

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 20.03.2025
Pronounced on: 18.04.2025

WP(C) 1383/2024
CM (821/2025), CM (7053/2024)

Falak Mukhtar, (Age 34 years)
D/o Mukhtar Ahmad Qureshi,
W/o Rasik Nazir
R/o Kani Dewar, Hawal, Srinagar-190003

... Petitioners/Appellant(s)

Through: Mr. G. A. Lone, Advocate with Mr. Mujeeb Andrabi, Adv. and
Mr. N. A. Baba, Advocate

V/s

- 1. UT of Jammu & Kashmir through**
Secretary to Govt.,
Health and Medical Education Department,
Civil Secretariat, Srinagar/Jammu
- 2. Dr. Syed Abid Rasheed Shah, IAS**
Secretary to Government,
Health and Medical Education Department,
Civil Secretariat, Srinagar/Jammu.
- 3. Principal,**
Government Dental College & Hospital,
Shireen Bagh, Srinagar
- 4. Dr. Abdul Qayoom Beigh, aged 37 years**
S/o Ghulam Mohammad Beigh,
R/o Ganjipora, B. K. Pora, Budgam.

... Respondent(s)

Through: Mr. Rais ud Din Ganaie, GA for R1-3
Mr. M. I. Dar, Adv. with Ms. Sana Imman and
Mr. Ruaani A. Baba, Advocates for R4

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T
18-04-2025

1. The instant petition has been filed by the petitioner herein under
Article 226 of the Constitution of India, for seeking the following
reliefs:

1) A writ of certiorari quashing the Government Order No.
383-JK(HME) of 2024 dated 20th June, 2024.

2) A writ of mandamus commanding upon the respondents to make selection to the posts of Sr. Residents/Registrars in accordance with Govt. order No. 282-JK(HME) of 2023 dated 4th April, 2023 and make appointments to the available vacancies of Registrars/Sr. Residents, lying vacant in Govt. Dental College & Hospital, Shireen Bagh, Srinagar and in other Dental and Medical Colleges where vacancies are available.

3) Any other writ, order or direction, which the Hon'ble Court may deem fit and proper in the circumstances of the case, may also be passed.

2. The facts under the cover of which the aforesaid reliefs have been prayed, and as are stated in the petition, are that the Government of UT of J&K issued SO 364 of 2020 dated 27-11-2020 notifying the J&K Medical and Dental Education (Appointment on Academic Basis) Rules, 2020 and pursuant thereto issued Government Order No. 282-JK (HME) of 2023 dated 04.04.2023 providing therein uniform selection criteria for engagement of faculty posts of Professors, Associate Professors, Assistant Professors, Lecturers and Senior Residents/Registrars in Medical and Dental Colleges within the Union Territory of Jammu and Kashmir.
3. It is stated that though most of the Medical and Dental Colleges within the Union Territory of Jammu and Kashmir made appointments to the said faculty posts on the basis of the selection criteria contained in Order dated 04-04-2023 *supra*, yet the appointment of Senior Residents/Registrars in the Government Medical/Dental College and Hospital, Shireen Bagh, Srinagar was deferred on the basis of a communication dated 30-10-2023

issued by Under Secretary to Government, Health and Medical Education Department that too despite availability of the posts and the urgency expressed in this regard by the Principal/Dean of the said college.

4. The said communication dated 30-10-2023 is stated to have been challenged by the petitioner herein in the Writ Petition WP(C) No. 1276 of 2024 before this court, wherein an interim order came to be passed on 07-06-2024, providing therein that so long as the communication dated 30.10.2023 does not take the shape of a Government Order issued in accordance with law, the selection criteria enumerated in government order no. 282-JK (HME) of 2023 dated 04-04-2023 shall prevail, and that the selection process be proceeded with as per the said criteria.
5. It is stated that despite serving the order of the court dated 07-06-2024 upon the respondents, the respondents, in defiance thereof, issued Government Order No. 383-JK (HME) dated 20-06-2024, wherein the criteria for selection to the post of Senior Residents/Tutors in Government Medical and Dental College in J&K were changed without any basis and on irrelevant and extraneous considerations.
6. The petitioner herein has maintained the instant petition, *inter alia*, on the premise that the impugned order suffers from serious non-application of mind and is de hors the law, besides being an ad-hoc arrangement made for obtaining some vested objectives and that the said order is incomprehensive falling in the realm of

