

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

Pronounced on :24.11.2025

**WP(C) No. 1388/2024
CM No. 3447/2024**

Dr. Jahangir Ahmed, Age 35 years
S/o Gh. Nabi Bhat,
R/o Ibrahim Colony, Arampora,
Sopore Baramulla, Kashmir.

.....Petitioner

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate

Vs

1. Dr. Manoj Sharma,
S/o Sudesh Sharma,
R/o Maghar Nagar, Upper Laxmipuram,
Chinore, Jammu.

.... Contesting Respondents

2. Union Territory of J&K
through Secretary to Govt.,
Health & Medical Education Department,
Civil Secretariat, Jammu.
3. Selection Committee
through its Chairman,
Principal Indira Gandhi Govt. Dental College,
Jammu.
4. Principal,
Indira Gandhi Govt. Dental College,
Jammu.

..... Proforma Respondents

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate for R- 1.
Mr. Raman Sharma, AAG for R- 2 to 4.

**Coram: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGMENT

Per: Rahul Bharti-J

01. By an adjudication in an Original Application (OA) **No. 61/1629/2022** preferred by the respondent No. 1 – **Dr. Manoj**

Sharma, the Central Administrative Tribunal (**"CAT" in short**), Jammu Bench has come to upset engagement of the petitioner – **Dr. Jahangir Ahmed** as Registrar on tenure basis in the Indira Gandhi Govt. Dental College (**"IGGDC" in short**), Jammu.

02. Adjudication of said OA has taken place in terms of judgment dated **30.05.2024** against which the aggrieved petitioner- Dr. Jahangir Ahmed came forward with the institution of present writ petition under article 226 of the Constitution of India filed on **06.06.2024** and the adjudication of which is now taking place through the medium of present judgment by which time the petitioner- Dr. Jahangir Ahmad has served his tenure posting leaving the adjudication of this writ petition meaningful for the respondent No. 1-Dr. Manoj Sharma.

03. The factual scenario in the backdrop of which institution of said OA **No. 61/1629/2022** came to take place needs to be set out first herein next.

04. Vide an advertisement **No. IGG DCJ/Estt/GD/6215-23** dated **18.10.2022** issued by the respondent No. 4 – Principal, IGGDC, Jammu, Online applications were invited for

the tenure post of Registrar, Tutor and Demonstrator in three identified disciplines/departments of IGGDC, Jammu.

05. One post of Registrar in the **Department of Oral Medicine and Radiology**, IGGDC, Jammu was meant to be provided through the selection process as envisaged in terms of said selection advertisement notice dated 18/10/2022.

06. Minimum qualification required for applying for the said tenure post of Registrar is Bachelor of Dental Surgery (BDS) from Dental Council of India (**“DCI” in short**) recognized Institute.

07. As per clause 1 (e) of said selection advertisement notice dated 18/10/2022, following documents were mentioned and required to accompany Online application to be submitted by the prospective candidate/s:-

“e. The application forms should be accompanied with self-attested copies of the following documents/ testimonials:-

1. BDS Degree from recognized College & recognized University.
2. Internship compilation certificate.
3. Attempt certificate issued by the Head of Institution/ University.
4. Marks card of all years of BDS.

5. MDS Degree from recognized College & recognized University (if any).
6. Rural Service certificate (after post-graduation issued by the Director Health Services (if any).
7. Field Service certificate (after post-graduation) issued by the Director Health Services (if any).
- 8. Distinctions, National Scholarship, Honours, Medal, Academic merit certificate (if any).**
9. House Job certificate for full one year issued by the Principal concerned.
10. Professional publication in a standard Medical Journal (if any).
11. Registration Certificate (upto-date) of J&K Dental Council.
12. Date of Birth Certificate.
13. A copy of Aadhar Card.
14. Domicile certificate/proof.”

08. In the same very selection advertisement notice dated 18/10/2022, the basis of the selection stood mentioned to take place in accordance with Govt., Order No. 706-HMER of 2007 meant for the purpose and prescribing the combined academic merit and performance in the interview as basis of merit evaluation and making of merit list and that is the

reason that documents solicited in terms of clause 1(c) supra along with submission of application form was bearing relevance.

09. The engagement on tenure basis for the post of Registrar is meant to be for a period of one year, further extendable on year to year basis up to maximum of three years subject to satisfactory work and conduct certificate from the Head of Department (HoD) of the concerned Specialty/ Department.

