

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

(Through Virtual Mode)

RP No. 30/2024 in
LPA No. 116/2024

Reserved on: 02.05.2025
Pronounced on: 12.08.2025

**1. Qurat-ul-Ain, Age 30 years,
D/o Khuda Bakhish, R/o Soura,
District Srinagar, Kashmir**

.... Applicant/Appellant(s)

Through:- Mr. J. H. Reshi, Advocate.

V/s

**1. UT of J&K through
Chief Secretary, Civil Secretariat,
Jammu/Srinagar**

.....Respondent(s)

**2. SKIMS, Soura, Srinagar,
Kashmir-190011.**

**3. Director, SKIMS, Soura,
Srinagar-190011.**

**4. Administrator (Policy),
SKIMS, Soura, Srinagar-190011.**

Through:- Mr. Furqan Yaqub, G.A.

CORAM:

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Per: Sindhu Sharma (J)

01. The petitioner, through the medium of this petition, seeks review of the judgment dated 30.05.2024, passed in LPA No. 116/2024, titled '*Qurat-ul-Ain vs. UT of J&K and others*'.

02. The brief facts of the case are that the Sher-i-Kashmir Institute of Medical Sciences (hereinafter referred to as '*SKIMS*') issued Advertisement Notice No. 04 of 2011 dated 17.06.2017, inviting applications from eligible candidates for filling up 36 posts of Medical Technologists in various

departments. The prescribed qualification for the said posts was a B.Sc. degree in Medical Technology. Out of the 36 advertised posts, 20 were earmarked for candidates under the Open Merit category.

03. The petitioner, being fully qualified, applied under the said category. Upon scrutiny, the petitioner, along with other candidates, was found eligible for participating in the written test for the post of Medical Technologist under the Open Merit category. The written test for the said post was conducted on 17.10.2018 and minimum qualifying marks for being shortlisted for the interview were fixed at 50 out of 100. The petitioner appeared in the written test but secured only 47 marks out of 100, as such, failed to secure the minimum qualifying criteria, therefore, she was not shortlisted for interview.

04. Aggrieved of not being allowed to participate in the interview, the petitioner approached this Court by way of SWP No. 2538/2018, seeking a direction to the respondents to call her for interview and consider her for selection and appointment to the post of Medical Technologist in terms of Advertisement Notice No. 04 of 2011 dated 17.06.2017.

05. In the aforesaid writ petition, this Court vide order dated 31.10.2018, directed the respondents to conduct the interview of the petitioner for the post of Medical Technologist advertised by SKIMS in terms of Advertisement Notice No. 04 dated 17.06.2017, with the further direction that the result of the interview be produced before the Court in a sealed cover.

06. A Coordinate Bench of this Court vide order dated 09.12.2020, directed the respondents—SKIMS to offer appointment to the petitioner, as sufficient number of posts were available. The respondents, aggrieved of the order dated

09.12.2020, assailed it by filing Letters Patent Appeal, i.e., LPA No. 24/2021, titled *UT of J&K and others vs. Qurat-ul-Ain*. This appeal was allowed vide judgment dated 02.08.2022 on the ground that the writ Court had exceeded its jurisdiction in passing the impugned order and the writ Court was directed to proceed to decide the writ petition finally in accordance with law.

07. The writ petition, i.e., SWP No. 2538/2018, was dismissed vide judgment dated 08.05.2024, by holding that the petitioner, had voluntarily responded to the advertisement notice, accepted the terms and conditions stipulated therein, including the prescribed criteria for qualifying the written test for viva-voce. The Court observed that since the petitioner had appeared in the written test but failed to secure the qualifying marks, she could not now be permitted to approbate and reprobate, and was estopped by her own conduct. The writ petition was held to be without merit and was accordingly dismissed, and the interim directions were vacated.