confusion, defying the reason and logic for departing from the uniform criteria earlier fixed and that the impugned order is also arbitrary and discriminatory, seemingly having been passed at the Secretary level by respondent 2 herein without any power and authority in violation of Government Order No. 810 JK (GAD) of 2020 dated 1-9-2020, whereby the Hon'ble Lt. Governor, J&K in exercise of powers conferred upon him vide Presidential Order SO No. 3937(E) dated 31-10-2019, vested unto the Chief Secretary and some of the Administrative Secretaries with powers of a Minister to be exercised by them in respect of the matters specified therein without there being any power vested unto the responder 2 herein in the capacity of the Administrative Secretary to Health and Medical Education Department and that the impugned order, in fact, has the effect of changing the rules affecting the rights of the petitioner that too in presence of earlier petition filed by the petitioner being WP(C) No. 1276 of 2024 order passed therein inasmuch as without any purpose, and on irrelevant and extraneous considerations without ruling out an element of bias and *mala fides* cannot also be ruled out.

7. **Objections** to the petition have been filed by the official respondents 1 to 3 as well as private respondent 4 herein who came to be implemented as party respondent by this court in terms of order dated 09.12.2024.
8. In the objections filed by official respondents, the writ petition is opposed, *inter alia*, on the premise that the petitioner has

suppressed material facts and that the Government Order dated 20.6.2024 has been issued for the purpose of conducting a written examination for the posts to be filled up on academic arrangement basis with a view to add competition for filling of the said posts having been issued with proper application of mind for choosing meritorious candidates for selection and appointment against the posts and that the mechanism of written examination for filling of the said posts is already prevalent in premier institutes including the All India Institute of Medical Sciences (AIIMS), New Delhi, and that the petitioner has no right to challenge the impugned order.

9. In the objections filed by respondent 4 herein while opposing the petition, it is being stated that the petitioner has, in fact, participated in the process of selection initiated in terms of the impugned order dated 20.06.2024 pursuant to the advertisement notice dated 03.07.2024 in which selection in the merit list for Speciality Prosthodontics the answering respondent secured 72.75 marks out of 100 marks and the petitioner secured 63.75 marks out of 100 marks, figuring at serial numbers 2 and 8 respectively in the said merit list and that the petitioner has suppressed the said facts and that the petitioner cannot, after having participated in the process of selection initiated pursuant to the order under challenge dated 20.6.2024, call in question the same.

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

10. Mr. G. A. Lone, appearing counsel for the petitioner, while making his submissions in tune and line with the case set up by the petitioner in the petition, would insist for grant of reliefs sought in the petition, whereas on the contrary, the appearing counsel for the respondents, while opposing the submissions of Mr. Lone, would seek dismissal of the petition on the sole ground that the petitioner cannot challenge the impugned order while simultaneously, without any objection or reservation of a right thereto, having participated in the process of selection initiated by the official respondents pursuant to the order under challenge dated 20.06.2024 during the pendency of the petition and which fact has been suppressed by the petitioner.
11. Insofar as the rival submissions of the appearing counsel for the respondents are concerned, it would be appropriate to refer to the principles of law laid down by the Apex Court in this regard.

The Apex Court in case titled as “**State of UP vs. Karunesh Kumar and others**” reported in **2022 SCC Online SC 1706** has referred to the judgment passed in case titled as *Madan Lal v. State of J&K [(1995) 3 SCC 486: 1995 SCC (L&S) 712]* wherein it has been held that “*it is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because of the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of*

interview was unfair or the selection committee was not properly constituted”.

The following has also been referred by the Apex Court in the “*State of UP*” case *supra* while referring to “*Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619: (2008) 2 SCC (L&S) 9]*,” wherein following has been held at para 59:

59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest Judgment in *Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 (2007) 2 SCC (L&S) 792]*... The Court also referred to the judgment in *Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 1986 SCC (L&S) 644]*, where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise."

