
(2004) 03 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1620 of 2003

Dr. Dalip Singh Jamwal

APPELLANT

Vs

University of Jammu and Others

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Jammu and Kashmir Universities Act, 1969 — Section 36

Citation : (2004) 3 JKJ 545

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : J.S. Kotwal, for the Appellant; J.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—Petitioner is working as Reader in the University of Jammu, Jammu. In this writ petition, he is seeking writ in the nature of

Certiorari for quashing communication dated 12.7.2003, whereby respondents have rejected the representation of the petitioner for placing him as

Senior Scale Lecturer in Mathematics with effect from 16.1.1991 instead of 17.8.1993. In addition to this, he is also seeking writ in the nature of

Mandamus directing the respondents to treat the petitioner's date of placement as Senior Scale Lecturer in Mathematics as 16.1.1991 instead of

17.8.1993, as he had completed five years service on 16.1.1991 and in consequence thereof petitioner has also prayed that he be paid the arrears

of pay and allowances on account of difference in pay and allowance on his placement as Senior Scale Lecturer w.e.f. 16.1.1991, till his

promotion as Reader on 7.8.2002 and further to direct the respondents to release arrears of pay on account of difference of salary and allowances

for the period w.e.f. 16.1.1986 to 12.6.1987 in view of the revision in pay scale of Lecturer from Rs. 700-1600 to Rs. 2200-75-2800-100-

4000, as recommended by University Grants Commission.

2. At the hearing of this petition, learned counsel appearing for the petitioner confined his argument only in regard to placement of the petitioner as

Senior Scale Lecturer in Mathematics w.e.f. 16.1.1991 instead of 17.8.1993 and also for payment of difference of pay and allowances in the event of change of date of placement.

3. In brief, the facts are that the petitioner vide order dated 9.4.1985 was initially appointed as Teaching Fellow in the department of Mathematics

at a consolidated salary of Rs. 700/- per month. His appointment was to take effect from 11.3.1985 till end of the Current Academic Session i.e.

31.5.1985. Thereafter, his appointment was extended from 1.6.1985 to 15.6.1985 and again from 17.8.1985 till 10.2.1986. In the meantime

petitioner qualified in Ph.D. Degree and, therefore, vide order dated 11.2.1986 in partial modification of order dated 31.8.1985, salary of the

petitioner as Lecturer in Mathematics was fixed equivalent to minimum of the scale of Rs. 700-1600, i.e. Rs. 700 plus DA/ADA/IR and MA, as

admissible under rules with effect from 16.1.1986, i.e. the date petitioner was declared qualified for Ph.D. Degree. Thereafter, it was again

extended from 16.1.1986 to 31.5.1986, or till the post is properly filled up, whichever earlier was to happen. Vide order dated 12.6.1986

sanction was accorded to the extension in the term of appointment of the petitioner upto the date preceding the date of commencement of Summer

break on the existing terms and conditions. Thereafter, six more extensions in adhoc appointment of the petitioner were given by issuing various

orders and the period of last order was to end on 17.6.1988 on the expiry of the academic session on the existing terms and conditions. Vide

communication dated 17.8.1988 petitioner was informed that Syndicate of the University has authorized his appointment as Lecturer in the

department of Mathematics of the University at a starting salary of Rs. 2200/- per mensem in the pay scale of Rs. 200-4000 plus allowances as

admissible under rules on probation for two years. In pursuance of his appointment, petitioner joined as Lecturer in the department of Mathematics

on 22.8.1988. It appears, that thereafter petitioner made grievance that

seniority list issued by the University is not correct inasmuch as his adhoc service as Lecturer in Mathematics w.e.f. 16.1.1986 to 16.8.1988 has not been counted and accordingly the petitioner asked the University to correct the seniority list and he be shown immediate below one Dr. Anita Langer. Claim of the petitioner was not considered by the University and so he filed writ petition (i.e. SWP No. 573/91) praying for the following reliefs:-