08. The petitioner sought setting aside of the judgment dated 08.05.2024 passed in SWP No. 2538/2018 in Letters Patent Appeal No. 116/2024, on the ground that there was no requirement for conducting a written test and interview, as out of 20 advertised posts under the Open Merit category, only 14 candidates were eligible for consideration. She further prayed for a direction to the respondents to offer her appointment to the post of Medical Technologist in SKIMS, with retrospective effect, pursuant to Advertisement Notice No. 04 of 2017 dated 17.06.2017 issued by SKIMS, Soura.

09. The petitioner contended in the LPA that, as per the terms and conditions of the Advertisement Notice, the recruitment was to be conducted in accordance with the Jammu and Kashmir Special Recruitment Rules,

2015, notified vide SRO 202 of 2015 dated 30.06.2015, which specifically provided that the select list was to be prepared on the basis of merit and did not prescribe the conduct of any written test or interview. It was further submitted that the principle of estoppel or the doctrine of approbate and reprobate was not applicable to the facts and circumstances of the case. Rather, the appellant submitted that SKIMS could not legally alter the selection process after prescribing a specific procedure in the Advertisement Notice, and was thus guilty of changing the rules of the game mid-way, which is impermissible.

10. The Hon'ble Division Bench of this Court, vide judgment dated 30.05.2024, dismissed Letters Patent Appeal No. 116/2024, by holding that there was no legal infirmity in the judgment passed by the learned Single Judge and that the same was a well-reasoned judgment dealing with all the issues raised in the writ petition. Relevant paragraph of the judgment reads as under:-

“In light of the discussion made hereinabove, coupled with the settled legal position, we do not find any legal infirmity with the judgment passed by the learned Single Judge as the same is well reasoned judgment dealing the issues raised in the petition, elaborately. We are thus, in agreement with the judgment passed by the learned Single Judge, which is thus, upheld and the appeal is dismissed accordingly.”

11. The petitioner aggrieved by the dismissal of Letters Patent Appeal No. 116/2024, has now approached this Court by way of the present petition, seeking review of the judgment dated 30.05.2024. The review of the judgment dated 30.05.2024 on the ground that this Court failed to appreciate the core controversy raised by her in the appeal and erroneously upheld the

judgment of the learned Single Judge. It is further submitted that there is an error apparent on the face of the record, as Advertisement Notice No. 04 of 2017 dated 17.06.2017 had provided for a fast-track recruitment process strictly in terms of SRO 202 of 2015 dated 30.06.2015, which was not adhered to and did not contemplate any short-listing of candidates. The respondents, instead of strictly adhering to the selection process prescribed in the Advertisement Notice, adopted an entirely different procedure not contemplated therein, therefore, the impugned judgment is liable to be set aside.

12. It is contended that the Advertisement Notice provided for filling up 36 posts of Medical Technologist (Technician Medical Group) under Serial No. 1, against which only 19 candidates were found eligible. The petitioner, being one of the eligible candidates, had a legitimate expectation of selection, however, instead of adhering to the procedure laid down under SRO 202 of 2015 dated 30.06.2015, the respondents subsequently issued a notice stating that the selection would now be made under SRO 439, which, according to the petitioner, was contrary to law. The conduct of written test and interview for short-listing candidates was thus *dehors* the Advertisement Notice and amounted to an impermissible change in the rules of the game.

13. It is further submitted that the principle of estoppel or the doctrine of approbate and reprobate, as relied upon by both the learned Single Judge and the Division Bench, is not applicable to the facts and circumstances of the present case and, therefore, could not have been a valid basis for deciding the impugned judgment.

14. The respondents have objected to the review petition on the ground that the petitioner has failed to establish any mistake or error apparent on the face of record. It is submitted that neither any new or important evidence or any sufficient reason has been provided to warrant review of the judgment. It is submitted that SKIMS is a tertiary care institute and a deemed university, where patient care is of paramount importance, therefore, it is imperative for the SKIMS authorities to appoint candidates who are best suited for the advertised posts.

