
(2016) 04 J&K CK 0059

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2595 of 2015 and MP No. 01 of 2015

Afifa Shaheen Kamli

APPELLANT

Vs

SKUAST

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 515

Hon'ble Judges : Mr. Ali Mohammad Magrey, J.

Bench : Single Bench

Advocate : Mr. Mahfooz Ahsan Nazki, Advocate, for the Petitioner; Mr. M.Y. Bhat, Advocate and Mr. S.A. Naik, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ali Mohammad Magrey, J.—By this common judgment, I propose to decide and dispose of the three writ petitions, founded on identical

material facts. In all these petitions, the facts pleaded are more or less identical, therefore are taken up together.

2. Petitioner in the instant petitions has questioned the decision of respondent-University, notified in terms of Notification No. 03 of 2011, dated

29.03.2012 and Notification No. 04 of 2012, dated 16.03.2012 as also notice bearing No. 06 of 2015, dated 23.09.2015, whereby it is notified

that the tenure of the existing officers and future appointments on the posts of Director Extension Education, would be for a period of 05 years and

University Order No. 964(Est.)of 2015, dated 13.11.2015 impugned in the SWP No. 2456/15, whereby on completion of five years tenure the

petitioner has been posted as Students Welfare Officer SKUAST-K, which post stands approved to be designated as Dean Students Welfare by

the University Council and vide Notification No. 01 of 2013, dated 11.01.2013, whereby University notified that the addition/amendment to

SKUAST-K Statutes-1983 as contained in Annexures-I, II, III and IV, extracted as under:

Amendment to Schedule-II to Chapter-III (Accounts Cadre) of SKUAST-K Statutes

Note-2 to Class IV Category 1 of Schedule II to Chapter III (Accounts Cadre) of SKUAST-K Statutes shall be recast as under:

Candidates selected for the post of Accounts Assistant shall have to undergo a training course for a period of one year (comprising theoretical

training for six months and practical training for six months) during which they shall be paid a stipend of Rs. 3500/- P.M. They shall be granted Pay

Band of Rs. 5200-20,200 with Grade pay of Rs. 2400 after completion of one year training course as described above. During the period of

probation, they shall have to qualify the ACC examination within the prescribed period failing which their future increments shall be stopped till they

pass the requisite examination.

3. Brief Facts:

(i) Petitioner claims to be an employee of Respondent No. 1 having been appointed as Director Extension Education vide University Order No.

768(Est.) of 2010, dated 15.11.2010. It is submitted by the petitioner that prior to his appointment as Director Extension Education, he was

working as Professor/Chief Scientist and Head, Division of Sericulture. It is submitted that respondents vide advertisement Notice No. 01 of

2009, dated 14.05.2009 advertised, inter alia the position of Director Extension Education and in terms of advertisement notification, the

qualification required for a candidate to apply for the said position was a Doctorate Degree in any branch of Agriculture/Veterinary or allied

Sciences with fifteen (15) years of experience in Extension/Research/Teaching, amongst others. It is submitted that the advertisement notice did not

mention that the advertised post was for a particular tenure. To the contrary, as per the Statutes framed by the respondent, the post of Director

Extension Education was not a tenure post and age of superannuation for a candidate appointed to the said post was fixed as (60) years (which

has now been changed 62), petitioner, accordingly, responded to the said advertisement notice and applied for the aforesaid position.

(ii) It is submitted that the selection Committee interviewed the petitioner and on completion of the process of selection, petitioner was appointed

as Director Extension Education vide order dated 15.11.2010. Clause-C of the said order, reads as under:

The appointment can be on tenural basis for five (05) years or till the appointee attains the age of superannuation, whichever earlier"".

(iii) Having registered the aforesaid stipulations being ambiguous, the petitioner inquired with the authorities about the meaning of said clause.

However, it is submitted that the petitioner was informed that appointment would not be on tenural basis and shall be governed by the statutes

framed by the respondent. Relying on the aforesaid assurance, the petitioner joined as Director Extension Education on 16.11.2010.

