu.

..... Respondent(s)

Through: Mr. Abhimanyu Sharma, Advocate

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

ORDER
(03.01.2025)

1. Instant petition under Article 226 of the Constitution of India is filed by the UT of J & K and two others, challenging an order/judgment dated 21.12.2022 passed by the Central Administrative Tribunal, Jammu Bench, Jammu ["the Tribunal"] in OA No. 61/1471/2021 titled **Dr. Poonam Gupta Vs. UT of J & K & Ors.**

2. In terms of the judgment impugned, the Tribunal has allowed the OA filed by the respondent-Dr. Poonam Gupta and quashed an order bearing No. 01-GAMC of 2021 dated 16.08.2021 passed by the petitioner no. 3-Principal, Govt. Ayurvedic Medical College, Jammu. The Tribunal has issued a further direction to the petitioners to take necessary steps for appointment of the respondent to the vacant post of Assistant Professor (Kayachikitsa) on academic arrangement basis within a period of one month.

Factual Matrix:

3. Vide an advertisement notification no. DIP/J-8588/20 dated 14.12.2020, the petitioner no. 3 invited applications *inter alia* for one post of Lecturer/Assistant Professor in the Department of Kayachikitsa, in Government Ayurvedic Medical College & Associated Hospital, Jammu. The engagement was to be made on Academic Arrangement Basis in terms of SO-364 of 2020 dated 27.11.2020. The respondent applied for the post of Lecturer/Assistant Professor as mentioned (supra) and was interviewed on 20.03.2021. Two other candidates namely Dr. Twinkle Gupta and Dr. Tanvi Singh who had applied for the post of Lecturer/Assistant Professor were found to be more meritorious. Accordingly, Dr. Twinkle Gupta was shown selected against the singular post of Lecturer/Assistant Professor while the candidate next in the merit namely Dr. Tanvi Singh was placed in the waitlist. The respondent herein was

candidate next in the merit to Dr. Tanvi Singh and, therefore, could find place neither in the select list nor in the waitlist.

4. It needs to be noticed that Dr. Twinkle Gupta and Dr. Tanvi Singh had simultaneously applied for higher post of Reader/Associate Professor in Kayachikitsa which had also been notified in the advertisement notification dated 14.12.2020. The posts of Reader/Associate Professor in Kayachikitsa notified were two in number. Even for the post of Associate Professor, Dr. Twinkle Gupta and Dr. Tanvi Singh were the candidates with higher merit. Dr. Twinkle Gupta and Dr. Tanvi Singh, therefore, also came to be selected against the aforesaid two posts of Associate Professor. On the request and option made by the aforesaid two doctors, they were treated to have been selected as Associate Professors and were accordingly offered the appointment. This led to the deletion of their names from the select list and waitlist of the post of Assistant Professor in Kayachikitsa notified simultaneously with the select list of Associate Professors. The respondent who was the most meritorious candidate left for the post of Lecturer/Assistant Professor was not selected and consequently, not offered the appointment.
5. This made the respondent to approach the Tribunal by way of OA being OA No. 61-934/2021 titled **Dr. Poonam Gupta Vs. UT of J & K & Ors.** The OA was disposed of by the Tribunal vide its order dated 23.06.2021 with the direction to the petitioner no. 3 to consider

the representation of the respondent and take a decision on the same by passing a reasoned and speaking order. This is how the matter came up for consideration before the petitioner no. 3 who vide its order bearing no. 01-GAMC of 2021 dated 16.08.2021 rejected the claim of the respondent for her appointment to the post of Lecturer/Assistant Professor on the ground that the respondent was neither figuring in the selection list nor in the waiting list.

