

Government of Jammu & Kashmir
Health & Medical Education Department
Civil Secretariat J&K, Jammu.

Subject: Select list for the post of Dental Surgeon in Health & Family Welfare Department - rejection of claim thereof.

Ref. No. i PSC/Lit/69/2018/Dental Surgeon/2003/DR dated 01-07-2019 & PSC/Lit/69/2018/Dental Surgeon/2003/DR dated 25-02-2020 from J&K PSC.
ii. Judgment dated 09-04-2018 in RPLPA No.40/2013, MP No.17/2013 titled Dr. Shwiti Gupta Vs State of J&K and Ors

Government Order No: 872 JK(HME) of 2020
Dated: 25-11-2020


WHEREAS, the Health and Medical Education Department vide communication No. HD(GAZ)28/81 dated 23-04-2003, No. HD/GAZ/ 208/81 dated 07-12-1998 and No. HD/GAZ/131/95 dated 05-06-2004 had referred 59 posts of Dental Surgeons to J&K Public Service Commission for making selection. These posts were notified by the Commission vide Notification Nos. 05-PSC of 2003 dated 23-06-2003, 11-PS of 2003 dated 1-10-2003 and 07-PSC of 2004 dated 17-08-2004;

AND WHEREAS, subsequently, all the three notifications were clubbed together by the Commission in response to which 469 Applications Forms were received by and a screening test was held on 20-03-2005 for the post of Dental Surgeon by the Commission. The result of candidates who appeared in the screening test was declared vide Notification No. 02-PSC of 2005 dated 02-04-2005 wherein among others, the applicant namely Shwiti Gupta (Roll No. 00234) was also declared to have qualified for the said written test by securing 107 marks;

AND WHEREAS, on the basis of marks obtained in written test and also fulfillment of other eligibility criteria, 145 candidates (including applicant namely Shwiti Gupta Roll No. 00234) were shortlisted and called for interview which was held at J&K PSC Office, Srinagar/Jammu. The select list as well as wait list was approved by the then Commission and recommendations were forwarded to the Administrative Department vide letter No. PSC/DR/Dental Surgeon/2004 dated 22-08-2005 except the name of applicant namely Shwiti Gupta Roll No. 00234) **due to low merit;**

AND WHEREAS, aggrieved with the selection process, Shwiti Gupta Roll No. 00234 alongwith other candidates filed a writ petition under SWP No. 1232/2005 in the Hon'ble High Court challenging therein Rule 51 of J&K PSC (B&P) Rules, 1980 which was dismissed by the Hon'ble High Court on 07-05-2013;

AND WHEREAS, thereafter, the petitioner filed LPASW No. 130 of 2013 and that too was dismissed by the Hon'ble High Court. Further, the petitioner has also filed a review petition under RPLPA No. 40/2013, MP No. 17/2013 which has been disposed off on 09-04-2018 with the following directions:-

"Though the Judgment and order under review cannot be interfered with and no different view can be taken, at this stage, on the source of review petition on hand, yet given the submission made by the learned counsel for the review petitioner/appellant, the matter needs no verbosity. The review petition is, accordingly, disposed of by providing that respondents shall accord consideration to the selection/appointment of review petitioner/appellant, Dr. Shwiti Gupta, as Dental Surgeon on her own merit. This exercise be completed within a period of eight weeks from the date the copy of this judgment is provided to the respondents".

AND WHEREAS, subsequently, the applicant approached the Commission claiming therein that at the time of interview, she has been awarded only 02 points for experience, while as she was entitled for 05 points. She has further claimed that being a sports person and having in possession certificate of Taekwondo issued by 1st All India Millennium Martial Art Championship-2000 but the same was not taken into account at the time of interview which hampered her selection;

AND WHEREAS, the case was examined/processed by the J&K Public Service Commission and placed before the Commission in its 5th Meeting held on 17-06-2019 and the Commission on Agenda Item No. 5.8 has decided as under:-

"Case of Dr. Shwiti Gupta for consideration of her experience and sports certificates for the post of Dental Surgeon in Health and Family Welfare.
The Commission discussed the matter in the backdrop of the decision of the Grievances Redressal Committee and approved to award 6 more points i.e. 03 for experience and 03 points for sports and recommend Dr. Shwiti Gupta to the Government for appointment against any available cadre post of Dental Surgeon."

