
(1991) 01 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : S. W. P. No. 1664 Of 1988

Akhtar Jan Naqeeb

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 11-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1991) JKLR 114 : (1992) KashLJ 211 : (1992) SriLJ 131

Hon'ble Judges : G.A.Kuchhai, J

Bench : Single Bench

Advocate : U.K.Jalali, M.S.A.Farooqi, Advocates appearing for the Parties

Judgement

The petitioner in this petition challenges as action of the respondents, whereby she has been debarred to compete for the post of Assistant

Professor in Anesthesiology, Institute of Medical Sciences, Soura, Srinagar and, therefore, seeks a mandamus for being considered for the post

from the date of selection i.e. 1988.

The case of the petitioner, in brief is that she is an adhoc Lecturer since July, 1986 working under the control of respondents. An advertisement

was issued by the respondent on 2061987 for certain posts in several disciplines, including the post of Assistant Professor, Anesthesiology,

prescribing the qualifications for competing the same. She also applied, but was not called for interview, when again on 1081988 another

notification was issued on the same lines for several posts, including the post of Assistant Professor in Anesthesiology. She consequently applied,

being qualified having passed postgraduation from PGI Chandigarh and having gained the required teaching experience from Alfata University in

Libya with effect from July, 1984 to 1986, then in addition as adhoc Lecturer from July, 1986 onwards, rather till date, but the petitioner was not

called for interview and dropped from selection. She, therefore, sought appointment with respondent No. 2 to ascertain the reasons. On meeting

him, she was informed that her adhoc service from teaching experience has not been taken into account therefore, excluded for the post of

Assistant Professor.

The case of the petitioner further is that there is no bar under any rule that experience on adhoc service cannot be taken into account for purposes

of eligibility, not the rules provide that only teaching experience on regular service will be taken into account for the selection for the posts under the

control of respondents. It is submitted by the petitioner that she has acquired more than four years, teaching experience on adhoc service as

Lecturer from 1936 onwards in respondent institute and while serving in Alfata University Libya from 1984 to July' 1986. The petitioner has given

in a supplementary affidavit, where the respondent in the same year of selection, orally argued, when she was excluded, having given benefit to

several candidates of experience gained from institutions outside the country: firstly, in case of Dr. Shad Saleem, having been selected due to

eligibility on account of experience gained from Benghazi University, a sister concern of Alfata University, Libya in the same selection process of

1981, where the petitioner was dropped. Then in case of some similarly situated candidates, namely Dr Shabir Ahmed, Dr. Mushtaq Ahmed and

Dr. Nisar Ahmed Mir, who had also experience from foreign institutions outside the country, but the petitioner has been made victim of hostile

discrimination, by dropping from selection, hitting the provisions of the constitution. Therefore, this petition for a writ of mandamus as indicated

above.

The respondents in a detailed counter affidavit have justified their impugned action of dropping the petitioner from selection against the post of

Assistant professor, Anesthesiology for two reasons : one on account of lacking the reaching experience of three years in the advertisement notice

from a recognized institution, firstly the teaching experience projected by the petitioner is from Alfata University, from 1984 to 1986, institution

from which the experience is projected is not recognized by Medical Council of

India under the Medical Council of India Act required for

eligibility. Then the remaining teaching experience projected by the petitioner is on account of adhoc service as Lecturer in the respondent institute

which cannot be considered for selection for the post of Assistant Professor, as only teaching experience on regular service can be taken into

account. Therefore, the aggregate teaching experience gained at Alfata University and on Adhoc service in the institute cannot be taken into

account, being contrary to advertisement notice, which requires teaching experience from a recognized Institution which the Alfata University is not

under the Medical Council of India Act, not recognized by the Medical Council of India. Further, the adhoc service cannot be counted for

eligibility; only teaching experience on regular service is counted. Therefore, the petitioner is not entitled to compete for the post of Assistant Prof.

Anesthesiology and rightly dropped and not called for interview. The petition deserves to be dismissed.

