

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP (C) No. _____ 2020
CM No. _____ 2020

Gokul Sharma & Ors V/s Union Territory of J&K & Ors
...(Petitioners) ...(Respondents)

IN THE MATTER OF:

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Filed by:-

Place: Jammu
Dated:29.06.2020

GAGAN BASOTRA
Advocate

①

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT JAMMU.**

Gokul Sharma & Ors V/s Union Territory of J&K & Ors
...(Petitioners) ...(Respondents)

WP (C) No. _____/2020
CM No. _____/2020

IN THE MATTER OF: MEMO OF URGENCY

MAY IT PLEASE YOUR LORDSHIPS;

The Applicants/Petitioners most respectfully submit as under:-

1. That the above titled writ Petition has been filed before this Hon'ble Court which is sure to succeed on merits.
2. That the matter is urgent in nature and requires to be taken up for hearing and orders as early as possible, in view of the submissions made in the main Writ Petition. In case the same is not listed today, the Petitioners shall suffer an irreparable loss and injury, which cannot be compensated by any other means.

It is, therefore, prayed that the Writ Petition and the MP may be listed urgently for consideration of the Hon'ble Court and for appropriate orders.

Petitioners

Gokul Sharma

THROUGH COUNSEL

Place : Jammu

Dated : 29/06/2020

**GAGAN BASOTRA
ADVOCATE**

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**BEFORE THE HON'BLE HIGH COURT OF JAMMU &
KASHMIR AT JAMMU**

WP (C) No. _____ 2020

IN THE MATTER OF: Memo of parties

1. Gokul Sharma ,
2. Abhishek Mahajan,
3. Akshi Gupta
4. Palash Sawhney

...Petitioner

Versus

1. Union Territory of Jammu & Kashmir through Principal Secretary to Government Social Welfare Department, Civil Secretariat, Jammu.
2. Chairman, the Jammu and Kashmir Board of Professional Entrance Examinations, Baghat-i-Barzulla Opposite J&K Bank, Srinagar.
3. The Jammu and Kashmir Board of Professional Entrance Examinations through its Secretary, Baghat-i-Barzulla Opposite J&K Bank, Srinagar.

...Respondents

Place: Jammu
Dated : : 29/06/2020

**Petitioners
Through Counsel**

**(Gagan Basotra)
Advocate**

BEFORE THE HON'BLE HIGH COURT OF JAMMU & KASHMIR AT JAMMU

WP(C) No. /2020
CM No. /2020

Gokul Sharma & Ors V/s Union Territory of J&K & Ors
...(Petitioners) ...(Respondents)

In the matter of: List of Dates & Events

Year 2019	The petitioners have passed their MBBS examination from the Jammu University in the year 2019 and are presently undergoing their internship in the Government Medical College, Jammu. The petitioners who belong to the general category are aspirants for seeking admission in the Medical Post Graduate Courses of MD, MG, PG Diploma in various Government Medical Colleges of the Union Territory of Jammu and Kashmir for the next academic year 2021.
30.01.2018	The respondent no.1 amended rule 15 of the J&K reservation Rules Of 2005 vide SRO 49 of 2018 dated 30.01.2018.
20.04.2020	The respondent no.1 again amended Rule 15 of the J&K Reservation Rules 2005 vide SO (Statutory Order) No. 127 dated 20.04.2020.
	The petitioners are aggrieved of rule 14 and amended Rule 15 of the Jammu and Kashmir Reservation Rules of 2005 vide SO(Statutory Order) no. 127 dated 20.04.2020, whereby the respondent no.1 has made excessive and constitutional impermissible reservation contrary to the Jammu and Kashmir Reservation Act of 2004 and Article 15(5) of the constitution of India, as such, is ultra

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vires. The petitioners are further aggrieved that the respondent no.1 has provided reservation without any meaningful exercise and that too has prescribed reservation for post graduate medical courses which is contrary to the judgments of the Hon'ble Supreme court. The petitioners being aggrieved have challenged the said rule amongst other on the grounds as mentioned in the writ petition.