AND WHEREAS, as per records, the Commission has already recommended 36 candidates under OM Category against 36 posts referred by the Department and the Commission has now decided to recommend Dr. Shwiti Gupta being eligible for her appointment as dental Surgeon under OM Category against any available vacancy in Health & Family Welfare Department;

AND WHEREAS, accordingly, the J&K PSC vide communication No. PSC/Lit/ 69/2018/Dental Surgeon/2003/DR dated 01-07-2019 has recommended name of Dr. Shwiti Gupta W/o Rohin Gupta, R/o Q.NO. 21 Rehari Colony, Jammu having merit of 64.66 points for her appointment to the post of Dental Surgeon under Open Merit Category against any available vacancy in Health & Family Welfare Department;

AND WHEREAS, the recommendations of the Jammu and Kashmir Public Service Commission has been examined in the Department and the matter was taken up with the General Administration Department for their opinion for considering appointment of Dr. Shwiti Gupta W/o Rohin Gupta, R/o Q.NO. 21 Rehari Colony, Jammu under Open Merit Category against any available vacancy of Dental Surgeon in Health & Family Welfare Department, over and above the requisitioned/Selected posts under Open Merit Category;

AND WHEREAS, in turn, the General Administration Department vide its U.O. dated 10-10-2019, observed as under:-

"Returned. The case has been examined in the General Administration and it has been found that the petitioner has lost her case in the writ court as well as in LPA. In the Review Petition, the Hon'ble High Court has directed to accord consideration to the selection/appointment of petitioner/appellant as Dental Surgeon on her own merit. The selection process of Dental



Surgeon have been completed in the year 2005. J&K PSC has re-opened the case after 14 years seemingly without ascertaining the validity of the sports certificate from the Youth Services & Sports Department and without any prior consultation with the Department of Law, Justice and Parliamentary Affairs or the Health & Medical Education Department. It is also a matter of examination as to whether the regulations of PSC provide for revisiting a selection process which stands concluded way back in 2005 and reworking the merit of a candidate when such selection Committee/Board of PSC has ceased to exist. There has also been a subsequent recruitment for the post of Dental Surgeons in the Health & Medical Education Department in 2012.

Further, the PSC has the mandate to recommend the candidates against the advertised posts. However, in the instant case the petitioner has been recommended for appointment over and above the advertised posts.

Accordingly, the Health & Medical Education Department is advised to carefully examine the recommendations of Public Service Commission afresh in consultation with the Department of Law, Justice and Parliamentary Affairs".

AND WHEREAS, based on the opinion of the GAD, the matter was taken up the Department of Law, Justice and Parliamentary Affairs for legal advice, who vide their U.O. dated 09-01-2020, opined as under:-

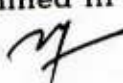

"Department is advised to examine the case in light of the advice of General Administration Department and if need be seek further clarification from Public Service Commission. In case Public Service Commission reviews its recommendations made in the year 2005 and hold the present petitioner more meritorious than the last selected candidate (Sr. No. 36) and reframe the merit list/recommendations accordingly, then a policy decision is required to be taken to appointment the petitioner over and above the post notified as ousting the last selected candidate after almost 15 years would lead to unending litigation, which shall not befit the State's interest.

AND WHEREAS, in light of the opinion of the Department of Law, Justice and Parliamentary Affairs, the issue has been examined in the Department and vide letter No. HD/GAZ/ Gen/128/2019/SL dated 27-01-2020, it was decided to apprise the J&K Public Service Commission about the opinions of GAD as well as Department of Law, Justice and Parliamentary Affairs with the request to re-examine the case and furnish afresh recommendations with convincing justification for considering such recommendations by the Department;

AND WHEREAS, in response to this Department's communication, dated 27-01-2020, the J&K Public Service Commission vide their letter No. PSC/Lit/69/2018/Dental Surgeon/2003/DR dated 25-02-2020 has clarified as under:-

"..... the Hon'ble High Court had upheld the claim of the Dr. Shwiti Gupta, therefore, the Commission was constrained to consider the grievance/representation of the Doctor. The selection for 36 referred posts was completed in the year 2005, as such the exclusion of the last selected candidate from the select list is neither feasible nor justified, as the same could lead the Commission into further litigation. Besides, at that time there was no provision in the Business and Procedure Rules to get the certificates verified from the Youth Services and Sports Department. The certificates of other selected candidates were also not verified. Further, there is no provision in the Jammu and Kashmir Public Service Commission (Business and Procedure) Rule, 1980 as amended from time to time to review the selection once made through proper procedure, as such the matter may kindly be dealt with administratively as thought fit."