The respondent, in the their counter affidavit, have attempted to justify the instances given by the petitioner where teaching experience from

institution from outside the country, not recognized by the Medical Council of India, has been considered in certain cases for selection of certain

posts by the respondents. Firstly, in case of Mr. Shad Saleem, the respondent has asserted that such experience from Benghazi University, Libya a

nonrecognized institution has been wrongly accepted and this wrong cannot justify another wrong to consider the experience gained by the

petitioner from Alfata University, a nonrecognized institute, nor the court can compel the respondents to commit a wrong it has once committed.

Regarding Dr. Shabir Ahmed, it has been submitted that he gained experience in king Faisal College Saudi Arabi, which is a teaching institution for

Royal College of Surgeons and recognized by the Medical Council of India. Similarly, Dr. Mushtaq Ahmed gained experience at king Faisal

Hospital, at Madina, which was taken as genuine being part of Royal College of Surgeons, and recognised by Medical Council of India. Dr. Nissar

Ahmed Mir, Professor of Neonatology, has gained experience from other institution, besides having experience in the Benghazi University, which

instance cannot confer any right on the petitioner to claim selection for the post of 'Assistant Professor, Anesthesiology.

I have heard the learned counsel for the petitioner. Legal Assistant, appearing on behalf of the respondents, on 4.9.1991 was given a week's time

to engage counsel for replying arguments as prayed by her, Earlier also, on 23.8.1991, the respondents were given time to engage a counsel, but

no counsel was projected till, final opportunity to file the written arguments was given vide order dated 4.9.1991, which right under that order

stands automatically closed.

The disposal of this petition now hinges only on two points: firstly, whether adhoc service of the petitioner for purposes of teaching experience as

Lecturer, will give the petitioner eligibility to compete for the post of Assistant Professor in Anaesthesiology applied by her: secondly, whether the

service put in by the petitioner in Alfata University, Libya for purposes of teaching experience, allegedly not recognised institution by the Medical

Council of India shall count towards eligibility for the post of Assistant Professor, as indicated above.

As regards the adhoc service rendered by the petitioner from 1986 till the date of filling in the application or till the date of interview for the post

applied by the petitioner, is not even disputed by the respondents, except for a fraction in the month of July, 1986 when the petitioner has

projected a certificate, she has partly gained experience in that month in Alfata University Libya and raining parts as adhoc Lecturer in the

respondentInstitute in July, 1986. The tenure regarding actual service rendered by the petitioner under the control of respondents is the subject of

the selection Committee, provided she succeeds, in eligibility on the grounds of adhoc service I teaching experience. The case of the respondents is

that it is not the adhoc service of a candidate which will count for eligibly to compete for any post, including be on regular serves by the candidate

concerned, not the adhoc as the petitioner project for her eligibility. Once we refer to the annexure 'E' to the petition, the earlier notification on the

subject dated 20th June, 1987 and subsequent notification annexure 'F' to the petition dated August 10, 1988 in question for selection of the

petitioner on the basis of experience, the relevant pinion of which is quoted hereunder:

Experience:

Should possess following minimum teaching experience in the subject in a

Medical College of a recognised Institute after qualifying postgraduate/postdoctoral degree:

Professor: Three years as Associate Professor:

Associate Prof : Three years as Assistant Professor:

Assistant Professor: Three Years as Lecturer:

Lecturer: Should have working experience of 2 years as Senior Resident / Registrar /Tutor/Post doctoral student after qualifying postgraduate degree or qualifying postdoctoral degree.

Regarding experience for purposes of Assistant Professor, the requirement is three years as Lecturer. It is also not specified whether teaching

experience of the Lecturer for three years should be on adhoc or regular service. Once the respondent in the notification consequent to which the

petitioner has applied for the post of Assistant Professor, does not indicate that such experience should be on regular service and not the adhoc. It

does not lie in the mouth of the respondent to object for purpose of selection/ interview that the experience should be gained on regular service and

not the adhoc, as in the case of the petitioner. The petitioner, admittedly, has rendered service on adhoc basis and gained experience with effect

from July 1986 onwards till she applied for the post in question. The respondents have not referred to any rule or regulation which will indicate that

it is only the regular service on which experience gained will be counted for eligibility and there is any bar for experience, gained on adhoc service.

