
(1996) 12 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : S.W.R. 386 of 1988

Bara Singh

APPELLANT

Vs

Vice chancellor

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Constitution of India, 1950 — Article 26

Citation : (1997) KashLJ 84

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : S.S.Lehar, D.C.Raina, C.S.Azad, Advocates appearing for the Parties

Judgement

1. .This petition has been moved for grant of writ of certiorari whereby order No. 525 of 1984 dated 07121984 which selects respondents 3 to 5

as Associate Professors, is required to be quashed. Beside this a prayer for grant of writ mandamus is also made whereby the official respondents

are required to be directed to appoint the petitioner as Associate Professor/ Senior Scientist by counting his back experience.

2. The petitioner was appointed as Research Assistant in Agriculture Department on 15021967. He was adjusted as Junior Soil Physcist on

06051977. Later on by virtue of Order No. 34E of 1982 dated 27051982 has was directed to assume the charge of the Assistant Agricultural

Chemist upon which post he worked right from 1977, though he was working in his own pay and grade.

3. Under Advertisement Notice No. 19/AU/Admn/ A15384/1509815217 dated 03031984 applications were invited for various posts, including

that of Associate Professor/Senior Scientists. Requisite qualification for eligibility for the post of Associate Professor/Senior Scientist was

doctorate with seven years experience of teaching/research in the subject, out of which four years should be in the rank of Asstt. Professor or

equivalent. It will be pertinent to mention here that the post of Asstt. Agricultural Chemist is equivalent to Assistant Professor. This position has been

admitted in para 14 of the counter affidavit filed by the official respondents. The counter affidavit also reveals that the petitioner was selected and

his name was sponsored by the Selection Committee as well. Later on he was dropped because he did not have the requisite experience of four

years as Assistant Professor. This was so because the service rendered by him as Asstt. Agricultural Chemist was not counted.

4. Thus the question that falls for determination of the Court is, as to whether or not the service rendered by the petitioner, while actually working

upon the post, which was equivalent to that of the Asstt. Professor, will not be counted simply because he was working in his own pay and grade

against the post which was inferior to that of the Asstt. Professor.

5. I was tempted to trace out the genesis of the term ""experience and interpret it in the backdrop of practical performance of the petitioner,

irrespective of the grade he was working in. Mr. Lehar has produced Govt. Order No. 328Agri of 1993 dated 02071993 whereunder petitioner's

grade as Asstt. Agricultural Chemist has been allowed with effect from 30061980. This goes to clinch the issue because on the date of the

interview he did not have four years experience, along with the grade. However, on the date of advertisement petitioner's experience, on the

interpretation of the Selection Committee, seems to be falling short of some days. For meeting the point from this end, I want to make a passing

reference to the word ""experience"".

6. Here the Advertisement notice uses the term 'experience' as noun. The term ""experience of teaching"" is not defined anywhere. However the

ordinary dictionary meaning of ""experience"" is the knowledge or skill resulting from practical acquaintance with facts and actual observation of

events. Black Law Dictionary, Sixth Edition, gives out the meaning of ""experience"" as a state, extent or duration of being engaged in a particular

study or work The real life as contrasted with the idea or imaginary. In the common parlance ""experience"" means the knowledge or wisdom gained

by working on a certain post. This knowledge, besides other factors, can be

gained by observation and interaction. Experience implies skill and knowledge gained by a personal knowledge, feeling or action. The term brings into its folds wisdom gained out of a person's instinctive faculties

rather than by reasons. It also signifies learning by doing apart from receiving such learning through the agencies of idealism or imagination.

7. A person who works on a post, irrespective of the consideration as to in which scale or grade he was working, gains the knowledge and

wisdom attached with such post. He comes into contact with the concerned people and problems by working on this post. His expertise and skill

are enriched. He definitely improves his knowledge by working on the post. Art.85(6) of Civil Service Regulations empowers the Government to

appoint a Government Servant to be incharge of a higher post independent of his duties.)

8. Art. 87 entitles him to charge allowance for such officiation. Once a Government servant works on a higher post, his work experience or teaching

experience on such post can definitely be counted for the purpose of his eligibility to contest a claim if that post or its equivalent post finds place in

the criterion fixed for such eligibility.

9. Therefore, in the light of foregoing discussions, I find that the/petitioner by working as Asstt. Agricultural Chemist, which is a post equivalent to

Assistant Professor, has gained experience as such, and for reckoning his experience, as required in terms of the statue of the SKUAST, the

period for which he worked as Asstt. Agricultural Chemist, shall be counted towards his teaching experince in terms of the advertisement notice.

As a result, the petitioner will be entitled to be appointed as Associate Professor from the date his selection was made.

10. Mr. D.C. Raina, appearing for respondentUniversity has vehemently argued that disturbing respondent 3 to 5 who have gained further

promotions, may create administrative problems. I register this apprehension and accordingly do not disturb the selection of respondent 3 to 5.

11. The petitioner will be appointed on any of the available post in the University, equivalent to assoicate professor. All the consequential benifits

shall also be released in his favour. However, the respondentUniversity shall release that part of the emoluments which relates to the period of

service of the petitioner in the University.

The petitione is disposed off accordingly.