

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

(Through Virtual Mode)

WP(C) No.1107/2020
CM No.3098/2020
CM No.3097/2020

Gokul Sharma & Ors.

..... Petitioner(s)

Through: -

Mr Gagan Basotra, Advocate

(Through Video Conference from High Court at Jammu.)

V/s

Union Territory of JK & Ors.

..... Respondent(s)

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

(On Video Conference from High Court at Srinagar)

ORDER

06.07.2020

CM No.3098/2020:

This application is filed with a prayer that the applicants may be allowed to file the accompanying WP(C) petition without enclosing therewith the requisite Stamp Paper, Court fee, etc.

For the reasons mentioned in the application, coupled with submissions made at the Bar, the instant application is *allowed* and the applicants are permitted to file the WP(C) No.1107/2020 without enclosing therewith the requisite Stamp Paper, Court fee, etc. It is, however, directed that the said deficiency shall be immediately made good by the applicants, as and when the prevailing lockdown period, announced by the Government on account of outbreak of COVID-19 pandemic, comes to an end.

CM *disposed* of as above.

WP(C) No.1107/2020; CM No.3097/2020:

The petitioners, who claim to have passed their MBBS examination from the University of Jammu in the year 2019 and presently undergoing their internship in Government Medical College, Jammu, are aggrieved of the action on part of respondent No.1 in amending rule 15, promulgated vide SO (Statutory Order) 127 dated 20th of April, 2020, of the Jammu and Kashmir Reservation Rules of 2005.

Mr Gagan Basotra, the learned counsel for the petitioners, submits that the aforesaid amended rule envisages 53% for reserved category (ies), thereby leaving only 47% for the open category which, in law, besides being excessive and constitutionally impermissible, is *ultra-vires* the Jammu and Kashmir Reservation Act. It is submitted that Section 9 of the Jammu and Kashmir Reservation Act clearly provides that total percentage of reservation shall, in no case, exceed 50% and, thus, the amended rule is in clear conflict with the mandate of Section 9 of the Act. It is pleaded that by the impugned amended rule, respondent No.1 has come up with an excessive reservation quota which is against the constitutional mandate and that the respondent No.1, contrary to the provisions of the Constitution, has provided 4% of reservation for Pahari speaking people by designating them as socially and educationally backward community on linguistic basis which, as per the learned counsel, cannot be the sole basis for being socially and educationally backward. It is contended that as per the criteria in vogue for declaring any community as educationally and socially backward, there must exist two circumstances, *viz.*, 'Backwardness' and 'Inadequacy of Representation' and that 'Backwardness' has to be based on objective factor(s), whereas 'Inadequacy of Representation' has to be factually existent. The learned

counsel, in this behalf, argues that in the case on hand, the respondent No.1, without following the said criteria, has declared the Pahari speaking people as socially and educationally backward and prescribed 4% reservation for a linguistic community. It is, accordingly, submitted that respondent No.1 has arbitrarily and capriciously exercised its authority under Section 23 of the Reservation Act, identifying Pahari speaking people as a reserved category which is against the constitutional principles governing grant of reservation to communities in view of Articles 15(1), 15(4) and 15(5) of the Constitution of India. To bring home this argument, the learned counsel has referred to and relied upon a judicial dictum rendered by Hon'ble the Supreme Court in case titled '*Dr. Preeti Srivastava v State of MP*'; reported as '(1999) 7 SCC 120'.

Heard.

Admit.

Notice in the main petition as well as in the connected CM, returnable by or before the next date of hearing.

List on 27th of July, 2020.

Since, an important question of law has been raised herein this petition, therefore, the learned Advocate General is requested to assist in the matter on the next date of hearing so fixed.

Registry to send a copy of this order to the learned Advocate General as well as to the learned counsel for the petitioners through *e-mail*.

(Ali Mohammad Magrey)
Judge

JAMMU
July 6th, 2020
"TAHIR"