The petitioner, without dispute, continued as adhoc lecturer from 1986, till she applied for the post and undisputedly even now and there is no

different norm for rendering service on adhoc basis or on regular basis. The nature of the service in both the cases is the same, except the

difference in tenure. The adhoc appointee is appointed for a stopgap arrangement for a specific period, while the regular service is on continued

basis, except interruption on application of rules. Further, adhoc service also can be regularised and it can also be subject to selection. Normally,

under Civil Service (Classification, Control and Appeal) Rules, adhoc appointment initially is for six months and it can be continued beyond that

period at the discretion of the appointing authority, may be due to delay in regular selection or other exigencies of administration. As observed

regarding the nature of service, there is no difference in the regular and the adhoc service. The difference only, as observed, is that of tenure and

has all other benefits of service available to regular employees, except the tenure which also can extend on confirmation by the appointing authority.

In this view of the matter, I am of the opinion that for gaining teaching experience by a Doctor,, no rules appear to have been rightly framed to put

a bar to an adhoc appointee to seek promotion or selection against a 'regular post' if he has gained experience even on adhoc service.

Regarding anhoc appointment, the Punjab and Haryana High Court in Amar Singh, Junior Analyst and other versus the State of Punjab and others,

reported in 1983 (1 SLR) have illustrated the status of an adhoc employee in these words:

Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose

services are terminable without notice or otherwise and an employee characterised as an adhoc and employed on similar terms.

Indeed, it appears to us that in the gamut of service law an adhoc employee virtually stands at the lowest rung. As against the permanent,

quasipermanent, and temporary employee, the adhoc one appears at lowest level implying that he had been engaged causally or for a stopgap

arrangement for a short duration of fleeting purpose.

To my mind it is an administrative necessity or call it emergency calling for additional hands for performing administrative task of a given post lying

either vacant or created to meet the given temporary necessity or emergency. When the administration stands in such dire need of additional hands,

the strict meticulous adherence to merit, and at times even eligibility in the matter of age and qualification and also the sanctional procedures for

selection are given a go by in the public interest.

In the nature of things it is expected to be a one time act to afford to the administrative authority breathing time to select and appoint candidates in

strict compliance with the relevant rules or the executive instructions. What is, however, happening in actual practice is that filling of vacancies,

existing or newly created, through adhoc appointments has become the norm and the selection through an established mode or procedures

sanctioned by stands relegated to the position of exception.

Their lordships, as quoted above, have fully illustrated the position of an adhoc employee, but what is required in this case is the value of the adhoc service rendered by an employee.

As observed above on the point, in my opinion for teaching experience to qualify to compete, there is no difference between the experience

acquired on regular or adhoc service because the nature of duty remaining in both the cases same. Moreover, the respondent in the notification

having not cleared to the intending applicants whether such experience should be on adhoc or regular service. My opinion is fully covered by the

observation made by the Lordships of Punjab & Haryana High Court in Dr. Ravinder Paul Kour versus State of Punjab reported in 1979 (1) SLR

page 645 wherein their lordships, in short, have held:

Experience on adhoc appointmentDetermination oftowards eligibility for promotion. Executive instructions, dated 15101975 bar the counting of

such experience towards eligibilityRules came into force in July, 1978

No provision therein that the requisite experience must be on regular appointmentGovernment not counting experience of the petitioner on adhoc

appointment towards eligibilityHeld that the experience gained by the petitioner should count towards eligibility for promotion.

This proposition has been adopted by the same Court in Dharm Singh, Superintending Engineer versus State of Punjab and others 1985 (1) SLR

page 358, where their Lordships have ruled in identical situation in these words:

Promotion/Experience in servicefor promotion to the post of Superintending Engineers seven years experience as Executive Engineer prescribed

under the rulesService rendered as an adhoc Executive EngineerRules silent about counting of such period in the total length or' service to be

treated as an experienceExecutive instructions to count period spend on adhoc appointment Executive instruction attractedpetitioner eligible for

promotion to the post of Superintending Engineer.

Thus having regard to the observations made and the rule laid, as quoted above, by Punjab and Haryana High Court, the respondents have no

justification to distinguish, rather discard, the adhoc service for purposes of experience to compete for the post of Assistant Professor by the

petitioner.

