

(2015) 04 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : SWP No. 1178 of 2013 and CMP No. 1880 of 2013

Amanullah Khan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-04-2015

Acts Referred:

Citation : (2015) 2 SriLJ 921

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

Bench : Single Bench

Advocate : Ms. Farah Bashir, Advocate, for the Petitioner; Mr. Mir Suhail, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Ali Mohammad Magrey, J. - The short controversy projected in the instant petition is that petitioner has superannuated from service on

31.08.2005 while discharging his duties petitioner has been promoted as Lecturer in terms of Government Order No. 964-Edu of 2004 dated

27.12.2004 which was never brought in the notice of petitioner nor of his immediate superiors. That petitioner, because of having not been served

with the copy of promotion order, has suffered a huge monetary loss as despite the promotion orders he continued to draw the salary in his own

pay-scale and the pension of the petitioner has also been wrongly fixed while taking into consideration the Master's grade and not that of a

Lecturer. The petitioner prays for a direction in the name of respondents for setting right the wrong by treating the petitioner as Lecturer right from

27th December, 2004 in terms of Government Order No. 964-Edu of 2004 dated 27.12.2004; to release the difference of pay as would exist

between a pay scale of a Master and Lecturer from 27.12.2004 till 31.08.2005; to fix the pension in the grade of Lecturer after declaring him of

having retired as Lecturer; and release all such benefits which would have accrued to him had he been retired as Lecturer.

2. Respondents have filed reply and resisted the claim of petitioner on the ground that writ petition is not maintainable because of it involving certing

disputed questions of fact which cannot be gone into in writ proceedings; that he cannot take shield of not having the knowledge of issuance of

Government Order and that none of his fundamental rights have been violated by the respondents.

3. Heard learned counsel for the parties and considered the submissions made.

4. Prima facie, it appears that, the submissions made by learned counsel for petitioner carries weight as against the submissions of learned State

Counsel. Every Government employee is entitled for all the benefits accruing to him/her on his/her promotion to the next higher grade and this

treatment cannot be denied to petitioner because of certain technicalities. It is not the case of respondents that the promotion order relied upon by

petitioner is fake/invalid or having been withdrawn subsequently, therefore, it would not only be unfair but unjustified too if the benefits of such

promotion order is allowed to be taken by few and denied to few.

5. Though it is quite strange that a Government Order involving the career of many has gone unnoticed not only by petitioner but by all such

agencies who are assigned with its implementation, like, the Drawing and Disbursing Officer, Accounts Section etc., still the petitioner cannot be

denied to reap the fruits of promotion ordered in his favour by virtue of such order. Therefore, the ground taken by learned State Counsel, that he

continued to draw the salary in his own scale and as such has relinquished the right of promotion is untenable.

6. Having regard to what has been stated hereinbefore, the writ petition succeeds and is allowed as such. Respondents are directed to consider the

case of petitioner for treating him to be a Lecturer right from 27.12.2004 till he attained the age of superannuation viz. 31.08.2005. The petitioner

is held entitled to the difference of pay as would exist between the pay-scale of Master and Lecturer from the date of promotion till he

superannuated. He is also held to be entitled for fixation of pension as

would,accrue to him had he retired as Lecturer and all consequential benefits thereof.

7. Disposed of along with all CMPs.