15. The respondents have further submitted that the Advertisement Notice No. 04 of 2017 dated 17.06.2017 issued by SKIMS was subsequently aligned with the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Rules, 2010, as amended by SRO 439 dated 11.12.2015, which mandated that the recruitment process must include an oral test to assess the merit of the candidates. The selection was based on a written test to ensure that only the most qualified candidates were appointed. It is also submitted that there is no error apparent on the face of the record warranting review of the judgment.

16. It is submitted that the petitioner did not raise any objection to the selection criteria prior to participating in the written test and only challenged the process *post facto* after failing to meet the qualifying marks. The respondents submit that the petitioner's challenge to the selection process at this stage is not sustainable and is an attempt to obstruct the recruitment process.

17. Heard learned counsel for the parties and perused the record.

18. The power of review is provided in Rule-65 of the Jammu & Kashmir High Court Rules, 1999 which reads as under:-

“Rule-65. Application for review of judgment.- The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in Order-XLVII Rule-1 of the Code.”

19. The scope of review, as envisaged under Order XLVII Rule 1 of the Code of Civil Procedure, is very limited and must be confined strictly to the grounds enumerated therein. An application for review would lie only if there is an error apparent on the face of the record or for any other sufficient reason, the non-consideration of which would result in a failure of justice. A review cannot amount to a re-hearing of the appeal, re-appraisal of findings, or re-evaluation of evidence on record, and identifying errors of that nature would fall within the ambit of appellate jurisdiction, which the review court does not possess.

20. The Hon'ble Apex Court, in **“Kamlesh Verma v. Mayawati”**, (2013) 8 SCC 320, while observing that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of the Code of Civil Procedure, summarized the governing principles as under:

“Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute: 20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse*

Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275] . 20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”

21. In ‘M/s Jain Studios Ltd. vs. Shin Satellite Public Com. Ltd.’, 2006 AIR SCW 3592, the Hon’ble Apex Court has held that:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

22. The contention of the petitioner is to be considered in terms of Rule-65 of J&K High Court Rules under Order-47 Rule-1. The issue raised by the petitioner that the selection process was unilaterally altered

midway by applying SRO 439 of 2015 in place of SRO 202 of 2015, as mentioned in the Advertisement Notice, is without merit. This issue stands conclusively addressed in the judgment rendered in LPA No. 115/2024 by the Hon'ble Division Bench, wherein it has been held that the petitioner, having voluntarily participated in the selection process after being fully aware of the selection criteria, including the written test and interview, is estopped from challenging the same at a belated stage. The Hon'ble Division Bench categorically found that the objections were misplaced and lacked foundation, particularly when she had subjected herself to the very process she now seeks to dispute.

23. The grounds taken in the present review petition are a repetition of the earlier submissions and touch upon the merits of the case already adjudicated upon in the appeal. The same cannot be re-agitated in review jurisdiction, as that would amount to an appeal in disguise, which is impermissible in law. In fact, the petitioner, under the guise of review, is seeking rehearing of the matter, which is not permissible in review process. The review proceedings are not by way of an appeal and have to strictly conform to the scope under Order 47 Rule-1 of CPC.

24. In **“Parsion Devi and others vs. Sumitri Devi and others”, (1997) 8 SCC 715**, it was held as under:

“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard

and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

25. In view of the aforesaid, we are of the considered view that the grounds raised by the review petitioner do not fall within the limited scope of review as envisaged under Section Rule-65 read with Order XLVII Rule 1 of the Code of Civil Procedure. The petitioner has not demonstrated any error apparent on the face of the record to warrant interference.

26. Accordingly, the review petition is found to be without any merit and is **dismissed**, along with the connected application(s).

(Wasim Sadiq Nargal)
Judge

(Sindhu Sharma)
Judge

Srinagar
12.08.2025
Michal Sharma/PS



Whether approved for reporting

: Yes