I, therefore, hold that the teaching experience gained by the petitioner on adhoc service short of any bar under the Rules or under the notification,

calling the application, will not bar the petitioner to compete for the post of Assistant Professor, Anaesthesiology under the control of respondents.

Now comes the second and the crucial point regarding eligibility of the petitioner for competing for the post of Assistant Professor, claiming the

aggregate experience firstly on account of adhoc service rendered as Lecturer from 1986 onwards i.e. till the date of filing the application and, in

addition, the teaching experience gained by the petitioner from Alfata University from July, 1984 to July, 1986, allegedly an unrecognized institution

by Medical Council of India.

The notification on the point is crystal clear that experience must be in a Medical College or a recognised Institution after qualifying Postgraduate

course. The petitioner has qualified Postgraduate degree from PGI, Chandigarh. The respondents interpret 'recognised institution' from the Medical

Council of India under the Medical Council of India Act, which does not find expressly place in the notification. The respondents object to the

teaching experience of the petitioner from Alfata University, Libya on the grounds that the institution is not recognised by the Medical Council of

India, therefore, such experience cannot be counted ""o qualify the eligibility for the post of Assistant Professor under the control of the

respondents. As I have observed, no such bar has been put under the notification calling the application from the candidates, which condition

requires to be express to debar the aspiring candidates with foreign teaching experience from competing in the examination. Whether the rules

permit or not such experience, but what is material is the notification, which is a clean chit to a candidate to apply even if he has teaching

experience from an institution outside the country, not recognised as pleaded by the respondents. The point does not come to an end here. It is

case of the petitioner, raised in the argument. That respondents have given benefit of foreign service from Bengazi University, again an

unrecognised institution, in case of Dr. Shad Saleem, for selection, which fact is admitted by the respondents in their counteraffidavit, but stated

that action taken in the shape of selection for Dr. Shad Saleem, is commission of wrong, which wrong cannot justify another wrong by considering

the teaching experience of the petitioner from an unrecognised institution of Alfata University. It is the case of the respondent that the court cannot compel the respondents to commit another wrong, once a wrong action has been taken by the respondents. Therefore, the petitioner's case cannot fall within the consideration for selection. Similarly, in case of selection of Dr. Nissar Ahmad Mir, having been admitted, given benefit of experience from an unrecognised institution, but the respondents attempted to camouflage the facts by submitting that he had teaching experience from other recognised institutions also, not indicated in the counter affidavit. Further in case of Dr. Shabir Ahmed and Dr Mushtaq Ahmed, the respondents again justify the teaching experience from the institutions outside the country from colleges attached to King. Faisal Institution, Saudi Arabia, having been given benefit because of recognition to those institutions.

The stand of the respondents, if sincere, could have been accepted to reject the case of the petitioner for having gained teaching experience from Alfata University from July, 1984 to July, 1986, an unrecognised institution, provided the respondents would not have repeatedly, in the instances indicated, adopted the mistake which they do not want to give benefit to the petitioner regarding the similar experience, but attempted brazenly to ignore the benefit in favour of the petitioner, which they have already afforded in case of Dr. Shabir Ahmed, Dr. Mushtaq Ahmed, Dr. Shad Saleem and Dr. Nissar Ahmed Mir. The stand of the respondents not to commit further wrong apparently is genuine, but allow the respondents to justify their stand against the petitioner is hit by the principle of hostile discrimination. Learned counsel for the petitioner argued that the Doctors, whose teaching experience outside the country has been accepted pertain to the selection of the same year i.e. 1988, when the petitioner applied.

