

(2015) 11 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 851 of 2005

Daljeet Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 765

Hon'ble Judges : Mr. Dhiraj Singh Thakur, J.

Bench : Single Bench

Advocate : Mr. Anil Sethi, Advocate, for the Petitioner; Mr. Ravinder Gupta, AAG, for the Respondent

Final Decision : Allowed

Judgement

Mr. Dhiraj Singh Thakur, J.—Petitioner challenges the order of consideration dated on 8.4.2005, issued by the Government rejecting the case

of the petitioner for giving him retrospective benefit of regularisation of his services as Lecturer w.e.f. 29.5.1984, the date when he was made as

Incharge Lecturer.

2. The facts of the case, as they emerge from the records are that the petitioner who was a teacher in the subject of botany, was adjusted as

Lecturer on Incharge capacity vide order dated on 29.5.1984, in his own pay and grade, for a period of six months or till the selection of a suitable

candidate was made by the Public Service Commission. The aforementioned arrangement continued till finally the petitioner was promoted as

Lecturer on substantive basis vide order dated on 26.2.1988 w.e.f. 13.5.1986.

3. Feeling aggrieved of the aforementioned order passed by the official respondents, petitioner filed SWP No. 2435/2003, seeking retrospective

benefit of regularisation against the post of Lecturer w.e.f. 29.5.1984. The case of the petitioner for retrospective promotion was considered

pursuant to an interim direction passed by this court dated on 15.1.2004, in the aforementioned writ petition, SWP No. 2435/2003, and rejected

by virtue of order dated on 8.4.2005, impugned in the present petition.

4. The reasoning and the basis of the order of rejection is contained in the last part of order impugned, is reproduced here-under:-

....Whereas in compliance to the order of the Hon'ble Court, the case of the petitioner/applicant was considered with reference to the decision of

the DPC and it was found that none of the juniors of the petitioner has been regularised over his head, as the post of lecturer being a state cadre

post can be filled up on regular basis on the strength of the general seniority list of P.G. Masters/Teachers of both the Divisions and that the

regularisation is made on the basis of availability of a post, seniority position and eligibility of a candidate at a particular point of time.

Therefore, the claim of the petitioner/applicant is hereby disallowed being not sustainable and tenable under rules.

5. On a reading of the order impugned, it thus, becomes clear that the basis of rejection of the case of the petitioner pertaining to regularisation of

the period for which he discharged his duties as Incharge Lecturer w.e.f. 29.5.1984, is that no person junior to the petitioner had been promoted

over his head as Lecturer. The manner in which the case of the petitioner has been considered and rejected is clearly not in consonance with the

settled position of law on the subject.

6. It is no longer res-integra that adhoc/stop-gap service of the promotees cannot be treated as non-est and that the same can be regularised under

Rule 23 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, retrospectively w.e.f. the date of occurrence

of a clear vacancy in the promotion quota subject of course, to the eligibility, fitness and other relevant factors as prescribed under the relevant

rules. Reference in this regard can be made to the judgment of the Apex Court in the case reported as Suraj Parkash Gupta and others v.

State of Jammu & Kashmir and others, AIR 2000 SC 2386.

7. According to Rule 25 of the aforementioned Rules of 1956, promotions to a service or class or to a selection category or grade are to be made

on grounds of merit and ability and subject to passing of tests that the Government may prescribe in that behalf and the seniority is to be considered only when merit and ability are approximately equal.

8. Therefore, while considering the suitability of the petitioner for such a retrospective benefit, no doubt, the seniority was relevant, however, the order impugned clearly failed to consider the merit and ability of the petitioner qua the seniors with reference to their ACRs. Seniority alone could not have been the determining factor to refuse grant of retrospective benefit to the petitioner. The respondents also had to consider the date on which a clear vacancy became available in the promotee quota in the Cadre of Lecturers. The order impugned is also conspicuously silent on that issue. The reasoning that no person junior to the petitioner had been promoted over the head of the petitioner, therefore, cannot be said to be a sound basis for rejecting his claim.

9. This petition is, accordingly, allowed. Order impugned dated on 8.4.2005, is set aside. The official respondents shall consider the case of the petitioner in view of the observations made here-in-above and pass a fresh order of consideration within a period of three months from the date, a copy of this order is made available to them by the petitioner.

10. Disposed of accordingly.