Besides, the Apex Court in the above “*State of UP*” at para 22 held as under:

“22. In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in *Union of India v. N. Murugesan, (2022) 2 SCC 25*:

"Approbate and reprobate

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a

party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

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27.2. State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144]: (SCC pp. 153-54, paras 22-23 & 25-26)

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar [AIR 1965 SC 1216].)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329].) In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] this Court has observed as under (R.N. Gosain case [(1992) 4 SCC 683], SCC pp. 687-88, para 10)

10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.

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25. The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [(2013) 5 SCC 470: (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

12. Having regard to the case set up by the petitioner, noticed in the preceding paragraphs, as also the aforesaid contentions of the appearing counsel for the respondents, inasmuch as the position and principles of law referred hereinabove, the only inescapable conclusion that can be drawn is that the petitioner indisputably has appeared in the process of selection initiated by the respondents for the post in question pursuant to the order under challenge dated 20.6.2024 without any objection/s or reserving any right thereto, and has not made the grade, so much so, the petitioner has even concealed the said fact about her said participation in the selection process held during the pendency of the petition. Here a reference to the judgment of the Apex court passed in case titled as "**Prestige Lights Ltd Vs. State Bank of India**", reported in **2007 (8) SCC 449** would be appropriate wherein at paras 33, 34 and 35 following has been held:

33 . . . The High Court is exercising discretionary and extraordinary jurisdiction under [Article 226](#) of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in [R V. Kensington Income Tax Commissioners](#), in the following words:

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, not law. He must not misstate the law if he can help it-the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

In case titled as **“K. D. Sharma Vs. Steel Authority of India Limited and Ors”** reported in **2008 (12) SCC 481**, the Apex Court at paras 34, 35 and 36 has held as under:

34. The jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of [R. v. Kensington Income Tax Commrs](#), in the following words: (KB P.514):

".....It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement".

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

In case titled as **“Manohar Lal (dead) by LRs versus Ugrasen (dead) by LRs and Ors”** reported in 2010 (11) SCC 557, the Apex Court at paras 48, 49, 50 and 51, has held as under:-

48 . . . When a person approaches a court of equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice." Who seeks equity must do equity. The legal maxim "Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiore", means that it is a law of nature that one should not be enriched by the loss or injury to another. (Vide *The Ramjas Foundation Vs. Union of India & Ors*, *K.P. Srinivas Vs. R.M. Premchand & ors.* and *Nooruddin Vs. (Dr.) K.L. Anand*.)

49. Similarly, in [Ramniklal N. Bhutta Vs. State of Maharashtra](#), this Court observed as under:

"10 . . . The power under [Article 226](#) is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point.....the interest of justice and the public interest coalesce. They are very often one and the same. The Courts have to weigh the public interest vis-a-vis the private interest while exercising....any of their discretionary powers.

50. In [Tilokchand Motichand Vs. H.B. Munshi](#), [State of Haryana Vs. Karnal Distillery](#), and [Sabia Khan & Ors. Vs. State of U.P. & Ors.](#) this Court held that

filing totally misconceived petition amounts to abuse of the process of the Court. Such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. A litigant is bound to make "full and true disclosure of facts."

51. In [Abdul Rahman Vs. Prasony Bai](#), [S.J.S. Business Enterprises \(P\) Ltd. Vs. State of Bihar](#) and [Oswal Fats & Oils Ltd. Vs. Addl. Commr. \(Admn\)](#), this Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it.

13. Viewed thus, the law laid down in the judgments *supra* by the Apex Court manifestly is applicable to the case in hand, in that, it will not be open to the petitioner to contend, on one hand, that the impugned order has been issued without any authority or for *mala fide* considerations, and on the other hand, acknowledge the validity of the said order without registering any protest or reserving any right thereto in the process of selection undertaken by the official respondents pursuant to the said order and conceal the said fact before this court.

14. Thus, for what has been observed, considered and analysed hereinabove, the petition is found to be without any merit and is accordingly dismissed.

**(JAVED IQBAL WANI)
JUDGE**

Srinagar
18-04-2025
N Ahmad

Whether the order is speaking: Yes

Whether the order is reportable: Yes