Petitioner
Gokul Sharma
Mob.No. 9797573953
THROUGH COUNSEL

Place: Jammu
Dated: 29/06/2020

(GAGAN BASOTRA)
ADVOCATE

**BEFORE THE HON'BLE HIGH COURT OF JAMMU &
KASHMIR AT JAMMU**

WP (C) No. _____ 2020

1. Gokul Sharma ,
2. Abhishek Mahajan
3. Akshi Gupta :
4. Palash Sawhney

...Petitioner

Versus

1. Union Territory of Jammu & Kashmir through Principal Secretary to Government Social Welfare Department, Civil Secretariat, Jammu.
2. Chairman, the Jammu and Kashmir Board of Professional Entrance Examinations, Baghat-i- Barzulla Opposite J&K Bank, Srinagar.
3. The Jammu and Kashmir Board of Professional Entrance Examinations through its Secretary, Baghat-i- Barzulla Opposite J&K Bank, Srinagar.

...Respondents

IN THE MATTER OF:-

Writ Petition under Article 226 of the Constitution of India for issuance of an appropriate writ, direction or order in

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the nature of mandamus seeking quashment of amended rule 15 of the Jammu and Kashmir reservation rules of 2005 promulgated vide SO (Statutory Order) 127 dated 20.04.2020.

MAY IT PLEASE YOUR LORDSHIPS,

The petitioners most respectfully submit as under:-

1. That the petitioners are the citizens of India, as such are entitled to their fundamental, legal and statutory rights enshrined under the Constitution of India.
2. That the petitioners are aggrieved of rule 14 and amended Rule 15 promulgated vide SO(Statutory Order) no. 127 dated 20.04.2020 of the Jammu and Kashmir reservation rules of 2005, whereby the respondent no.1 has made excessive reservation which is constitutionally impermissible and being aggrieved of the same are filing the present writ petition. The Copy of SO (Statutory Order) no. 127 dated 20.04.2020 is enclosed herewith and marked as **Annexure-I**.
3. That the petitioners have passed their MBBS examination from the Jammu University in the year 2019 and are presently undergoing their internship in the Government Medical College, Jammu. The petitioners who belong to the general category are aspirants for seeking admission in the Medical Post Graduate Courses of MD, MG, PG Diploma in various Government Medical Colleges of the Union Territory of Jammu and Kashmir for the next academic year 2021. The petitioners are aggrieved of the

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act of the respondent no.1 by way of amending rule 15 promulgated vide SO(Statutory Order) 127 dated 20.04.2020 of the Jammu and Kashmir reservation rules of 2005. It is submitted that the respondent nos. 2 and 3 in pursuance of the aforesaid amendment are legally bound to select candidates for the academic session 2021 in accordance with the amended rule 15 of the J&K Reservation Rules of 2005 as such are generally aggrieved of the same and are jointly filing the present writ petition.

4. That before projecting the grounds of the writ petition , the petitioner for the facility of reference and convenience reproduce Rule 15 amended vide SRO 49 of 2018 dated 30.01.2018 and the latest amended rule 15 vide notification dated 20.04.2020 of the J&K Reservation Rules 2005 which is reproduced in verbatim as under:-

Rule 15 amended vide SRO 49 of 2018

*"15. **Distribution of Seats**:- For the postgraduate courses in MD/MS/M.Tech. Engineering and Agricultural Sciences and similar other post graduate courses, the seats shall be distributed as follows with the condition that the selection of candidates from the Reserved Categories for different streams shall be made strictly on the basis of their inter-se merit treating them as a single class for the purpose of allotment of streams:-*

S. No.	Category	%age
(i)	Open Merit (OM)	75%
(ii)	Reserved Category	
(a)	Scheduled Caste	4%
(b)	Scheduled Tribe	5%
(c)	Socially and Educationally Backward Classes	

(i)	Resident of Backward Areas	10%
(ii)	Resident of Area Adjoining Actual Line of Control	2%
(iii)	Weak and under privileged Classes (Social Castes)	1%
(d)	Children of Defence Personnel/ Para military Forces and State Police Personnel*	2%
(e)	Candidates possessing Outstanding Proficiency in Sports	1%

Amended rule 15 vide SO 127 dated 20.04.2020

“15. Distribution of Seats:- For the postgraduate courses in MD/MS/M.Tech. Engineering and Agricultural Sciences and similar other post graduate courses, the seats shall be distributed as follows with the condition that the selection of candidates from the Reserved Categories for different streams shall be made strictly on the basis of their inter-se merit treating them as a single class for the purpose of allotment of streams:-

