

(2024) 02 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : ?Latters Patent Appeal No. 121 Of 2021, 44 Of 2022, Civil
Miscellaneous Case No. 9034, 9035 Of 2021, 3175, 3176, 7698 Of
2022

Dr. Alka Sharma And Others

APPELLANT

Vs

Dr. Rajinder Mishra And Others

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

University Grants Commission (Minimum Qualifications For Appointment Of Teachers
And Other Academic Staff In University And Colleges And Other Measures For The
Maintenance Of Standards In Higher Education) Regulations, 2010 — Regulation 6

Citation : (2024) 02 J&K CK 0009

Hon'ble Judges : Tashi Rabstan, J;Puneet Gupta, J

Bench : Division Bench

Advocate : P.N. Raina, Ankit Dogra, Deeksha Handoo, Rahul Pant, Dhruv Pant,
Ajay Abrol, Manik Bhardwaj, Jatinder Choudhary

Final Decision : Disposed Of

Judgement

Tashi Rabstan, J

1. Both these Letters Patent Appeals have been directed against the judgment dated 29.10.2021 delivered by the learned Single Judge in SWP No.1447/2017, whereby the learned Single Judge while quashing the communication dated 06.03.2017 issued by the University Grants Commission to the Assistant Registrar (Adm. TE/W), University of Jammu and the consequential orders/communications of the University of Jammu dated 14.03.2017 and 30.05.2017, has held that the University of Jammu has wrongly rejected the claim of writ petitioner-Dr. Rajindra Mishra for his promotion with retrospective effect from 04.08.2009. Consequently, the University of Jammu was directed to consider the claim of the writ petitioner-Dr. Rajindra Mishra for grant of promotion to the post of Professor under the Career Advancement Scheme (for short, CAS) with effect from 04.08.2009 afresh thereby putting him at the relevant place in the seniority list after putting notice to the effected candidates, who have already been

promoted under the CAS in the intervening period.

2. Since common question of facts and law are involved in the case and both the appeals have been preferred against the same judgment of learned Single Judge, as such both the appeals are being decided by this common judgment.

3. The facts-in-brief, as gathered from the file, are that vide letter of appointment dated 17.06.1992 issued by the Selection Committee of University of Jammu, the writ petitioner was initially appointed as a Lecturer, Management Studies. He was promoted as a Senior Lecturer under Career Advancement Scheme on 19.12.2000 and, as a Reader, on 04.09.2004.

4. Thereafter, vide order dated 07.12.2007 the effect of Senior Lecturer was given with effect from 27.07.1998 and, as a Reader, with effect from 04.08.2001.

5. Again, vide subsequent order dated 17.12.2007, the order dated 07.12.2007 came to be modified, whereby the retrospective effect of promotion of writ petitioner as a Senior Lecturer was changed to 04.08.2001 instead of 27.07.1998, and, as a Reader, the same was changed to 04.08.2003 instead of 04.08.2001.

6. The writ petitioner was promoted as Associate Professor with effect from 04.08.2006. In October, 2015 the University of Jammu had issued circular inviting applications from eligible candidates for promotion to the post of Professor under Career Advancement Scheme as per UGC Regulations, 2010. Writ petitioner-Dr. Rajindra Mishra also applied for the same. The Selection Committee, which met on 06.05.2016, found the writ petitioner to be eligible for promotion from the date of his eligibility to the cadre, i.e., with effect from 04.08.2009 when the writ petitioner completed his three years of service as Associate Professor. The Selection Committee, however, recommended that writ petitioner-Dr. Rajindra Mishra be given seniority from the date he joins as a Professor in the Business School. However, the office of Chancellor addressed a communication to UGC on 09.01.2017 seeking clarification as to whether if a candidate does not apply three months in advance prior to the due date of eligibility, whether such candidate can be considered for retrospective promotion under Career Advancement Scheme.