6. It is this speaking order dated 16.08.2021 passed by the petitioner no. 3 that was assailed by the respondent by filing OA before the Tribunal which has been decided in her favour by virtue of order/judgment impugned in this petition.
7. The Tribunal after considering the rival contentions and having gone through the material on record came to the conclusion that the speaking order dated 16.08.2021 impugned in the OA was legally unsustainable and accordingly quashed the same. The Tribunal also held the respondent entitled to selection and appointment as Lecturer/Assistant Professor in Kayachikitsa which post had remained unfilled due to the shifting of the selected and waitlist candidates to the post of Associate Professor in the same department.

DISCUSSION:

8. **Having heard learned counsel for the parties and perused the material available on record,** we are of the considered opinion that the judgment passed by the Tribunal and the conclusions arrived by it

are in consonance with the legal and factual scenario obtaining in the case. We may not fully subscribed to the reasoning given by the Tribunal, yet, we have no manner of doubt that, in the given facts and circumstances of the case, the respondent was entitled to be selected and appointed as Lecturer/Assistant Professor in Kayachikitsa being the candidate with highest merit left in the fray.

9. The claim of the respondent for selection and appointment against the post of Assistant Professor has been denied by the petitioner no. 3 solely on the ground that with the shifting of a candidates figuring in the select list and waitlist for the post of a Lecturer/Assistant Professor to the select list of the posts of Associate Professor, the petitioners were left neither in the select list nor in the waitlist. And that, since, the respondent was not figuring either in the select list or in the waitlist, as such, could not have been selected and considered for appointment against the post of Lecturer/Assistant Professor. We find inherent fallacy in the understanding of the petitioners.

10. Indisputably, Dr. Twinkle Gupta and Dr. Tanvi Singh, who were figuring in the select list and waitlist, respectively, for the post of Lecturer/Assistant Professor were shifted and selected against the two posts of Associate Professors notified by the same notification issued on 14.12.2020. The moment Dr. Twinkle Gupta and Dr. Tanvi Singh were shifted to the select list of Associate Professor, the petitioners ought to have prepared a fresh select list and the waitlist for Assistant

professor. We are saying so because once the option of Dr. Twinkle Gupta and Dr. Tanvi Singh to be selected and appointed as Associate Professor was accepted by the petitioners, the select list/waitlist earlier prepared for the post of Lecturer/Assistant Professor became non-existent. It was, thus, the bounden duty of the petitioners to draw the fresh select list of Assistant Professor by picking up the person who was on the top of the merit list.

11. Indisputably, the respondent was the candidate with the highest merit for the post of Assistant Professor. It is not the case of the petitioners that the merit of the respondent was too inferior than Dr. Twinkle Gupta and Dr. Tanvi Singh and that a policy decision was taken not to offer the appointment to a candidate with such inferior merit. The two candidates who had better merit than the respondent got selected and appointed against the higher post of Associate Professor and the next candidate with highest merit left for the post of Assistant Professor was the respondent and the respondent alone. It was, thus, not the case of preparing a fresh waitlist exceeding the prescribed limit of 20% to accommodate the respondent as is the case understood by the Tribunal. The respondent was entitled to be selected being the most meritorious candidate left for the post of Assistant Professor in Kayachikitsa after the migration of one selected and one waitlist candidate to the select list of Associate Professor in the department of Kayachikitsa.

CONCLUSION:

12. It is, thus, held that if a candidate is selected against a lower and higher post simultaneously and obviously makes choice for higher post, his name from the select list of lower post shall be deemed to have been deleted.. He/she shall not be treated as having been selected against the lower post. In such situation, the candidate next in the order of merit is required to be shifted to the select list.
13. Viewed from any angle, there is no possibility of having a second opinion on the issue. The respondent being the most meritorious candidate left in the fray for the post of Lecturer/Assistant Professor in the department of Kayachikitsa notified vide advertisement dated 14.12.2020 is the only candidate entitled to be selected and appointed against the said post.
14. In the premises, **we find no merit in the instant petition and the same is accordingly dismissed** along with connected application(s), if any.
15. **Interim directions, if any, shall stand vacated.**

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
03.01.2025
Manan

Whether the order is reportable : Yes