(iv) Respondent vide notification bearing No. 03 of 2011, dated 29.03.2011 purportedly notified that the tenure of existing officers and future

appointments on the posts of inter alia Director Extension Education would be for a period of five (05) years.

(v) It is submitted that in addition to the aforesaid notification, the respondent issued Notification No. 04 of 2012, dated 16.03.2012 purporting to

amend the Schedule I and II of Chapter II of the SKUAST Statutes. It is submitted that as per the said purported amendment, a note was added

to the Schedule which read as under:

The appointments to the posts indicated at sr. no. 1 to 7,11 and 14 shall be on tenure basis for a period of 05 years

(vi) Respondent herein issued advertisement Notice No. 06 of 2015, dated 23.09.2015, whereby applications were invited inter alia for the post

of Director Extension Education. As per the said notification, the post has been advertised as a tenural post for a period of 5 years. Petitioner

feeling aggrieved of the aforesaid notifications/notices, has questioned the same in the instant writ petitions on the grounds detailed out as under:

a. It is submitted that procedure for incorporation of a statute (or amendment thereof) has been prescribed under Section 40 of the SKUAST

Act. The said provision stipulates the following steps which are necessary for a statute to be made:

i. As a first step, the Statute or an amendment thereto is required to be proposed by the Board.

ii. Secondly, such proposal by the Board is required to be approved by the University Council.

iii. The final step is an assent by the Chancellor.

b. It is submitted that in the present case, the Statute was purportedly been amended vide Notification No. 04 of 2012, dated 16-03-2012. It is

further submitted that in the said notification, it is asserted that the same has been issued after being recommended by the Board of Management in

its 51st meeting and approved by the University Council at its 21st Meeting. However, a bare perusal of the Minutes of Meetings of the Board of

Management would reveal that such an amendment was never proposed. To the contrary, the Board proceeded on an assumption (albeit wrongly)

that the post of Directors has already been made as Tenure post, perhaps under a misconception that order dated 29-03-2011 amounted to

amending the statutes. It is therefore evident that no amendment, affecting the term of the Petitioner, as envisaged under Section 40 of the

SKUAST Act has been carried out.

c. it is submitted that the Respondent has indeed amended the Statute to mean that the appointment to the post of Directors are for a period of five

(05) years, the said amendment cannot bind the Petitioner in as much as the amendment does not specify that the same is applicable to the existing

employees. To the contrary, the language used in the Minutes would clearly reveal that the same is applicable only to new employees.

d. It is pertinent to mention that the purported amendment has been carried out to the Schedule I to Chapter II of the SKUAST Statutes. Clause 4

(B) i.e. the only clause where a reference to the Schedule is found in the body of the statute, reads under:

The Vice Chancellor shall have a post advertised indicating therein the requisite qualifications to be possessed by a candidate prescribed in the

schedule and may invite suggestions/recommendations from such persons/institutions/agencies as he deems fit and appropriate in connection with

filling up a vacancy.

Thus, it is clear that the Schedule is only descriptive of the requisite qualification to be possessed by a candidate and necessarily applies only to

fresh appointments. The said provision, read with the Schedule of the purported amendment, would further substantiate the case of the Petitioner

that the said amendment, even if, valid can be applicable only to future candidates.

e. Assuming though not admitting the amendment has been sought to be made applicable to existing employees, it is settled law that in case of a

conflict between the body of the Act and the Schedule, the former prevails. Thus, Notification dated 16-03-2012 purporting to make the post of

the Petitioner a Tenural Post would necessarily have to be treated as non-est in law being in conflict with the provisions of the Clause 22 read with

Clause 3 (iv) of the Statute.

f. It is settled law that an Administrative instruction or an order cannot exceed the Provision of a Statute or the Rules framed there-under. In the

Present case, the Rules admittedly provide that the age of superannuation shall be sixty two (62) years. The Notification No. 03 of 2011, dated

29-03-2011 is clearly in conflict with the provisions of the Statute and is therefore liable to be set aside.