The UGC vide communication dated 06.03.2017 conveyed that the writ petitioner cannot be considered for retrospective promotion under Career Advancement Scheme as he did not apply with three months in advance of the due date of his eligibility. Accordingly, Under Secretary to Governor's Secretariat vide communication dated 14.03.2017 forwarded the clarification furnished by the UGC to the Vice Chancellor, University of Jammu with a request to reprocess the case in terms of the said clarification and UGC Regulations, 2010. Thus, the Assistant Registrar (Adm TE/W), University of Jammu vide communication dated 30.05.2017 suggested the writ petitioner to take further necessary action.

7. Feeling aggrieved, writ petitioner-Dr. Rajindra Mishra filed SWP No.1447/2017

before this Court. The learned Single Judge vide judgment dated 29.10.2021 quashed the communications dated 06.03.2017, 14.03.2017 and 30.05.2017 holding that the University of Jammu has wrongly rejected the claim of writ petitioner for his promotion with retrospective effect from 04.08.2009. Consequently, the University of Jammu was directed to consider the claim of writ petitioner-Dr. Rajindra Mishra for grant of promotion to the post of Professor under the Career Advancement Scheme with effect from 04.08.2009 afresh thereby putting him at the relevant place in the seniority list after putting notice to the effected candidates, who have already been promoted under the CAS in the intervening period. Hence, the present appeals.

8. LPA No.44/2022 is filed by the University of Jammu. Whereas, LPA No.121/2021 is filed by Dr. Alka Sharma and Dr. Vinay Chouhan. Though both were not party respondent to the writ petition, they filed the LPA on the ground that they were promoted against the post of Professor under Career Advancement Scheme prior to writ petitioner-Dr. Rajindra Mishra and if he is given the retrospective effect of promotion against the said post with effect from 04.08.2009, in that eventuality the writ petitioner would become senior to them.

9. It was argued that in terms of the clarification furnished by the University Grants Commission (for short, UGC), the writ petitioner is not eligible to be considered for retrospective promotion against the post of Professor under Career Advancement Scheme, because, as per Clause 6.3.1 of UGC Regulations, 2010, the writ petitioner had failed to apply with three months in advance of the due date of his eligibility. Therefore, the Governor's Secretariat vide communication dated 14.03.2017 has rightly requested the Vice Chancellor, University of Jammu to reprocess the case of writ petitioner in terms of the clarification of UGC. It was also argued that the writ petitioner was not meeting the criteria for his CAS promotion from the date of eligibility.

10. Heard learned counsel appearing for the parties, considered their rival contentions and also perused both the appeal files.

11. Admittedly, it is not in dispute that writ petitioner-Dr. Rajindra Mishra acquired the eligibility for promotion against the post of Professor under Career Advancement Scheme on 04.08.2009, however, he was denied the promotion with effect from the said date on the ground that in terms of Clause 6.3.1 of UGC Regulations, 2010, he had failed to apply with three months in advance of the due date.

12. In case of appellant-Dr. Alka Sharma, she claims to have acquired the eligibility for promotion against the post of Professor in March, 2010. However, it is also a fact that she too had failed to apply with three months in advance of the due date, but, in her case, she was given promotion against the post of Professor with retrospective effect from 23.03.2010 ignoring Clause 6.3.1 of UGC Regulations, 2010. Appellant-Dr. Alka Sharma claims to have submitted her Performance Based Appraisal System (PBAS) under Career Advancement Scheme

for the post of Professor in the Business School on 09.09.2011, but she has not specifically mentioned as to on which date she submitted her application. In response to an application filed under the Right to Information Act, against the relevant column regarding the date of application of appellant-Dr. Alka Sharma, the word "nil" has been mentioned by the University of Jammu; meaning thereby the University of Jammu for obvious reasons avoided to give specific information even under an application filed under the Right to Information Act. Even, as claimed by appellant-Dr. Alka Sharma, the Performance Based Appraisal System for the post of Professor was submitted by her on 09.09.2011, i.e., after about one and a half years after she acquired eligibility for the said post, however, in her case the writ respondents took a different but favourable stand.