10. An express mention is made in said selection advertisement notice dated 18/10/2022 to accompanying **Govt. Order No. 706-HMER of 2007** dated **11.01.2007** as annexure-A on the basis whereof combined merit, with weight age of 90% academic merit and 10% in the interview, of competing candidates is meant to be assessed.

11. As per the academic merit evaluation, the respondent No. 1-Dr. Manoj Sharma was awarded **75 marks** whereas the petitioner- Dr. Jahangir Ahmad earning **77 marks**.

12. Academic Merit evaluation of 16 participating candidates came to be framed by a four member selection-cum-screening committee headed by the respondent No. 4 - Chairperson/ Principal IGGDC, Jammu.

13. The petitioner- Dr. Jahangir Ahmad's academic marks attainment at 77 came to be highest with the respondent No. 1 - Dr. Manoj Sharma and one Dr. Prenika Sharma tied at second best 75 marks.

14. On **18.11.2022**, interview of the candidates for the tenure post of **Registrar, Oral Medicine & Radiology** came to take place on the basis whereof final merit list came to be published vide Notification **No. IGG-DCJ/Estt/6780** dated **22.11.2022** bearing reference to 17 candidates having competed for the engagement in which the petitioner-Dr. Jahangir Ahmed came to be topper having earned aggregate **84.00 marks** to be first as against the respondent No. 1-Dr. Manoj Sharma with **82.50 marks** at second position tied with Dr. Prenika Sharma also securing 82.50 marks which thus paved way for issuance of an **Order No.143/IGGDCJ of 2022** dated **22.11.2022** by the respondent No. 4 – Principal IGGDC, Jammu thereby ordering the engagement of the petitioner- Jahangir Ahmed as **Registrar** in the **Department of Oral Medicine & Radiology, IGGDC, Jammu** for a period of one year at first instance further extendable on year to year basis upto maximum of three years subject to satisfactory work and conduct certificate from the concerned HOD as per **S.O. 364** dated **27.11.2020**.

15. The tenure post of Registrar is admissible to consolidated pay equal to the post of Dental Surgeon in the Health Department as per **SRO-193** dated **24.04.2018** plus DA.

16. Feeling aggrieved of being edged out of the competition as being 2nd highest merit position holder in the final merit list next to the petitioner- Dr. Jahangir, the respondent No. 1 – Dr. Manoj Sharma made a written representation dated **24.11.2022** to the Health & Medical Education Department, Govt. of UT of J&K registering his grievance therein that he has not been allocated correct and full marks as admissible to him in terms of **Govt. Order No. 706-HMER of 2007** dated **11.01.2007** thus denying him his legitimate top merit position ahead of the petitioner-Dr. Jahangir Ahmed.

17. The respondent No.1- Dr. Manoj Sharma is Bachelor of Dental Surgery ("**BDS**" *in short*) from IGGDC, Jammu, University of Jammu with passing year December 2010 with percentage of **61.28** and then Master of Dental Surgery ("**MDS**" *in short*) from Darshan Dental College, Udaipur, RUHS, Jaipur with passing year 2022 and percentage **56.14**.

18. In the context of computation of his academic merit constituting the core of his claim for entitlement for higher

marks in combined academic merit , the respondent No. 1 – Dr. Manoj Sharma reckoned that allocation of **75 marks** to him was not correct as he ought to have been awarded **78 marks** which coupled with interview marks as allotted to him would have aggregated his total score to **85.50** thereby taking him ahead of the petitioner – Dr. Jahangir Ahmed for the purpose of selection and appointment as Registrar to the ouster of the petitioner – Dr. Jahangir Ahmed’s claim of being the topper.

19. The premise on which the respondent No. 1 – Dr. Manoj Sharma claimed his entitlement to allocation of **78 marks** in place of **75 marks** awarded to him for assessment of academic merit out of **90 marks** earmarked, the respondent No. 1-Dr. Manoj Sharma claimed that he has earned **three (3) First Positions** in the course of his studies in BDS course by reference to which he was to be awarded **5 marks** being the maximum as envisaged in **Govt. Order No. 706-HMER of 2007 dated 11.01.2007.**

20. Three subjects in BDS course in which the respondent No. 1 – Dr. Manoj Sharma has earned Ist position are:-

(i) **Dental Materials in BDS First Prof.,
September, 2006.**

**(ii) Orthodontics in BDS Pre-Final Prof.,
December, 2009 &**

**(iii) Preventive and Community Dentistry in BDS
Pre-Final Prof., December, 2009.**

as is admittedly certified by the University of Jammu.