g. That the Petitioner applied for the position of Director Extension Education only after being satisfied that the said post was not a tenural post and

that the Petitioner would retire in accordance with the Statute of the Respondents and the Rules framed there-under. The Petitioner was thus,

deputed from her existing position. It is, therefore, evident that the Petitioner, on the basis of promise extended by the Respondent has substantially

changed her position. The Respondent is thus bound by the Principle of Promissory Estoppel and cannot be permitted to go back.

h. The action of the Respondent in seeking to treat the appointment of the Petitioner as a tenural appointment is exfacie illegal in as much as the

advertisement notice did not mention that the appointment was to be made for a particular tenure.

i. The stipulation in the order dated 15-11-2010, being ambiguous in nature would necessarily have to be construed beneficially in favour of the

Petitioner herein especially so when on the date on which the said notification was issued, there was admittedly no purported amendment even in

the schedule.

j. Assuming though not admitting that the Respondent has indeed amended the Statute to mean that the appointment of the Petitioner is for a period

of five (05) years, the said amendment cannot bind the Petitioner in view of the

settled law that an executive authority cannot pass a notification with retrospective effect unless there is a specific power given to the authority under the Statute. In the present case, no such power has been conferred upon the Respondent. Thus the power to issue the impugned notifications cannot be traced to the Statute rendering the said notifications and the advertisement void ab-initio.

k. The Petitioner reserves her right to take additional grounds at the time of arguments, which have not been specifically pleaded in the present.

4. On notice respondents have filed reply, whereby while denying the contentions raised in the writ petitions are seeking dismissal of the writ petitions and defending the Notifications and Notices with particular reference made in paragraphs 4 to 8 of their reply. Paragraphs 4 and 8 being relevant are extracted as under:

4. That the contention of the petitioner that the amendment has been brought in force in the Schedule and not in the main Statutes and thus the

Schedule cannot be given effect is totally baseless and misconceived. The Statute in Clause 22 provides for age of superannuation which is 62

years for teaching Staff and 60 years for non teaching staff. The said clause has no role to play in the present case as the question of

superannuation is not an issue at all. The petitioner has not been retired from the services and has only to be adjusted against her substantive post

and thus the clause quoted by the petitioner has no bearing on the issue. Thus there is no contradiction between the Statute and the Schedule as

both deals with different situations. The issue is squarely covered by Schedule II and decision of the competent authority thus no interference of this

Hon'ble Court is warranted.

5. That in fact process for declaring Officer Posts such as Directors, Deans, Registrar, etc. as tenure posts was long back initiated and Academic

Council of SKUAST-J approved tenure posting of 5 years of such posts vide approval dated 29.06.2005 which was placed before Board of

Management meeting on 29.08.2005, the University Council for SKUAST-J and SKUAST-K being same, held its meeting on the said issue on

12.01.2010 under the Chairmanship of the Governor of J&K State which took the decision to the effect that the senior positions in SKUAST-J

and SKUAST-K should be on tenure basis for a period of four to five years and

accordingly on the basis of university Council decision an order came to be issued on 13-10-2010. Simultaneously the process for filling up the post of Director Extension Education post was initiated and because of that reason applications were invited for making appointment on temporary basis with further condition that same shall be governed by the Rules and Statute which would come into vogue and on that reason the petitioners appointment was made for a period of five years which condition was imposed in her appointment order which she accepted without any demur.