13. Further, the University of Jammu also filed an affidavit before the Writ Court wherein it was deposed that one Dr. Romesh Kumar acquired the eligibility for promotion against the post of Professor under Career Advancement Scheme on 24.10.2012. He, however, applied on 29.08.2014, i.e., about two years of acquiring the eligibility, but, in his case too, he was given promotion with retrospective effect, i.e., from 24.10.2012. Thus, it leads to the conclusion that number of candidates were being given promotions with effect from the date of their acquiring eligibility notwithstanding the fact that they had not applied with three months in advance of the due date in terms of Clause 6.3.1 of UGC Regulations, 2010.

14. Thus, the grievance of writ petitioner-Dr. Rajindra Mishra is that although he is entitled to be promoted against the post of Professor under Career Advancement Scheme (CAS) with retrospective effect from 04.08.2009, the University Grants Commission (UGC) vide communication dated 06.03.2017 opined that he cannot be considered for retrospective promotion under CAS as he had failed to apply with three months in advance of the due date of his eligibility in terms of Clause 6.3.1 of UGC Regulations, 2010; meaning thereby, as per UGC, though the writ petitioner was fully eligible to be promoted against the post of Professor from the date he applied for the same but he cannot be given retrospective effect of promotion with effect from 04.08.2009, i.e., when he attained the eligibility, as there was delay in applying the same in terms of Clause 6.3.1 of UGC Regulations, 2010.

15. Now the question arises for consideration is: whether the writ petitioner is entitled for retrospective effect of promotion from 04.08.2009, and, whether Clause 6.3.1 of UGC Regulations, 2010 applies to writ petitioner or not?

16. Therefore, before proceeding further, it would be relevant to reproduce hereunder Clause 6.3.1 of Regulation 6 of University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in University and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (for short, UGC Regulations, 2010) hereunder:

"6.3.1 A teacher who wishes to be considered for promotion under CAS may submit in writing to the university/college, with three months in advance of the due date, that he/she fulfils all qualifications under CAS and submit to the university/college the Performance Based Appraisal System proforma as evolved by the concerned university duly supported by all credentials as per the API guidelines set out in these Regulations. In order to avoid delays in holding Selection Committee meetings in various positions under CAS, the University/ College should immediately initiate the process of screening/selection, and shall complete the process within six months from the date of application. Further, in order to avoid any hardships, candidates who fulfill all other criteria mentioned in these Regulations, as on 31 December, 2008 and till the date on which this Regulation is notified, can be considered for promotion from the date, on or after 31 December, 2008, on which they fulfill these eligibility conditions, provided as mentioned above."

17. Admittedly, UGC Regulations, 2010 came into force with effect from 30.06.2010. Therefore, these Regulations are prospective in nature and do not have any retrospective effect.

18. Clause 6.3.1 of Regulation 6 (supra) envisages two situations. So far as first part of Clause 6.3.1 is concerned, the same is prospective in nature. Therefore, Clause 6.3.1 to the effect that a teacher who wishes to be considered for promotion has to apply three months in advance of the due date of his/her eligibility would mean to have prospective effect, i.e., the said Regulation would apply to those teachers who attain eligibility from the enforcement of these Regulations and not before that. And, that is why, in the second part of this Regulation, it has further been added that in order to avoid any hardships, candidates who fulfill all other criteria mentioned in these Regulations, as on 31 December, 2008 and till the date on which this Regulation is notified, can be considered for promotion from the date, on or after 31 December, 2008, on which they fulfill these eligibility conditions, provided as mentioned above; meaning thereby such candidates, who have already attained the eligibility prior to the enforcement of these Regulations from 31.12.2008, would be entitled for promotion from the date they fulfill the eligibility conditions/criteria provided in Regulation 6, i.e., Selection Procedures, as such the bar of applying for promotion with three months in advance of the due date would not apply in their case.