21. For the purpose of his claim of being entitled to earn five (5) marks for his three first positions, the respondent No. 1 – Dr. Manoj Sharma drew reference from Annexure-A to the Govt. Order No. 706-HMER of 2007 dated 11.01.2007.

22. Annexure-A to the Govt. Order No. 706-HMER of 2007 provides as under:-

**Annexure “A” to Government Order No. 706-
HMER of 2007
dated 11.01.2007**

System of allotment of marks for selection of candidates for appointment as Registrars/ Demonstrators/Tutors in Government Medical College Jammu/Srinagar and Government Dental College Jammu/Srinagar.

Total Marks:- 100

- | | |
|--|----|
| 1. <u>Academic Career (MBBS/BDS) or equivalent qualification</u> | 40 |
| a. Passed all examination at the first attempt | 40 |
| b. One failure.
(deduct 3 marks for every subsequent failure) | 37 |
| 2. <u>Distinction scholarship, Honours Medals and Certificate (Upto maximum of 5 marks)</u> | |
| a. National merit scholarships obtained during MBBS/BDS | 01 |

- | | |
|--|-----------|
| b. Best Graduate of the year from the Medical College/Dental College | 02 |
| c. First in the University in the final MBS/BDS Exam | 03 |
| d. Second in the University in the final MBBS/BDS | 02 |
| e. Third in the University in the final MBBS/BDS | 01 |
| f. Prize/Medal/Honour Marks (75% or more) first position in each Subject in the University Professional Examination | 02 |
| g. Second position each subject in the University Professional Examination | 1/2 |
| 3. <u>House Job Career in a teaching institution (5 marks)</u> | |
| a. For "Excellent" grading | 05 |
| b. For "Very Good" grading | 03 |
| c. For "Good" grading | 01 |
| 4. <u>Rural Service (Prior to post graduation) Maximum 5 marks</u> | |
| For each one year of rural service A certificate regarding rural service will be issued by Director Health Services concerned regarding physical working of the doctor in rural area | 01 |
| 5. <u>Field Service (after post graduation) Maximum 5 marks</u> | |
| For each one year field service after post graduation. | 01 |
| 6. <u>Post graduate career (Maximum 20 marks)</u> | |
| a. For MD/MS/MDS/Course | 20 |
| b. For diploma course | 10 |
| 7. <u>Professional publication in a standard medical journal (2 marks for each Publication)</u> | |
| 8. Viva Voce | 10 |

Note: For basic sciences departments, research work done in any recognized institution may be given

credit in lieu of house job career.

23. The respondent No. 1 – Dr. Manoj Sharma's reference with respect to allocation of marks to him for his Ist position in three subjects in his BDS course came to be drawn from clause 2(f) of the aforesaid annexure-A to the Govt. Order No.706-HMER of 2007 dated 11.01.2007.

24. The grievance of the respondent No. 1 – Dr. Manoj Sharma being placed at second place in the merit list is that because he was awarded only **2 marks** for his **First Position** in three subjects whereas he ought to have been awarded maximum **5 marks** and, therefore, suffered consequent loss of **3 marks** and also loss of merit losing the appointment to the petitioner – Dr. Jahangir Ahmed.

25. The CAT, Jammu Bench, in its judgment dated 30.05.2024, came to hold in paragraph 22 that a candidate having secured first position in any subject/s in the University Professional Examination of BDS is entitled to 2 marks each for such subject/s to maximum of 5 marks whereas the respondent No. 1 – Dr. Manoj Sharma was treated differently by being awarded only 2 marks under clause 2(f) of the Govt. Order No. 706-HMER of 2007 dated 11.01.2007 as against his Ist Position secured in three subjects.

26. The CAT, Jammu Bench, thus, held that the petitioner –Dr. Jahangir Ahmed was to have merit position next below the respondent No. 1 – Dr. Manoj Sharma but by an erroneous interpretation of clause 2(f) of the Govt. Order No. 706-HMER of 2007 the petitioner-Dr. Jahangir Ahmed scored over the respondent No. 1 – Dr. Manoj Sharma which rendered the **Order No.143/IGG DCJ of 2022** dated **22.11.2022** of appointment of the petitioner –Dr. Jahangir Ahmed as Registrar on tenure posting in the Department of Oral Medicine and Radiology, IGGDC, Jammu as illegal and arbitrary.