6. That the contention of the petitioner that no such conditions were imposed in the advertisement notice or appointment order is again wrong

factually. Rather, the advertisement notice clearly mentioned that "...in case of selection of in-service candidates, their services shall be regulated in

accordance with the statutory provisions as are in vogue or as may come into force from time to time." Similarly, the appointment order also clearly

mentioned that the appointment shall be on tenure basis by stating that the appointment can be on tenure basis for 05 years or till the appointee

attains the age of superannuation whichever earlier, and also by stating that the service conditions of the appointee shall be governed in accordance

with the SKUAST Statutes and rules of the University as are in force with amendments or as may come into force from time to time, together read

with the provisions of J&K CSRs wherever applicable. It is hereby made clear applications were invited for making temporary appointment

against the posts because the same was pending approval of the University Council and had only been adopted by SKUAST-J at that point of

time in terms of the University Council Decision taken for both universities which was taken in 2010. However, the advertisement notice and the

appointment order clearly mentioned that the amendments which shall come into force in future at the relevant point of time shall be applicable and

the appointment order even mentioned that the appointment shall be for five years or superannuation, whichever is earlier which leaves no doubt

that the petitioner has no right to claim continuation on the said post.

7. That the petitioner has been appointed in 2010 the appointment order clearly mentioning that the appointment is for a period of five years.

Thereafter, the university council decision was acted upon by issuing notification

in SKUAST-K in the year 2011 which is challenging by the petitioner now after a period of four years. The petitioner accepted the appointment in terms of the appointment order and served against the post for the tenure of five years, and now when she was to be relieved in terms of rules, she has come up with the present writ petition. The petitioner having accepted the appointment order is bound by its terms and conditions and she having not challenged the amendment for four years, the writ petition deserved to be dismissed on the doctrine of laches only and no consideration to the merits of the case deserves to be given. The writ petition merits dismissal on the doctrine of laches and on the doctrine of acquiescence.

8. That the petitioner has not been discriminated against the condition regarding tenure appointment in the appointment order of the petitioner was not of that post only, rather the said condition was in the same manner put in the appointment orders of other Directors who were also appointed for other positions along with the petitioner vide University Order No. 767(Est.) of 2010, dated 15.11.2010 for the post of DRI (now Director Education) and Director Research, respectively, therefore, the appointment made on tenure basis was/is general policy decision and not any discrimination. Other appointments in respect of Deans of subject matter faculties and other officers of the University were also made on similar condition viz. tenure appointment for 05 years, therefore, the presentation of the petitioner before the Hon'ble Court is misleading and suppression of the facts.

5. Petitioner has also filed rejoinder, wherein he has objected the reply of respondents as being baseless and false with reference to powers, as detailed out in the statutes, with particular reference made in paragraph-C which being relevant, is extracted below:

c. Assuming on demur that the purported amendment was validly carried out, the assertion of the Respondent that the amendment is applicable to the petitioner is also grossly misconceived in as much as the amendment nowhere mentions that it is applicable to the existing employees. Thus, even if the amendments were to be held to be valid, it is never applicable to the petitioner who is an existing employee. It may not be out of place to mention that the purport amendment has been carried out to the Schedule I

to Chapter II of the SKUAST Statutes. Clause 4 (B) i.e. the only clause where a reference to the Schedule is found in the body of the Statute, reads under:

The Vice Chancellor shall have a post advertised indicating therein the requisite qualification to be possessed by a candidate prescribed in the Schedule and may invite suggestions/recommendations from such persons/institution/agencies as he deems fit and appropriate in connection with filling up a vacancy

6. Heard learned counsel for the respective parties, perused the record and considered the matter.

7. The moot question for consideration of the Court is whether the petitioner has right to continue against the post of Director Extension Education beyond the period of five years and till she reaches the age of superannuation with reference to applicable conditions of advertisement, appointment and the statute.

8. Petitioner in response to the advertisement notice dated 14.05.2009, admittedly applied for the post of Director Extension Education and she got selected and appointed as such vide order dated 15.11.2010 and claims her continuation as Director Extension Education till she reaches the age of superannuation i.e., up to the age of 62 years. Petitioner has challenged Notification No. 03 of 2011, dated 29.03.2011 whereby and where under the officer's posts including the post of Director Extension Education has been declared as tenure posts for a period of five years.

