

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2025
(Arising out of SLP(C) No.7052 of 2025)

NIGHAT SHAFI SHAH

APPELLANT

VERSUS

STATE OF JAMMU AND KASHMIR & ORS.

RESPONDENTS

R1 : STATE OF JAMMU AND KASHMIR

R2 : DEPUTY COMMISSIONER, GANDERBAL

R3 : DEPUTY COMMISSIONER, SRINAGAR

R4 : MISSION DIRECTOR, NATIONAL RURAL
HEALTH MISSION (NRHM)

R5 : DR. NAZIR AHMAD DAR

O R D E R

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the impugned common judgment dated 13.12.2024 passed by the Division Bench of the High Court of Jammu and Kashmir and Ladakh at Srinagar in LPAW No.114 of 2013 and batch cases, by which the appointment of the appellant as Medical Officer in Indian System of Medicine (ISM), which has been set aside by the learned Single Judge of the High Court of Jammu and Kashmir at Srinagar (as it then was) vide its order dated 27.05.2013, has been upheld.

4. Learned senior counsel for the appellant submitted that the appellant joined her service to the post of Medical Officer in ISM in the year 2008 on contractual basis and has been continuing without any interruption or any adverse reporting. It was submitted that for the said reason, her employment was extended from time to time. It was submitted that when the advertisement came on 31.11.2007, the appellant had applied for such post and there were two stipulations; one that preference would be given to the candidate of the same block where the health institution is located and second that the candidate should preferably be below the age of 40 years. It was contended that the appellant satisfied both the criteria for the reason that the new district was carved out in the year 2008 and prior to that, on the date of the advertisement i.e., 31.11.2007, the appellant belonged to the Srinagar District for which, the post was advertised. The further contention is that the appellant was below the age of 40 years whereas, respondent no.5 at that relevant point of time, was over 45 year of age. Learned senior counsel contended that the biggest factor which is in favour of the appellant is that she was much higher in the merit list as compared to respondent no.5.

5. Learned counsel for respondent no.1-State submitted that he does not controvert the fact that the services of the appellant have been unblemished and that is the reason, why till date, she is continuing to hold the post. It was further contended that the State would not oppose her continuity on such post.

6. Learned counsel for respondent no.5 submitted that the appellant cannot in the garb of being suitable at the relevant

point of time continue to hold the post in a substantive way as she has been continued without any break and the candidature of other persons, who may be qualified and suitable, are not being considered. It was further submitted that the appellant cannot claim a right for the reason that the age factor was only a preference and further that at the time of actual appointment, the district of the appellant was different and it was only respondent no.5 who was suitable, being a resident of the district, for which actual appointments were made. Learned counsel further contended that the appellant has not challenged the terms of the advertisement which stipulated that it would be a purely contractual engagement and secondly, that it's an year to year contract.

7. Having considered the matter in its entirety, we find substance in the submissions of learned senior counsel for the appellant. The contention that the appellant was at the relevant point of time, was eligible on the criteria of being a resident of the district, is undisputed and thus, a subsequent development of creation of a new physical district, which now made the appellant a resident of a neighboring district, cannot be held against her. Further, the fact that the appellant was under 40 years of age, made her more eligible and ultimately, in merit, she was far ahead of respondent no.5. All these factors, were germane to be considered and could not have been lost sight of on some technicalities. Moreover, when the authorities themselves have taken a stand that the appellant has discharged her duties to the post without any complaint and they do not oppose to her continuing

in the said post, we find that the post of a doctor, being in the nature of a public service, the appellant who has been performing her duty for the local populace without any complaint, cannot be said to be ineligible or should not be unsuited at this point of time.

8. Accordingly, the appeal succeeds and is allowed. The impugned judgment and order passed by the Division Bench and the learned Single Judge stand set aside and the appellant shall continue on the post in terms of relevant provisions in the Rules in force and in accordance with law.

9. Pending application(s), if any, shall stand disposed of.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[PRASHANT KUMAR MISHRA]

NEW DELHI
12th NOVEMBER, 2025

ITEM NO.10

COURT NO.14

SECTION XI-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).7052/2025

[Arising out of impugned final judgment and order dated 13-12-2024 in LPAW No.114/2013 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar]

NIGHAT SHAFI SHAH

Petitioner(s)

VERSUS

STATE OF JAMMU AND KASHMIR & ORS.

Respondent(s)

(IA No. 62644/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 12-11-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. D.N. Goburdhan, Sr. Adv.
Mr. Towseef Ahmad Dar, AOR

For Respondent(s) Mr. G. M. Kawoosa, Adv.
Mr. Pashupathi Nath Razdan, AOR
Ms. Maitreyee Jagat Joshi, Adv.
Mr. Astik Gupta, Adv.
Ms. Akanksha Tomar, Adv.

Mr. Rohan Thawani, Adv.
Ms. Pooja Dhar, AOR
Ms. Divya Sharma, Adv.
Ms. Aakriti Vikas, Adv.
Ms. Maryam Junaid, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

2. The appeal is allowed in terms of the signed order.

3. Pending application(s), if any, shall stand disposed of.

(SAPNA BISHT)
COURT MASTER (SH)

(Signed order is placed on the file)

(ANJALI PANWAR)
ASSISTANT REGISTRAR