The acceptance of teaching experience from outside the country is in case of four Doctors. That means the respondents have deliberately given benefit to those candidates and refused such benefit in case of the petitioner. Further, this stand in the counter affidavit by the respondents regarding teaching experience from outside the country appears an afterthought. As I have observed, nowhere in the notification it is indicated that the institution for purpose of teaching experience should be recognised by the Medical Council of India. Perhaps it is under that shadow, the

respondents have accepted the teaching experience of four Doctors named from outside the country short of specifications in the notification that such experience should be from institutions recognised by Medical Council of India. The institution, Alfata University, if not recognised by Medical Council of India as asserted by the respondents, but it must be a recognised teaching institution in that country which has not been disputed and the petitioner cannot be refused benefit of teaching experience from that university, when respondents have failed to indicate any notification from Medical Council of India indicating that King Faisal Institution is a recognised institution, omitting Bengazi University in case of Dr.Mir who has been given benefit of practice from that University. May be due to illwill, the petitioner has been refused the benefit of teaching experience from Alfata University. It is the positive case of the petitioner that when she did not get the interview slip for selection from the respondent, she approached respondent No. 2 the Director, who, as per affidavit of the petitioner, only objected to eligibility on account of adhoc service not the teaching experience from an unrecognised institution which, I have already observed, is an afterthought and deliberate attempt to deprive the petitioner to take benefit from such experience accepted by the respondents on similar situation of other candidates, who stand admittedly selected. This is not the question of compelling the respondents to commit a wrong which they openly admit, but legally and on the principle of natural justice, what is required that the petitioner gets a similar benefit from the respondent which they have afforded in favour of others. Otherwise, such refusal is a deliberate attempt by the respondents to impose hostile discrimination against the petitioner on account of instances given by her regarding the benefit of teaching experience given to others in the same selection process but not to her. Therefore, the stand taken by the respondents that they cannot be compelled to commit any further wrong which they have committed once, is short of any genuine basis but smells mala fide intentions of the respondents to deprive the petitioner from competing in the Examination, when she fulfills the eligibility as per notification short of any reservations in the same.

In conclusion of the judgment, Mr. U. K. Jalali, Sr. AAG, appearing for the respondents, filed copy of the written arguments much beyond the

time, without explaining the delay to file the same, copy of which has been refused by learned counsel for the petitioner, being beyond the time

allowed by the court to file the same. The stand taken by the respondents in the written argument is a summary of the counter affidavit filed. Only

additional point raised in the written arguments' is that the petitioner had continued in adhoc arrangement under the orders of the court consequent

to the verdict in another writ petition filed by the petitioner. I may observe it is immaterial whether the petitioner continued under the orders of the

court in adhoc arrangement or under the discretion of the respondent. What is material is whether she was working as a Lecturer and gained

teaching experience, not disputed by the respondents, we except that such experience should not be counted without support of any rule of law.

I, therefore, after considering, dispel the written argument of Mr. Jalali on this point that even adhoc service of the petitioner was under the orders

of the court, which argument is without foundation.

The learned counsel for the petitioner referred to a judgment of this court delivered in writ petition No. 124 of 1989 dated 18th July, 1991 seeking

identical relief in this petition to treat the petitioner appointed from the date selection for the post of Assistant Professor, Anesthesiology was held in

1986, deviating from the relief of consideration for selection against the post of Assistant Professor made in this petition. After going through the

judgment, I am of the opinion that the principle cannot be applied to this case, for the reason the petitioner was not interviewed, while in the case

referred, the petitioner had undergone the process of selection, having been interviewed, but not selected.

Now for the reasons given and observation made, I am of the opinion that the respondents have arbitrarily barred the petitioner to appear in

interview for the post of Assistant Professor, Anaesthesiology, due to the reason that her teaching experience on adhoc service and teaching

experience from Alfata University, Libya cannot be considered for eligibility as per notification No, 5 dated August 10, 1981.

Since vide DB. order dated 13.12.1988 in this petition, one post of Assistant Professor, Anesthesiology has been ordered to be kept vacant, I,

therefore, allow this petition holding the action of the respondents illegal and arbitrary not allowing the petitioner to compete for the post of

Assistant Professor in Anesthesiology, and, therefore, by a writ of mandamus hold the petitioner to be entitled to compete for the post of Assistant Professor, Anaesthesiology on the basis of teaching experience on anhoc service under the control of respondents together with the teaching experience gained in Alfata University, Libya like other candidates selected, and direct the respondents to consider the petitioner for selection for the post of Assistant Professor, Anaesthesiology from the date the selection was held in 1988 with consequential benefits.