27. The petitioner- Dr. Jahangir Ahmed's appointment was, thus, quashed with a corresponding direction to the Selection Committee as well as the Principal, IGGDC, Jammu to take the academic merit of the respondent No. 1 – Dr. Manoj Sharma at **78 marks** making his aggregate score to be **85.50** and on that basis to engage the respondent No. 1 – Dr. Manoj Sharma to the post of Registrar in the Department of Oral Medicine and Radiology, IGGDC, Jammu by reference to advertisement notice **No. IGG DCJ/Estt/GD/6215-23** dated **18.10.2022** within a period of one month.

28. By the time CAT, Jammu Bench came up with its judgment dated 30.05.2024, the petitioner – Dr. Jahangir

Ahmed had already come to serve his two years' tenure posting as Registrar, Department of Oral Medicine & Radiology, IGGDC, Jammu.

29. Upon institution of this writ petition, this Court, in terms of an order dated 07.06.2024, came to direct *status-quo* to be maintained which meant continuation of the tenure appointment of the petitioner –Dr. Jahangir Ahmed as Registrar, Department of Oral Medicine & Radiology, IGGDC, Jammu which has now lasted more than three years which otherwise is the maximum period of engagement leaving this writ petition only to be examined from the point of purpose of the respondent No. 1 – Dr. Manoj Sharma as to whether he has suffered loss of appointment wrongly and unfairly without touching upon the legitimacy of the appointment of the petitioner – Dr. Jahangir Ahmed as Registrar, Department of Oral Medicine & Radiology, IGGDC, Jammu. In case if it is to be held that the respondent No. 1 – Dr. Manoj Sharma suffered loss of appointment as Registrar, Department of Oral Medicine & Radiology, IGGDC, Jammu then the relief to which he is entitled from the outcome of the present writ petition.

30. The position which gets posed before us from the adjudication of CAT, Jammu Bench in terms of its judgment dated **30.05.2024** vis-à-vis the respondent No. 4 - Principal,

IGGDC, Jammu's Order No. **Order No.143/IGGDCJ of 2022** dated **22.11.2022** of appointment of the petitioner – Jahangir Ahmed based upon final merit list **No. IGG-DCJ/Estt/6780** dated **22.11.2022** is that by reference and with respect as to true scope of Govt. Order No. 706-HMER of 2007 dated 11.01.2007 in terms of its Annexure-A, Clause-2(f), CAT, Jammu Bench and the selection committee headed by the respondent No. 4 - Principal, IGGDC, Jammu are found in opposite direction..

31. The selection committee headed by the respondent No. 4 - Principal, IGGDC, Jammu by reference to aforesaid clause 2(f) of Annexure A to Govt. Order No. 706-HMER of 2007 held that Ist Position in three subjects secured by the respondent No. 1 – Dr. Manoj Sharma in his BDS course would earn him only two marks literally meaning as if the respondent No. 1 – Dr. Manoj Sharma's three Ist Positions were as good as one Ist Position just for two marks' entitlement whereas CAT, Jammu Bench, in its judgment dated 30.05.2024, has held that for his three Ist Positions in his BDS course, the respondent No. 1 – Dr. Manoj Sharma were to earn as a matter of entitlement two marks each aggregating to six (6) but only to suffer loss of one mark so as not to exceed five (5) marks maximum allocation

meant in terms of Clause-2 of Annexure-A to Govt. Order No. 706-HMER of 2007 prescribing five 5 marks capping.

32. Before we proceed to examine the true scope of Clause-2 read with its sub clause (f) of Annexure-A to Govt. Order No. 706-HMER of 2007, it needs to be first registered that Govt. Order No. 706-HMER of 2007 dated 11.01.2007 is issued by the Health & Medical Education Department, Govt. of Jammu & Kashmir specifically providing for the system of marking for assessment of merit of applicants for selection as Registrars/ Demonstrators/Tutors and House Job officers in Govt. Medical College, Jammu/Srinagar and the Govt. Dental College, Srinagar/Indira Gandhi Govt. Dental College, Jammu.

33. The Hon'ble Supreme Court of India in the case of **"The Commissioner, Corporation of Madras Vs Madras Corporation Teacher's Mandram and others," 1997 AIR SC 2131** has stated that is a well settled legal position that it is the legal or executive policy of the Govt. to create a post or to prescribe the qualifications for the post. Prescription of qualification is with obvious purpose of eligibility and merit assessment.