AND WHEREAS, on the clarifications of the J&K Public Service Commission, the issue has been examined in the Department and it has been decided to place the

issue before the Hon'ble Lieutenant Governor through Chief Secretary in coordination for accord of approval to consider the appointment of Dr. Shwiti Gupta W/o Rohin Gupta R/o Q.No. 21 Rehari Colony, Jammu against the available post of Dental Surgeon under Open Merit Category in Health & Family Welfare Department, over and above the requisitioned/selected posts under open merit Category in relaxation of rules with the prior approval of the Hon'ble Advisor (Incharge);

AND WHEREAS, accordingly, the case file was submitted to the authority for accord of approval for placing the issue before the Hon'ble Lieutenant Governor through Chief Secretary in coordination which has been approved by the Hon'ble Lieutenant Governor;

AND WHEREAS, after accord of the approval for placing the issue before the Hon'ble Lieutenant Governor through Chief Secretary in coordination, the Director, Health Services, Jammu vide this Department's letter dated 9-06-2020 was requested to furnish the details of vacant posts of Dental Surgeons in open merit category under which the temporary appointment of Dr. Shwiti Gupta W/o Dr. Rohin Gupta Gupta can be considered against one of the posts in the Health and Family Welfare Department, over and above the requisitioned/selected posts under open merit category in relaxation of rules.

AND WHEREAS, the Director, Health Services, Jammu vide letter No. DHS/J/ES-3/Vacancy/810 dated 09-06-2020 has intimated that seventeen (17) posts of Dental Surgeons are presently vacant and have not been referred to the J&K Public Service Commission for making selection;

AND WHEREAS, the Financial Commissioner, Health and Medical Education Department with the prior approval of the Advisor (B) to Lieutenant Governor submitted the draft resolution to the Hon'ble Lieutenant Governor through Chief Secretary in coordination for consideration and approval;

AND WHEREAS, the General Administration Department returned the proposal with the following observations:-

"Returned. The proposal has been placed before the competent Authority (Hon'ble Lieutenant Governor) who has observed that the proposal of the Health and Medical Education Department with regard to appointment of Dr. Shwiti Gupta against an identified vacancy is in violation of statutory rules and the reopening of case by J&K PSC after 15 years and recommending the candidate for appointment against any available vacancy is beyond the mandate of recommending agency.

Further, the petitioner shall be informed by issuing a speaking order in the matter as per the directions of the Hon'ble Court.

The department is accordingly advised to take further appropriate action in the matter."

AND WHEREAS, the instant case has been considered in the department and keeping in view the directions of the Hon'ble High Court as well as General Administration Department it has been found that the case of the aforesaid doctor does not merit any further consideration and the claim of the petitioner needs to be rejected.

Now therefore, in compliance to the judgment dated 09-04-2018 in RPLPA No.40/2013, MP No.17/2013 titled Dr. Shwiti Gupta Vs State of J&K and Ors and decision conveyed by the General Administration Department, the case of the petitioner have duly been considered and it was found that the appointment of Dr. Shwiti Gupta against an identified vacancy is in violation of statutory rules and the reopening of case by J&K PSC after 15 years and recommending the candidate for appointment against any available vacancy is beyond the mandate of recommending agency, as such, the claim of the petitioner is rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

(Atal Dulloo) IAS
Financial Commissioner
Health and Medical Education Department

Dated: 25-11-2020

No. HD/Gaz/Gen/128/2019/SL

Copy to the:

1. Principal Secretary to the Hon'ble Lieutenant Governor.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Secretary, J&K Public Service Commissioner.
4. Director, Archives, Archeology & Museums, J&K.
5. Director Health Services, Jammu.
6. Additional Secretary (Law), Health and Medical Education Department.
7. OSD with Advisor(B) to Hon'ble Lieutenant Governor.
8. Concerned.
9. Private Secretary to the Financial Commissioner, H&ME Department.
10. Government Order file/Stock file/ Website H&ME.


(Mohammad Iqbal Lone)

Under Secretary to the Government
Health & Medical Education Department