- (i) Quashing seniority list of University Teachers (Lecturers) issued by respondent No. 1 under No. Admn/90/27006-46 dated 18.1.90,
- (ii) To re-draw the seniority list showing the petitioners name immediately below Dr. Anita Langer;
- (iii) To treat adhoc service of the petitioner as Lecturer from 16.1.1986 to 21.8.1988 as regular service.
- (iv) To treat the fictitious/artificial break in service during summer vacation from 13.6.1987 to 20.9.1987 and 18.6.1988 to 21.8.1988 as on duty with all consequential benefits.
- (v) To allow UGC revised pay scales from 16.1.1986 with all benefits of arrears, increments and allowances.

4. Vide judgment dated 14.3.1995, learned Single Judge dismissed the writ petition. Aggrieved by the order of the learned Single Judge, petitioner filed Letters Patent Appeal (i.e. LPA (SW) No. 142/95). Vide judgment dated 1.4.1996, the appeal was allowed only to the extent that he was held entitled to the salary for the period he was given fictional breaks in service. He was also held entitled to counting of this period for the purpose of seniority so far as the allotment of staff quarter to him in the University was concerned. The relevant part of the order passed by LPA Bench on 1.4.1996 reads:

We have considered the matter carefully. A look at Annexure P-14 dated 26.12.1994 demonstrates that the period spent on adhoc service is to be counted, if continuous and followed by regular appointment. It is pointed out that since the petitioner had breaks in service, this period of adhoc service cannot be counted with the regular service rendered by the appellant-petitioner. It appears that the University has recorded fictional breaks in the service of the petitioner at two times, namely, from 13.6.1987 to 10.9.1987 and from 18.6.1988 to 21.8.1988. In addition to this there appears to be a gap between 17.6.1988 till the date he joined the substantive

service as Lecturer. However, the fact remains that the petitioner had been approved for regular service on and from 17.6.1988 by the University. The result therefore is that the petitioner (appellant) is deemed to be in continuous service throughout from 16.1.1986 to 22.8.1988. Consequently, he is entitled to salary for the period he is given fictional breaks.

Rattan Lal and Others Vs. State of Haryana and Others, . He is also entitled to counting of this period for purpose of seniority so far as the allotment of staff quarter to him in the University is concerned.

Since the petitioner succeeds on the first point, the University will consider his case for the allotment of staff quarter. The salary, for break period be paid in two months, the allotment of staff quarter be made within a week from today.

5. The aforesaid order passed in appeal has become final, as neither petitioner nor the University took the matter in further appeal to the Supreme

Court. Vide order dated 22.3.1994 passed by the respondents petitioner was placed in the Senior Scale Lecturer with effect from 22.8.1993, i.e.

on completion of five years service as Lecturer in Mathematics. Further, vide order dated 27.8.2002 petitioner has been promoted as Reader in

the department of Mathematics in the pay scale of Rs. 12000- 18300. After almost a year of his promotion as Reader, petitioner sent a notice

dated 17.5.2003 to the Vice Chancellor of the University of Jammu, for fixing the date of placement of the petitioner as Lecturer in Senior Scale in

the department of Mathematics as 16.1.1991 instead of 17.8.1993 and also for payment of arrears of pay and allowances on account of his

placement as Senior Scale Lecturer from 16.1.1991 till the date of his promotion as Reader. Vide communication dated 12.7.2003, petitioner has

been informed by respondent No. 2 that on scrutiny of his case and keeping in view of the guidelines as received from the University Grants

Commission and the clarification sought on the subject, placement as Senior Scale Lecturer given to the petitioner is correct. Hence the present

writ petition.