34. Govt. Order No.706-HMER of 2007 is, thus, product of exercise of an executive power and authority of the Govt. of

Jammu & Kashmir which at the relevant point of time was served by the Constitution of the Jammu & Kashmir, 1956 vesting executive power in the Govt., and which now is vesting under the aegis of Constitution of India.

35. Govt. Order No. 706-HMER of 2007 which is a product of exercise of executive power by the Govt. of J&K was still holding the field at the time of selection process initiated vide advertisement **No. IGGDCJ/Estt/GD/6215-23** dated **18.10.2022** and, therefore, said Govt. Order has a full legal force and enforceability like a statute and/or statutory rules because a State Govt., has executive power, in relation to all matters with respect to which the legislature of the State has power to make laws, and that power extends even with respect to the matter of selection and appointment to Govt./Public Service as came to be held by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **"B. N. Nagarajan Lingappa Veerappa Shindal Vs State of Mysore," 1966 AIR SC 1942.**

36. A full Bench of this Court in the case of **"H. S. Sahni Vs State of J&K," 2000 Kash. LJ 548**, while referring to the judgment of the Hon'ble Supreme Court of India in **"The Commissioner, Corporation of Madras Vs Madras Corporation Teacher's Mandram and Others"** (supra)

unequivocally has held that it is the executive domain of the Govt. to prescribe the qualifications and features related there with in the matter of selection/employment relatable to Govt. job/civil posts/public employment.

37. In the case of **“Nagpur Improvement Trust Vs Yadaorao Jagannath Kumbhare and others,” 1999 AIR SC 3084**, the Hon’ble Supreme Court of India has endorsed the general principle of Service jurisprudence that in the absence of any statutory rules governing the service conditions of the employees, administrative/executive instructions and/or decisions would operate in the field and appointments/promotions can be made in accordance with such executive instructions/administrative directions.

38. Hon’ble Supreme Court of India in the case of **“Banarsi Das & others Vs State of Uttar Pradesh,” 1956 AIR SC 520** stamped the legal position to the effect that is open to the appointing authority to lay down the requisite qualifications for recruitment to Govt. service and it is open to the authority to lay down such pre-requisite conditions of appointment as would be conducive to the maintenance of proper discipline amongst the Govt. servants.

39. In the case of **“Ramesh Prasad Singh Vs State of Bihar,” 1978 AIR SC 327**, the Hon’ble Supreme Court of India came to acknowledge that in the absence of rules, qualifications for a post can be validly laid down in the self same executive order creating a service or post filling it up according to those qualifications.

40. Once Govt. Order No. 706-HMER of 2007 is an exhibit of law in itself, both in terms of its text and context. The authority to carry forward application of Govt. Order No. 706-HMER of 2007’s mandate, which in the present case is the selection committee headed by the respondent No. 4 - Principal, IGGDC, Jammu, was and is no body, by any stretch of claim and authority by its self assumption, to intrude, interpret, corrode and corrupt the text and context of said Govt. Order No. 706-HMER of 2007 which both literally and purposely meant to award marks as intended in acknowledgement of merit of candidate as compartmentalized therein.

41. Sub clause (f) of Clause 2 is reproduced once again for the sake of serving the emphasis. The heading & sub-clauses of Clause 2 reads as under:-

2. Distinction scholarship, Honours Medals and Certificate (Upto maximum of 5 marks)

a. National merit scholarships obtained during MBBS/BDS	01
b. Best Graduate of the year from the Medical College/Dental College	02
c. First in the University in the final MBS/BDS Exam	03
d. Second in the University in the final MBBS/BDS	02
e. Third in the University in the final MBBS/BDS	01
f. Prize/Medal/Honour Marks (75% or more) first position in each Subject in the University Professional Examination	02
g. Second position each subject in the University Professional Examination	1/2

42. The reservation of marks by the maker and author of Govt. Order under Clause 2 is obviously with an end purpose to recognize and respect the merit to the maximum extent and, accordingly, the areas of excellence and attainment relatable to a BDS Graduate have been identified deserving of allocation of marks in connection with assessment of academic merit in view of the fact that no written examination is to take place for the purpose of carrying out merit based selection of candidate for appointment in terms of Govt. Order No. 706-HMER of 2007.