(i)	Open Merit (OM)	57%
(ii)	Reserved Category	
	(a) Scheduled Caste	8%
	(b) Scheduled Tribe	10%
	(c) Socially and Educationally Backward Classes	
	(i) Resident of Backward Areas	10%
	(ii) Resident of Area Adjoining Actual Line of Control/ International Border	4%
	(iii) Weak and Under Privileged Classes (Social Caste)	4%
	(iv) Pahari Speaking People	4%
	(d) Children of Defence of Personnel/ Para military Forces and State Police Personnel	2%
	(e) Candidates possessing Outstanding Proficiency in Sports	1%
	(f) Economically Weaker Section (EWSs)	10%

5. That it is relevant to mention here that the respondent nos. 3 & 4 have issued the Information Brochure 2020 for Registration of Counseling and Preference Form filling and Admission Process prescribing procedure for

and being impermissible in view of the various judgments of the Hon'ble Supreme Court. **It is submitted that reservation under the Constitution of India is not a legal compulsion but only a discretion.** The petitioners submit that by way of amending rule 15 of the J&K reservation rules of 2005 vide SO 127 dated 20.04.2020 (Annexure-I), the respondent nos. 2 and 3 would issue the brochure for registration counseling and preference form and admission process prescribing procedure for selection and admission to medical post graduate courses for various government medical colleges in the Union Territory of J&K in accordance with the amended rule 15 vide SO 127 dated 20.04.2020 which has adversely affected the petitioners. The petitioners through the medium of the present writ petition do not seek to challenge reservation for 10% to *Economically Weaker Sections (EWS)* which has been brought into force by way of 103 amendment of the Constitution of India as the same is subject matter of challenge in various writ petitions pending before the Hon'ble Supreme Court. The petitioners are confining their challenge in the present writ petition only to the extent of reservation to other reserved categories vide rule 15 of the J&K Reservation Rules 2005. The petitioners accordingly being aggrieved of the aforesaid rule seek to challenge the same to the extent as submitted above amongst other on the following grounds:

- a. That the amended rule 15 provides for reservation which is more than 50% though in the said rule it provides for open merit category 57% which is factually

and legally incorrect as it fails to include 10% reservation of the *Economically Weaker Sections (EWS)*. It is submitted that the perusal of the rule clearly reveals that the total reserved category is 53% and leaving only 47% for the open category which is excessive and constitutionally impermissible as there can be no reservation for more than 50% as held by the Hon'ble Supreme Court in Indra Sawhney and Balaji's case.

- b. That the reservation provided by way of amended rule 15 is 53% which is ultra-vires to the J&K Reservation Act. It is submitted that section 9 of the J&K Reservation Act provides clearly that the total percentage of reservation shall in no case exceed 50% and the same is reproduced as under:-

"9. Reservation in professional institutions

(1) The Government shall reserve seats in the Professional institutions for candidates belonging to reserved categories and such other classes and categories as may be notified from time to time .

Provided that the total percentage of reservation shall in no case exceed 50%..."

The amended rule being in clear conflict with section 9 of the J&K Reservation Act is ultra-vires to the parent Act and as such, is liable to be quashed.

- c. That it is trite law as held by the Hon'ble Supreme Court that higher the learning in specialized fields lesser be the reservation, (1999) 7 SCC 120 titled "Dr.



Preeti Srivastava Vs State of M.P” . The Hon’ble Supreme Court has held that for specialized medical courses the reservation should be minimum taking into account only the merit and balancing the interest of specialized learning and candidates from reserved categories. The Hon’ble Supreme Court has held that to devalue merit at the summit is to temporise with the country’s development in the vital areas of professional expertise. It has further held that reservation for post graduate medical courses should be less taking into view the high grade skill, talent, technical, scientific and research involved in these medical courses, as it would be dangerous to deprecate merit and excellence at higher levels . The higher you go in the letter of education, the lesser should be reservation. It is accordingly submitted that amended rule provides for a very high and excessive reservation and that too for reserved categories which are not traceable to constitution of India, is against the constitutional fundamental principles governing equality, as such, is liable to be quashed.