Petitioner has also challenged the University Notification No. 01 of 2013, dated 11.01.2013, whereby and where under amendment was made in the Statute and placing the post of Director Extension Education as tenure post and the advertisement Notice No. 06 of 2015, dated 23.09.2015 whereby the post of Director Extension Education has been advertised as a tenure post for a period of five years. In support of the challenge, petitioner has raised the grounds having reference to retrospective effect of the notifications/statutes against the mandate of law and policy.

9. Learned counsel for petitioner while reiterating the grounds of challenge raised in the writ petitions, submits that the condition imposed in the order being ambiguous and petitioner had no knowledge of amendment, therefore, had accepted the appointment by treating it as full time

appointment and not of tenure basis. Learned counsel further submits that University Council of Jammu is different than that of the Council of

SKUAST-Kashmir. He further submits that predecessor in interest namely Dr. G.M. Wani, of the petitioner, retired on reaching the age of superannuation.

10. Per contra learned counsels for the University submits that the advertisement notice dated 14.05.2009 clearly prescribed in general conditions

that the nature of appointment shall be temporary in accordance with Statutory provisions as are in vogue or as may come into force from time to

time. The University Council of SKUAST Jammu in its meeting held on 12.10.2010 decided that the appointment of Deans, Directors and Officers

of the University shall be on tenure basis for a period of five years.

11. It is submitted that the decision dated 12.01.2010 was implemented in terms of the Notification No. 09 of 2010, dated 13.10.2010 issued by

the Registrar SKUAST-Jammu. It is submitted that the decision was acted upon by SKUAST Kashmir after submission of report by Joint

Committee of Vice Chancellor SKUAST-Jammu, SKUAST-Kashmir dated 23.09.2010, the follow up action was taken and appointment order

was issued in favour of the petitioner on 15.11.2010, wherein two important conditions were imposed. The appointment can be on tenure basis for

a period of five years or till the appointee attains the age of superannuation whichever earlier.

12. It is submitted that the appointee can be posted at any constituent Unit of the University on an equivalent post as and when required and the

service conditions of the appointee shall be governed in accordance with the Statute with amendments as may come into force from time to time.

13. It is submitted that decision of the University Council and notification along with decision of Joint Committee dated 23.09.2010 was placed

before the Board of Management of SKUAST Kashmir on 11.03.2011, which was ratified by the Board. Thereafter the Notification dated

29.03.2011 was issued by the SKUAST Kashmir. It is further submitted that the University Council SKUAST Kashmir while implementing the

decision taken in 21st Meeting dated 05.09.2011 decided to incorporate the said decision in Schedule 1st to Chapter II of the Statute SKUAST-

K, for which the recommendation was also made by the Board of Management in

it's 51st Meeting. It is submitted that the decision taken by the University Council SKUAST-J on 12.01.2010 was acted upon vide order dated 13.10.2010 issued by SKUAST-J, which was ratified by Board of Management SKUAST-K in its Meeting held on 11.03.2011 and the University Council SKUAST-K also approved incorporation of the said amendment in the Statute in 21st Meeting which was held on 05.09.2011, as assented by the Chancellor.

14. It is submitted that the issue got fully clarified in terms of communication addressed by the Principal Secretary to Governor dated 13.10.2010.

It is submitted that the Board of Management in the process of incorporation of the said decision in the Statute took decision and approved the

same in 50th Board Meeting and appointments against the officer posts were approved for amendment and incorporation in the Statute in 53rd

Board Meeting and the decision of 53rd Meeting was approved and confirmed in 54th, 55th and 56th Meetings of the Board of Management

wherein the writ petitioner was a Member of the Board and the action taken in the previous Meetings of Board which include the tenure

appointment of Deans etc., appointed on tenure basis in terms of the decision of Board of Management dated 11.03.2011. It is submitted that the

writ petitioner herself accepted the said action and did not raise any objection against the same and continued to work on tenure basis as Director

Extension Education for a period of five years. It is submitted that on completion of five years tenure two appointees vacated the position and

joined back their original posting however, the petitioner filed the present petitions despite the fact that in response to the impugned advertisement

notice dated 23.09.2015, she recommended the Application Forms of three in-service candidates. It is submitted that the earlier Director

Extension Education namely Shri Dr. G.M. Wani retired on superannuation in the year 2009 and at that time the said Notifications were not in

existence. It is submitted that the decision for enhancement of retirement age of 62 years was taken by State Government which was immediately

acted by the University and after its implementation the University Council ratified the same by taking the decision for applying the same. It is

submitted that if the petitioner's stand is accepted by this Court that will affect the said decision and the writ petitioner is then liable to be removed

from the service after completion of 60 years sendee, therefore, seeks dismissal of these three writ petitions on the grounds mentioned here in above.