43. Thus, sub-clauses (a) to (g) of Clause 2 are all merit feeding aspects of a BDS candidate and if he or she has the credentials drawn, be it from one sub-clause or combination of sub-clauses, then full effect is meant to be reserved and served

to him or her without any botheration except that upper-ceiling of five marks is the limitation for the selection authority not to breach.

44. We are surprised when we come across that selection authority itself was in understanding of this very position, as came to be held by the CAT, Jammu Bench in its judgment dated 30.05.2024 in favour of the respondent No. 1 – Dr. Manoj Sharma, that for Ist Position in each subject of BDS course, a candidate, as in the case of the respondent No. 1 – Dr. Manoj Sharma, is entitled to two marks each for Ist Position in any given Subject but in case of Ist Position in three or more subjects in BDS course study attained by a candidate then ceiling of five (5) marks is to come into effect.

45. The selection authority on its own call came to put a different text and context into clause 2 thereby over-reaching the Govt. which otherwise is the author of Govt. Order No. 706-HMER of 2007 and the maker of the policy attending Annexure-A to said Govt. Order.

46. The CAT, Jammu Bench in paragraph 21 of its judgment dated 30.05.2024 is correct to the point of perfection in holding that as a selection committee headed by the respondent No. 4 – Principal, IGGDC, Jammu it was not in the

domain of the selection committee to over-reach clause 2(f) of Govt. Order No. 706-HMER of 2007.

47. A perusal of the judgment dated 30.05.2024 of CAT, Jammu Bench would show that though it has not come up with in-depth analysis and reasoning to support the conclusion that the respondent No. 1 – Dr. Manoj Sharma was entitled to earn for his Ist Position in three subjects of BDS course two marks each with maximum ceiling marks of five being entitled to be awarded to him but we intend to hold that sub-clauses (a) to (g) of Clause 2, Annexure-A of Govt. Order No. 706-HMER of 2007 ought to be read in harmony.

48. In this regard, we read situation like that a BDS candidate aspiring for the post, as mentioned in Govt. Order No. 706-HMER of 2007, may have a national merit scholarship obtained during his BDS course thereby entitling him with award of one mark and then same very candidate may also simultaneously have the credit of best graduate of the year from Dental College entitling him to earn two marks for the same and thirdly may also happen to be first in the final BDS exam securing him full three marks. Aggregate of three aforesaid marks allocation would come to six but the ceiling limit in Clause-2 being maximum five marks would restrict allocation of marks to such a candidate to be at five without

diluting the achievements of said candidate. Therefore, this would mean that sub-clauses (a) to (g) of clause A are all independent sub-clauses sub-serving each other as well, the benefit of each is to be given to a candidate who has to his or her credit the status of such sub-clause/s.

49. In clause-2(f), the word **“each”** affixed to **“Subject”** in which a candidate has first position secured is of relevance to show that first position in each subject would outrightly earn two marks and similarly first position in another subject in BDS course would also invite two marks allocation and so on with only rider being a ceiling limit of five marks not to be exceeded.

50. Thus, by no stretch of botheration, the selection committee headed by the respondent No. 4 – Principal, IGGDC, Jammu ought to have taken upon itself a concern that clause-2 to Annexure-A of Govt. Order No. 706-HMER of 2007 is having some problematic working aspect and with that obsession curtailing the entitlement of the respondent No. 1- Dr. Manoj Sharma to earn five marks for his Ist Position in three subjects of BDS course.

51. There is a definite slip of comprehension on the part of the selection committee headed by the respondent No.4 in

understanding of provision and play of marks reserved in clause 2 of Annexure A to Govt. Order No. 706-HME which caused writing off two subjects' Ist Position of the respondent No. 1-Dr. Manoj Sharma and left him awarded with only 2 marks for Ist Position for one subject only.

52. Selection Committee missed the woods for the trees by loss of reading in true sense and spirit the composition and apportionment of marks with respect to academic merit evaluation of candidate/s. In this regard, it is pertinent to lay out the mark distribution in Annexure A which is as under:

- | | |
|--|----|
| 1. <u>Academic Career (MBBS/BDS) or equivalent qualification</u> | 40 |
| 2. <u>Distinction scholarship, Honours Medals and Certificate (Upto maximum of 5 marks)</u> | |
| 3. <u>House Job Career in a teaching institution (5 marks)</u> | |
| 4. <u>Rural Service (Prior to post graduation) Maximum 5 marks</u> | |
| 5. <u>Field Service (after post graduation) Maximum 5 marks</u> | |
| 6. <u>Post graduate career (Maximum 20 marks)</u> | |
| 7. <u>Professional publication in a standard medical journal (2 marks for each Publication)</u> | 10 |

8. Viva Voce

10

Thus, seven (7) heads aggregate to 90 marks whereas Viva voce reserved 10 marks add up to 100 marks.