- d. That on the base perusal, of Rule 15, amended vide SRO 49 of 2018 dated 30.01.2018 and again amended vide SO 127 dated 20-04-2020, it clearly transpires that wide and unfettered discretion has been conferred on the executive (delegate) to prescribe the extent for reservation of each category without there being laid down by the legislature any policy, principle or standard for the guidance of executive (delegate) to frame subordinate legislation i.e the J&K Reservation

Rules. It is submitted that delegated legislation has been framed under section 23 of the Reservation Act which does not provide any bench mark, standard or guidance for the executive i.e the delegate to provide the extent of reservation for each reserved category. In others words, the executive i.e the delegate is free to determine any extent of reservation at its own sweet will, whim and fancies. It is clearly evident that under the old reservation rules, the reservation provided to general category was 75% whereas under the latest amendment rules the general category is only left with 47%. The petitioners submit that in the absence of any statutory frame work the present executive (delegate) may in future increase or decrease the extent of reservation for each reserved category as its own sweet will dictated by extraneous consideration. **The Hon'ble Supreme Court as reported in 1974 AIR (SC) 1660** has held that essential legislative function cannot be delegated in the absence of determination of the extent of legislative policy and its formulation. In the present case, the legislature by way of Reservation Act has not prescribed the Reserved categories and the extent of reservation applicable to them, as such has left it to the executive to frame, reservation rules by way of delegated legislation which is a clear case of excessive delegation.

- e. That the reservation provided under the Constitution of India is only for SC, ST, socially & educationally backward classes and economically weaker sections. The Constitution of India does not provide any

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selection and admission to medical post graduate courses in accordance with rule 15 of SRO 294 of 2005 as amended vide SRO 49 of 2018 dated 30.01.2018 and provides for distribution of seats amongst the reserved category as under:-

"13 DISTRIBUTION OF SEATS

The distribution of seats shall be strictly in accordance with Rule 15 of SRO 294 of 2005 as amended vide SRO 49 of 2018 dated 30-01-2018 (Annexure-C) to this Brochure, unless & until modified by UT of J&K Govt., as indicated below:-

S. No.	Category	%age
(i)	Open Merit (OM)	75%
(ii)	Reserved Category	
(a)	Scheduled Caste	4%
(b)	Scheduled Tribe	5%
(c)	Socially and Educationally Backward Classes	
(i)	Resident of Backward Areas	10%
(ii)	Resident of Area Adjoining Actual Line of Control	2%
(iii)	Weak and under privileged Classes (Social Castes)	1%
(d)	Children of Defence Personnel/Para military Forces and State Police Personnel*	2%
(e)	Candidates possessing Outstanding Proficiency in Sports	1%

The copy of Annexure-C mentioning the distribution of seats in accordance with Rule 15 of SRO 294 of 2005 as amended vide SRO 49 of 2018 dated 30-01-2018 of the **Information Brochure 2020 for Registration of Counseling and Preference Form filling and Admission Process** is enclosed herewith and marked as **Annexure-II**.

6. That the perusal of the aforesaid rule position reveals that the official respondent no.1 has come up with excessive reservation which is against the constitutional mandate

reservation on the basis of language i.e. the linguistic minority cannot be a basis of reservation traceable to Constitution of India under article 15 & 16. The Respondent No 1 however contrary to the provisions of Constitution of India has provided 4% of reservation for *Pahari* speaking people. The Respondent No 1 has though designated *Pahari* speaking people as socially & educationally backward, but the same is constitutionally impermissible as a language/linguistic community cannot be the sole basis for being socially and educationally backward. The Hon'ble Court in *Indra Sawhney's* and in subsequent cases have delineated the criteria and the basis of any community being educationally and socially backward. in every case where the states decides to provide for reservation there should exist two circumstances, namely, "Backwardness" and "Inadequacy of representation". The backwardness has to be based on objective factor whereas inadequacy has to be factually exist. The Respondent No 1 without having determined any intelligent, objective and fair criteria that *pahari* speaking people are socially and educationally backward have prescribed 4% Reservation for a linguistic community. The petitioners submit that the identifiable criteria for determining any person belonging to a *pahari* speaking would be vague which is clearly evident by the amended Rule 21 of the J&K Reservation Rules which govern the procedure and authority for granting the certificate. The petitioners for the perusal of the Hon'ble Court reproduce the same as under:-

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"In Rule 21, after clause (viii), the following clause (ix) shall be added;

(ix) (a) A person claiming the benefit under the Pahari Speaking People Category must be a member of the Pahari Clan, Community, or Tribe having Distinct Cultural, Ethnic and Linguistic identity.

(b) He/She must be speaking Pahari language and his/her mother tongue must be Pahari.

(c) He/She must produce Aadhar Card/Voter Identity Card/Domicile certificate.

