

(2018) 05 J&K CK 0051
In the Jammu And Kashmir High Court
Case No : SWP NO. 130 OF 2017

AJIT SINGH AND OTHERS	Vs	APPELLANT
UNIVsERSITY OF JAMMU AND OTHERS		RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Jammu and Kashmir Civil Services (Special Provisions Act), 2010 — Section 3(i)(b)

Citation : (2018) 05 J&K CK 0051

Hon'ble Judges : DHIRAJ SINGH THAKUR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Petitioners 1, 2 & 3 came to be engaged as Junior Assistants on a consolidated salary with effect from 11.06.2002, 16.07.2002 and 20.07.2002

respectively. The petitioners assert that they continued working without any interruption, but with usual/artificial breaks. However, it is stated that the

University authorities issued another order of their re-engagement dated 01.09.2006, 26.04.2006 and 01.03.2006 in regard to petitioner Nos. 1, 2 and 3 respectively.

2. In the meantime, the University authorities believing that the provisions of the J&K Civil Services (Special Provisions Act), 2010 were applicable

to the University decided on the same analogy to consider the petitioners and other similarly situate for regularization on the ground that they had also

completed seven years of service. In this regard a Committee was constituted by the Vice-Chancellor to screen the service records of the persons

working on contractual basis, who had completed seven years of service. After deliberating the issue, recommendations were made by the

Committee, including in favour of the petitioner Nos. 2 & 3 on the ground that they had rendered more than seven years of service upto 31.12.2010

and, therefore, they be considered for regularization against the two clear vacancies. The recommendation was also made in favour of petitioner No. 1

for regularization among others on the same grounds.Â

3. It appears that in the meanwhile, the issue was also taken up with the Financial Advisor of the University, who opined that the provisions of the

J&K Civil Services (Special Provisions Act), 2010 were not applicable to the University and that the University Council could take a view in

formulating a suitable policy. It further appears that ignoring the recommendations of the Financial Advisor, i.e. Commissioner/Secretary to

Government, Finance Department, Government of Jammu & Kashmir, the Vice-Chancellor in purported exercise of the powers vested in him under

Section 3(i)(b) given in Chapter XXXVII-E of the University Calendar authorized the regularization of the petitioners with effect from their date of

joinings. The Registrar, University of Jammu thereafter issued the order dated 28.10.2011, notifying the said decision.Â

4. Subsequently, however, it appears that the University having realized that the order dated 28.10.2011 had been issued contrary to the opinion of

the Financial Advisor, the decision notified vide order dated 28.10.2011 was kept in abeyance, until the University formulated a suitable policy. The

order of abeyance was issued by none else than the Vice-Chancellor himself on 12.11.2011.Â

5. Thereafter, it appears that the University did formulate a policy in consonance with the provisions of the J&K Civil Services (Special Provisions

Act), 2010 and under Item no. 72.47, the decision of the Vice-Chancellor in having ordered the regularization of the contractual appointments of the

persons working as Junior Assistants were placed before the University Council for approval with effect from their date of joining report i.e.

28.10.2011. It appears that the University Council resolved that the matter be referred to the Financial Advisor Universities with full facts for his

considered advice.Â

6. The Financial Advisor Universities vide his communication dated 08.08.2013 conveyed his concurrence, but made it subject to the condition that

â??the incumbents have more than seven years continuous service without any

break at their back. Upon the receipt of the concurrence, the University Council issued an order dated 17.08.2013, ordering the regularization of the petitioners herein who stood at Sr. No. 9, 10 & 11 of the said order with effect from 08.08.2013, i.e., the date of concurrence.

7. In the present petition, the petitioners challenge the said order to the limited extent that the date of regularization ought to have been with effect from 28.10.2011, as was the decision taken by the Vice-Chancellor, which was approved in principle by the Financial Advisor, who had submitted his concurrence. It was submitted that the Committee constituted by the Vice-Chancellor earlier had found that the petitioners had all put in more than seven years of continuous service calculated from the year 2002, as the Committee had already recorded satisfaction that the petitioners had already completed seven years upto 31.12.2010 and, therefore, there was no occasion to defer the date of regularization to 08.08.2013. It was urged that the date of concurrence by the Financial Advisor was totally irrelevant for purposes of order of regularization.