53. Now, Clause 2 has been allocated 5 maximum marks allocable to a candidate which he or she may earn by individual sub clauses enlisted from (a) to (g) and/or from collective collection from any of sub clauses taken together relatable to a particular candidate.

54. Thus, for marks computation under Clause 2 bearing 5 marks capping, all sub clauses (a) to (g) are to be reckoned disjunctively as well as conjunctively with only one caveat not to overstep 5 marks score notwithstanding higher marks computation of any given candidate who may have earning of marks drawn from each sub clauses exceeding 5 marks.

55. Now if left to Selection Committee's comprehension, then 1st position of a BDS candidate in more than one subjects in his BDS Course is of waste effect worth no merit earning for him or her in terms of sub clause f of Clause 2 which in other words would mean for a candidate like the respondent No. 1- Dr. Manoj Sharma the maximum marks earmarked under clause 2 are two(2) only and no further by which standard total marks reserved for academic merit evaluation instead of

90 would come to be 87 for a candidate like petitioner. This would be nothing but undercutting of the scheme of marks allocation provided in the Govt. Order in reference not being meant and made by Government but by the selection authority acting under the Government Order.

56. To borrow from the Hon'ble Supreme Court of India's use of expression in case of "Sanwarlala Agarwal & Ors Vs Ashok Kumar Kothari & Ors," (2023) 7 SCC 307 in para 18 **"As is commonly known, the stream cannot rise above its source"**, we are of confirmed view that the selection committee headed by the respondent No.4 ventured to rise above the Government in self construing sub clause f of clause 2 in a very merit negating manner with respect to the evaluation of the respondent No.1-Dr. Manoj Sharma's academic merit relatable to his Ist position status viz. three subjects.

57. It is here where the merit of the respondent No. 1 – Dr. Manoj Sharma got converted into demerit thereby giving an edge to the petitioner- Dr. Jahangir Ahmed in securing the appointment as Registrar in the Department of Oral Medicine and Radiology, IGGDC, Jammu thereby depriving the legitimate claim of the respondent No. 1 – Dr. Manoj Sharma of being appointed as Registrar in the Department of Oral Medicine and Radiology, IGGDC, Jammu.

58. In the case of **“Jagadish Prasad V. State of Rajasthan & Ors.” 2011 AIR SC 3189**, the Hon’ble Supreme Court of India has stated a proposition that **“State has to select best candidates to higher post. State must not frustrate rules providing for merit as main criterion.”** is what urges us to hold that the respondent No. 1-Dr. Manoj Sharma was entitled to earn his full marks for his merit under sub clause f of Clause 2.

59. We are not convinced that the judgment of this Court in the case WP(C) No.522/2022 titled “Ruhina Malgotra Vs. UT of J&K and others” has actually dealt with such aspect of the case or for that matter a controversy of this nature was involved in that case so as to be of any binding effect on this Bench.

60. In the light of the aforesaid, we hereby hold that the respondent No. 1 – Dr. Manoj Sharma was and is entitled to be appointed as Registrar in the Department of Oral Medicine and Radiology, IGGDC, Jammu in place of the petitioner - Dr. Jahangir Ahmed and that right of the respondent No. 1 – Dr. Manoj Sharma still accrues to him which is to be given to him with respect to the forthcoming appointment as intended for the post of Sr. Resident/Registrar in the Department of Oral Medicine and Radiology, IGGDC, Jammu by reference to the

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61. In this case, we have been constrained to resort to equity balancing by not disturbing the attainment of the petitioner – Dr. Jahangir Ahmed in terms of his appointment as Registrar in the Department of Oral Medicine and Radiology, IGGDC, Jammu which posting he has served and would entitle him the full benefit and credit.

62. ***Disposed of*** accordingly.

(Rahul Bharti)
Judge

(Sindhu Sharma)
Judge

Jammu
24.11.2025
Muneesh

Whether the judgment is speaking : **Yes**

Whether the judgment is reportable : **Yes**