6. On notice of the writ petition, respondents in their objections have stated that the petitioner is not entitled to the relief sought for, because

granting of relief would mean up-setting the earlier judgment of the Hon'ble Court, besides disturbing the administrative set up and the higher

position attained by the teachers of the University, who have continued to enjoy the superior status over the petitioner for more than ten years and

have not been arrayed as party respondents to the writ petition. It is stated that in the earlier writ petition, petitioner was denied all other reliefs

except to treat the period of his adhoc service for the purpose of seniority in regard to allotment of staff quarter to the petitioner in the University

and for the grant of salary for the period of fictional breaks-. It is also stated that the procedure prescribed by the University of Jammu for

placement of teachers, Assistant Registrar, Assistant Librarians and Assistant Directors of Physical Education in the senior scale/ selection scale,

published vide Notification dated 13.3.1990, in terms whereof the petitioner was placed in the senior scale after completion of five years regular

service, does not permit the counting of adhoc service for considering his placement in the senior scale/selection grade. According to respondents,

the procedure prescribed by the University specifically provides, that it is the regular service which is to be counted for considering the placement

of a Lecturer in the senior scale/selection grade. Respondents further state that because of silence of the petitioner to question his placement as

Lecturer in the senior scale in Mathematics in 1993 for over a period often years, disentitles him to rake up an old and stale issue.

7. In rejoinder, petitioner has stated that prayer made in the present writ petition originates from the judgment dated 1.4.1996 passed in LPA(SW)

No. 142/95, by which the period of adhoc service rendered by the petitioner was counted as continuous service and vide aforesaid judgment of

the LPA Bench, adhoc service of the petitioner has to be treated as continuous service for all intents and purposes.

8. The submission of learned counsel for the petitioner is that a serious mistake has been committed by the respondents by treating the petitioner's

date of placement as Lecturer in the senior scale with effect from 17.8.1993 instead of 16.1.1991, thus violating the judgment dated 1.4.1996-

passed by the LPA Bench. The precise submission of learned counsel for the petitioner is that the petitioner is entitled to all benefits i.e. seniority,

promotion etc. for the reason that his adhoc service was followed by regular service and, therefore, seniority of the petitioner has to be counted

from the date of his initial engagement.

9. Against this submission, learned counsel for the respondents contended that the petitioner is not entitled to relief sought for as the same was denied to him by the LPA Bench. Further, according to learned counsel for respondents, the initial appointment of the petitioner being only adhoc and not made according to rules, rather it was by way of a stop gap arrangement, therefore, the period of adhoc service of the petitioner cannot be counted for the purpose of his seniority. Mr J.P. Singh, learned counsel appearing for the respondents, further submitted that the petitioner vide order dated 17.8.1988 came to be appointed as Lecturer in the department of Mathematics after due process of selection as per the rules and, therefore, his seniority has to be counted from the date of his substantive appointment against the post of Lecturer in Mathematics. In support of his submissions learned counsel has cited The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, .

10. I have heard learned counsel for the parties and have carefully gone through the record of the case.

11. It is the admitted case of the parties that a Lecturer is to be placed in senior scale only after five years regular service. The question which arises for consideration is whether the appointment of the petitioner for the period from 16.1.1988 to 16.8.1988 was in accordance with the rules, followed by regularization? If the answer is in affirmative, then the seniority of the petitioner is to be reckoned with effect from the date of his initial appointment. If, however, initial appointment of the petitioner was only adhoc and not according to rules and made as a stop gap arrangement, the officiation to such post cannot be taken into account for consideration of his seniority. The second question to be considered is whether because of judgment dated 1.4.1996 of the Letters Patent Bench, petitioner as a matter of right, is entitled to treat adhoc service as Lecturer from 16.1.1988 to 21.8.1988 as regular service for all intents and purposes. The third question which arises for consideration is whether as per guidelines laid down by the University Grants Commission adhoc service rendered by the petitioner is to be counted for his placement as Lecturer in Senior Scale. Last question to be considered is whether the writ petition is not maintainable being barred by delay and laches and also for not impleading

necessary parties, who may be affected in case the writ petition is allowed.