15. Learned counsel for the petitioner has referred to and relied upon the cases titled Jyoti Brothers v. Shree Durga Mining Co., reported in

AIR 1956 Cal. 280, 60 CWWN 420; Sri Gulshan Trading Company & Anr. v. The State of Uttar Pradesh & Ors., reported in [1971]

28 STC 487(All); M/s Aphali Pharmaceuticals Ltd. v. State of Maharashtra & Ors., reported in (1989) 4 Supreme Court Cases 378;

Muneshwara Nand v. State, reported in AIR 1961 All 24, 1961 Cri. L.J. 1; Ajay Enterprises (P) Ltd. & Anr. v. Municipal

Corporation of Delhi, reported in (1972) ILR 2 Delhi 629; and Bhadeswar Municipality v. Samnagar Jute Factory Co., Ltd., reported

in (1957) ILR 2 Cal. 296.

16. Learned counsels for the respondents has referred to and relied upon the cases titled National Institute of Technology & Anr. v. Pannalal

Choudhary & Anr., reported in 2015 STPL (LE) 50611 SC; and Dr. Basavaiah v. Dr. H.L. Ramesh & Ors. reported in 2010 STPL

(LE) 44029 SC.

17. Admittedly, the petitioner has responded to advertisement Notice No. 01/2009, dated 14.05.2009 for the post of Director Extension

Education and condition of advertisement prescribed and nature of appointment as temporary with two years probation as extend-able as

prescribed under rules; it is also provided that in case of selection of in-service candidates their service shall be regulated in accordance with the

statutory provisions as are in vogue or as may come into force from time to time. It is also provided in the order of appointment of petitioner that

the appointment is governed by terms and conditions including one that the appointment can be on tenural basis for a period of five years or till the

appointee attains the age of superannuation, whichever is earlier.

18. Petitioner having accepted the terms and conditions of the advertisement notice and appointment order, can by no stretch of imagination turn

round and claim continuation till attaining the age of superannuation, which if allowed, goes against the mandate of the judgment passed by the

Hon'ble Supreme Court in case titled ""Aphali Pharmaceuticals Ltd. v. State of

Maharashtra (1989) 4 SCC 378".

19. It is well settled law, that in academic matters the Courts have very limited role particularly when no malafide is alleged and in the matters

dealing with the academics the decision is to be left to the academician and experts, the Courts cannot sit in appeal over the decision of such

experts. The principle is laid in case titled ""Dr. Basavaiah v. Dr. H.L. Ramesh & Ors., reported in 2010 STPL (LE) 44029, Supreme

Court"".

20. Petitioner's claim with reference to continuation on the post on the ground of similarity with Dr. G.M. Wani, who retired on superannuation in

the year 2009, has no substance, as at the time of appointment of said incumbent the conditions of advertisement notice and appointment order, as

also amendment to the statutes were not in force, therefore, the University has decided to make appointment on tenure basis, so, it shall not be

proper for the Court to ask them to make appointment on full terms basis. Appointment against the post whether temporary, permanent or tenure

is a condition having reference to the powers of the employer. The Court cannot lay down the conditions of employment or fix the tenure of

appointment and it is up to the authorities to take a decision as has been done in the present case.

21. In view of the above discussion, there is no merit in these writ petitions, being meritless, are hereby dismissed along with connected MPs.

Interim direction shall stand vacated.

22. Registry to place a copy of the judgment on each file.