19. Further, in the second part of this Regulation, it has been provided that in order to avoid any hardships, candidates who fulfill all other criteria mentioned in these Regulations, as on 31 December, 2008 and till the date on which this Regulation is notified, can be considered for promotion from the date, on or after 31 December, 2008, on which they fulfill these eligibility conditions. The term all other criteria in itself is sufficient to mean preclude the criteria of applying three months in advance of the due date, or, in other words, except the criteria of applying three months in advance of the due date, the candidates who fulfill all

other criteria mentioned in these Regulations, as on 31 December, 2008 and till the date on which this Regulation is notified, can be considered for promotion from the date they fulfill the eligibility conditions. Therefore, the purpose of second part to Clause 6.3.1 was to remove any type of ambiguity with respect to applying for promotion with three months in advance of the due date, as mentioned in first part of this Regulation.

20. Not only this, in the second part, it has specifically been written "in order to avoid any hardships"; meaning thereby the very essence of adding second part to Clause 6.3.1 was to protect those candidates from facing any type of hardships, who attained the eligibility between 31.12.2008 to till UGC Regulations of 2010 were notified. Therefore, first part of Clause 6.3.1 cannot be read in isolation, rather it has to be read in continuation of the second part.

21. More so, if those candidates, who attained the eligibility conditions from 31.12.2008 to till these Regulations were notified, also had to apply for promotion with three months in advance of the due date of their eligibility, then what was the purpose of adding second part to Clause 6.3.1. Therefore, in such a situation, in terms of second part of Clause 6.3.1 of Regulation 6, the writ respondents were bound to consider the case of writ petitioner for promotion against the post of Professor under CAS with effect from 04.08.2009 when he attained the eligibility. Otherwise too, the writ respondents have not questioned the eligibility conditions of writ petitioner; rather they declined him the retrospective effect of promotion only on the ground that he failed to apply with three months in advance of the due date.

22. Further, in terms of Clause 6.3.12(a) of the UGC Regulations of 2010, if a candidate applies for promotion on completion of minimum eligibility period and is successful, the date of promotion will be from that of minimum period of eligibility. In the present case, it is not the case of writ respondents that the writ petitioner was not fit for promotion when he acquired the minimum period of eligibility on completion of three years of service as Associate Professor. Therefore, applying the said clause too, admittedly, the writ petitioner acquired the minimum period of eligibility for promotion on 04.08.2009 when he completed the three years period as Associate Professor.

23. Further, the objective behind the Career Advancement Scheme was that there could be a good number of teachers eligible for such higher positions; yet they do not find chances of elevation even after serving in the same grade for decades. Therefore, the system of Career Advancement Scheme was formulated to give avenues of promotion to the deserving candidates, who do not get career advancement despite their eligibility and merit due to the absence of vacancies at higher levels, which could lead to frustration to them resulting in demotivation. The CAS helps in retaining and motivating these talented teachers. Therefore, in order to achieve the ends of scheme, referred to above, an interpretation which helps the teaching community to get promotion after completing the stipulated time must be adopted. Any other interpretation which

debars or makes a candidate ineligible by taking a narrow and hyper technical interpretation will go against the spirit of the scheme, thereby defeating the very purpose of the scheme.

24. Further, the University Grants Commission had filed an affidavit on 27.02.2021 before the High Court of Delhi in Writ Petition (Civil) No.10744/2019 specifically deposing that the UGC had issued a Public Notice dated 21.11.2014 clarifying that CAS shall be governed by the UGC Regulations which are in operation on the date of eligibility and not on the date of interview. Therefore, on this ground too, the petitioner is entitled for promotion with effect from 04.8.2009 when he attained the eligibility for promotion under CAS against the post of Professor.

25. We are also in agreement with regard to the findings of the learned Single Judge that the writ petitioner has satisfactorily given the explanation of delay, as when the writ petitioner was not found eligible for the post of Professor under direct recruitment, he opted for the post of Professor under CAS being already in service.

26. Therefore, in view of what has been discussed above, we do not find any ground to take a view other than the one taken by the learned Single Judge. Accordingly, both the appeals fail and the judgment of learned Single Judge is upheld. Connected CMs, accordingly, stand disposed of.