12. The appointment of Teachers is regulated by The Jammu and Kashmir Universities Act, 1968, and Statutes & Regulations Under the Act (as

amended upto February, 1999) (for short hereinafter referred to as The Act). Section 24(d) of the Act provides that all appointment (permanent

or temporary) to the posts of teachers shall be made by the Syndicate on the recommendation of the Selection committee constituted for the

purpose in accordance with the provisions of Section 36 of the Act"" and on such terms and conditions as may be prescribed by the Statutes. Third

proviso to Section 24(d) provides that the Vice-Chancellor may make appointments of teachers as a temporary measure for a period not

exceeding six months to carry on the work and if the recommendations of the Selection Committee are not received within a period of six months,

the Vice-Chancellor of the University may extend the appointments, if any, made by him, for the duration of the academic session with the

approval of the Syndicate. u/s 36 of the Act, Selection Committee for the appointment of teachers is to comprise of:-

(i) Vice Chancellor (Chairman),

(ii) Pro-Vice Chancellor, if any,

(iii) Chairman, Public Service Commission or, a member of the Public Service Commission nominated by him;

(iv) The Head of the University Department concerned in case of selection of Readers and Lecturers only;

(v) One member nominated by the University Council of the University concerned in the case of appointment of Professors and Readers and one

member nominated by the Syndicate concerned in the case of appointment of Lecturers, as the case may be;

(vi) two persons not connected with the University having special knowledge of the subject in which the appointment is to be made, nominated by

the Vice Chancellor from the panel of experts approved by the University Council in the case of Professors and Readers and the Syndicate in the

case of Lecturers.

13. Provided that the panels shall be reviewed after every two years.

14. It is not in dispute that initial appointment of the petitioner as a Teaching Fellow was upto the end of current academic Session, i.e. 31.5.1985.

Thereafter, on completing his Ph.D. vide order dated 11.2.1986, salary of the petitioner was fixed equivalent to minimum of the pay scale of Rs.

700-1600 plus usual allowances and his period of appointment was to remain upto 16.2.1986. Thereafter, it was extended from time to time upto

the date preceding the date of commencement of every summer break. This arrangement continued till the petitioner came to be appointed on

regular basis. The action taken by the Vice Chancellor in extending adhoc appointment of the petitioner was approved by the Syndicate. One such

approval for the year 1986-87 has been placed on record.

15. The appointment of the petitioner on substantive -basis was made in pursuance of the selection which was held on 4.6.1988. The minutes of

meeting of the Selection Committee dated 4.6.1988 reads as under:-

Minutes of the meeting of the selection committee for appointment of lecturers (two posts i.e. one post in Topology and the other open post) in

Mathematics held on 4 June 1988 in the office Chambers of the Vice-Chancellor, University Campus, Canal Road, Jammu.

PRESENT

1. Vice Chancellor,
2. Mrs. Tahira Shahmiri, Member J&K P.S.C.
3. Prof. Y.R.Malhotra, Nominee of the Syndicate.
4. Prof. H.P.Dikshit, Vice Chancellor, Rani Durgawati Vishwa Vidyalaya, Jabalpur.
5. Prof. Satya Deo Tripathi, H.O. the Department Mathematics.

Thirty six applicants for the posts of Lecturers (two in numbers) In Mathematics were invited for interview. Full particulars of the applicants were

placed before the members of the Selection Committee. The following candidates were present and were interviewed by the Selection

Committee.

1. Dr. Mohammad Shamim Alam, M.Sc I (Meerut) Ph.D.(Garhwal) Sr. No. 2.
2. Shri Bhopal Singh Sharma, M.Sc.I, M.Phil I (Meerut), Sr.3.
3. Dr. Dalip Singh Jamwal, M.Sc.I, M.Phil 'O' Grade Ph. D.(Jammu) Sr.5.
4. Dr. Ram Krishen, M.Sc.I, M.Phil A Grade, Ph.D.(Jammu) Sr.6.
5. Dr. Jagpal Singh Verma, M.Sc.I, D.Phil)Gerhwal Sr.8.
6. Dr. Som Datt Sharma, MA I, Ph. D. (Jammu) Sr.9..