*(d) Further, Tehsildar, shall be the authority to certify the claim of persons belonging to said Category. The Revenue Authority shall issue such certificate after due diligence as per **Form-XV** appended to this notification."*

The Copy of Amended Reservation Rule, Rule 21 is enclosed herewith and marked as **Annexure-III**.

It is accordingly submitted that Respondent No.1 has arbitrary, capriciously exercise its discretion under Section 23 of the Reservation Act, indentifying Pahari Speaking People as a reserved category which is against the constitutional mandate and establish constitutional principles governing grant of reservation to communities in view of Article 15(1),15(4), 15(5) of the Constitution of India.

- f. That the perusal of the amended and unamended Rules clearly reveals that the Respondent No 1 has doubled the extent of reservation pertaining to SC, ST and residents of area adjoining actual line of control.

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However, The Respondent No 1 has increased the extent of reservation applicable to weak and under privileged classes(Social Caste) to four times. It is clearly evident that the Respondent No 1 in exercise of its power as delegatee for framing reservation rules (Delegated Legislation) has without any basis, quantifiable data prescribed arbitrary excessive reservation to aforesaid categories for admission to Post- Graduate institutions and the same is liable to be setaside, for without any basis.

- g. That Article 15(5) read with 16 (4) of the Constitution of India are only enabling provisions for providing reservation to various categories besides SC, ST which are educationally and socially backward. It is submitted that the state is under a constitutional mandate to balance the conflicting claims of reserved and unreserved categories which must be balanced and harmonized in accordance with the principles of equality under Article 14 of the Constitution of India. The state has to ensure that no class prosper at the cost of others class and no person could suffer because of the drawbackness which are not his, but social. The affirmative action of the state has to ensure that there is a balance of merit and positive discrimination. It is submitted that the petitioners are not against the concept of reservation but are only aggrieved to the extent of reservation which has been done without any legal justifiable basis and that too in case of institutes of higher learning. In the present case, the extent of reservation is surely beyond a cut- off point which has

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resulted in reverse discrimination. In the present case, the reservation prescribed is beyond the parameters under Article 14, 15(5) of the Constitution of India as such is excessive and is unconstitutional and is liable to set aside.

- h. That Rule 14 read with amended Rule 15 of the J&K Reservation Rules of 2005 providing reservation for reserved categories i.e. children of defence personnel, children of paramilitary forces and state police personnel, and candidate possessing outstanding proficiency in sports is not traceable to the J&K Reservation Act nor to the constitution of India. It is submitted that Article 15 (5) read with 16 (4) of the constitution of India does not provide any such reservation for the said reserved categories. It is to be understood that the constitution of India is a parent Act and any law of the land has to be traceable to it nor can be in conflict with it. The perusal of the J&K Reservation Act of 2004 also do not classify the aforesaid categories as reserved categories in accordance with clause 2 (l) of the J&K Reservation Act. The respondent no.1 by providing reservation to the said categories has exceeded its authority and as such, the said Rule 14 read with amended Rule 15 of the J&K Reservation Rules of 2005 being ultra-vires to the J&K Reservation Act and constitution of India is liable to be quashed.
- i. Rest of the grounds shall be urged at the time of hearing.

7. That the petitioners have no other efficacious / alternate remedy available than to approach this Hon'ble court by way of the present writ petition for redressal of their grievances.
8. That the petitioners have not filed any other writ petition or proceedings before any court including this Hon'ble Court on the same subject-matter.

An affidavit in support of the writ petition is annexed herewith.

IN THE PREMISES: -

It is, therefore, respectfully prayed that the Hon'ble Court may, in the facts and circumstances of the case, be pleased to;

1. Allow the writ petition
2. Issue an appropriate , writ, order or direction of the nature of mandamus commanding the respondents to quash and set aside rule 14 and amended rule 15 of the Jammu and Kashmir Reservation Rules of 2005 amended vide SO(Statutory Order) no. 127 dated 20.04.2020

With a further writ of mandamus directing the respondents to frame the rule 15 of the Jammu and Kashmir Reservation Rules of 2005 in accordance with the constitutional mandate by way of not providing any excessive reservation and providing reservation only to reserve categories in accordance to the principles for providing reservations to the institutes of higher learning.

3. Any other appropriate order or direction which the Hon'ble Court deems fit and proper in the given facts and circumstances of the case may kindly be passed in favour of petitioners.

Petitioners

Gokul Sharma

THROUGH COUNSEL

Place : Jammu

Dated: 29/06/2020

(GAGAN BASOTRA)
ADVOCATE