8. In the response filed by the University, a stand is taken that it was erroneous to assert that the petitioners had all rendered seven years of continuous service as on 31.12.2010. According to the stand of the University, there was a break in services rendered by the petitioners during their contractual engagements. It is further stated that the petitioners were engaged on contractual basis in the year 2002 and continued to perform their duties as contractual employees of the University and their services were discontinued in the year 2004-05. Petitioner No. 1 continued upto 25.08.2005 and thereafter his engagement on contractual basis was not extended till 31.08.2006. Petitioner No. 2 continued upto 26.08.2005 and thereafter his engagement was also not extended. Consequent upon the joining of the newly recruited Juniot Assistants, the contractual engagement of the petitioners No. 1 & 2 was withdrawn vide communication dated 26.08.2005. Petitioner No. 3 continued in his engagement upto 05.10.2004 and thereafter the petitioner No. 3 also did not continue in service.

9. It is further stated that all the petitioners came to be engaged on contractual basis for the second time with effect from 01.09.2006, 01.03.2006 and 26.04.2006. It was thus stated that keeping in line with the recommendations made by the Financial Advisor, it was necessary for the petitioners to

have to their credit seven years of continuous service and, therefore, any service rendered prior to their re-engagement in 2006 could not have been considered.Â

10. Heard learned counsel for the parties.Â

11. It is not denied that the Vice-Chancellor had ordered the regularization of the petitioners with effect from 28.10.2011, that was on the premise that

the Committee had considered the petitioners as having completed seven years of service as on 31.12.2010. However, the Financial Advisor in his

communication dated 08.08.2013 conveying concurrence had specifically stated that the incumbents should have seven years of continuous service to

their credit. Since there was a break, as per the affidavit submitted by the University in the service rendered by the petitioners on contractual basis,

which has not been denied by the petitioners, as no rejoinder has been filed, the period of seven years of continuous service would be counted only

with effect from the dates of re-engagement of the petitioners in the year 2006 and not with effect from the initial date of their engagement in the year

2002.

12. Seven years of continuous service would be completed by the petitioner in the year 2013 and not in the year 2011, as was earlier ordered by the

Vice-Chancellor, based upon Committees recommendations. It needs to be pointed out that the Committee in its recommendations had only stated that

the petitioners had completed seven years of service in the University but had not stated that the petitioners had rendered seven years of continuous

service, as was the condition precedent.Â

13. The petitioners, however, are right in asserting that the date of concurrence by the Financial Advisor i.e., 08.08.2013 had no relevance to their

regularization. In fact, the petitioners even then are held not entitled to regularization with effect from 28.10.2011 but would have a right to be

regularized upon completion of seven years of continuous service with effect from the dates of their re-engagement. Calculating seven years of

continuous service of the petitioners with effect from 01.09.2006, 01.03.2006 and 26.04.2006, the petitioners would be eligible for regularization upon

completion of seven years of continuous service onÂ 01.09.2013, 01.03.2013 and 26.04.2013 respectively.

14. Having considered the entire matter, I am of the opinion that there is no

merit in the prayer of the petitioners that they be considered for regularization with effect from 28.10.2011. However, the petitioners would be entitled to regularization upon completion of seven years of continuous years with effect from 01.09.2013, 01.03.2013 and 26.04.2013 respectively. The order dated 28.12.2016 to that extent shall stand quashed. The University shall proceed to issue a fresh order specifying the dates of regularization in accordance with the observations made in hereinabove.

15. The petitioners and the private respondents are the similarly situate, as the private respondents had completed their continuous and uninterrupted period of seven years in the year 2010 and on that account were ordered to be regularized with effect from 28.10.2011. However, the claim of the petitioners in regard to the service benefits, which was given to similarly situated other employees has been rejected in regard to the petitioners by virtue of order dated 28.12.2016. No reason has been given as to why the case of the petitioners was not found valid for a similar treatment as against those who have been conferred the said benefits. The order dated 28.12.2016 in that regard is a non-speaking order, insofar as the rejection of the case of the petitioners is concerned and is, accordingly, quashed to the extent of the petitioners. The official respondents shall pass a fresh order, giving detailed reasons as to why the benefits accorded to the private respondents by way of order dated 28.12.2016 was not permissible in case of the petitioners. This becomes necessary, as the response filed by the University is silent on this aspect of the matter.Â Â

16. Let a fresh speaking order be passed in this regard within a period of six weeksâ?? from the date, a copy of this order is made available to the respondents.Â

17. The petitioners in any case would get all consequential benefits with effect from the dates of their regularization as mentioned in paragraph 14 hereinabove. Grant of other benefits will be dependent upon the order that will be passed by the official respondents in terms of the directions issued in paragraph 15 above.Â

18. Disposed of accordingly along with connected MP.