7. Dr. Ashok Kumar, M.Sc.I, Ph.D (Jammu) Post Doctoral Fellow (USA). Sr. 11.
8. Dr. Narendra Chaturvedi, M.Sc.I, Dep.Statistics Ph.D. (BHU) Sr. 15.
9. Dr. Shanker Prasad, M.Sc. I, Ph.D. (BHU) Training Course in Computer Programming, Sr. No. 18.
10. Dr. Raju Singh, M.Sc. I, Ph.D. (Bihar University)
11. Shri Divya Kumar'Bagga, M.Sc.I, Dr. Hari Singh Gour Vishwavidyalaya, Sagar.
12. Shri Vimal Kumar, M.Sc. I (Agra), Sr. No. 27.
13. Miss Meenu Rampal, M.Sc. 1st class, 1st. Position B.Ed. Ist. Div. M.Phil. 1st Class 1st Position .
14. Miss Pankaj Malla, M.Sc.Ist class 1st Position,
15. Shri Uma Kanta Behera, M.Sc. I (Utkal).

After taking into consideration the academic record, teaching and research Ex., specialization, published work and performance at the interview,

the Committee adjudged the following candidates suitable for appointment as Lecturers in Mathematics in the order mentioned below on probation

for two years in the pay scale of Rs. 2200-4000.

Rank I. Dr. Som Datt Sharma, against open post at the pay to be fixed under rules (Serial 9)

Rank II. Dr. Dalip Singh Jamwal, against the post of Lecturer in Mathematics (Topology) Serial 5.

The Committee recommends the following candidate for placement as Lecturer in Mathematics (Open Post) on the waiting list.

1. Dr. Ashok Kumar, (Serial 11) at the starting pay to be fixed under rules.

16. The reading of the aforementioned minutes of the committee clearly demonstrates that the selection committee had been constituted for the

selection of Lecturers in Mathematics in terms of Section 36 of the Act. The appointment of the petitioner on substantive basis was in pursuance of

selection which took place on 4.6.1988. His initial appointment, as indicated earlier, was of Fellow Teacher and thereafter on completing his Ph.D.

his salary was fixed in the minimum of the pay scale of the post of Lecturer. It was only a stop gap arrangement which continued till the selection

took place on 4.6.1988. It was in pursuance thereof that the petitioner joined on regular basis with effect from 22.8.1988. The initial appointment

of the petitioner was not made by inviting applications from all eligible

candidates or interview by the selection committee constituted u/s 36 of the Act. It was only a stop-gap arrangement for a fixed period which came to be extended from time to time. The appointment of the petitioner thus was covered under the corollary set out in conclusion (A) of the Direct Recruit Class II Engineering Officers' Association case (supra), and therefore, the benefit of adhoc service is not admissible. The corollary to conclusion (A) lays down that where initial appointment was only adhoc and not according to the rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

17. In another case, U.P. Basic Shiksha Parishad v. Haridev Mani Tripathi 1993 (1) S.L.R. 15 the same principle has been applied by the

Supreme Court. In that case before the Supreme Court, the respondents therein were appointed on adhoc basis as untrained Assistant Teacher

and on their obtaining the certificate of training were given substantive appointment. Their seniority was reckoned from the date of regular

appointment. When they claimed their seniority from the date of their adhoc appointment, the same was turned down by the Supreme Court by

holding that the seniority was rightly determined from the date of substantive appointment on receiving the training and not from the date of initial

appointment, because the length of service was to be determined from the date of their substantive appointment on receiving the training.

18. This being the position in law, the answer to the first question is that the period of adhoc service of the petitioner from 16.1.1986 to 16.8.1988

cannot be counted for the purpose of seniority or for placing him as Lecturer in senior scale with effect from 16.1.1986.

19. Now coming to the second question, the petitioner in his earlier writ petition had sought (a) quashing of seniority list and in consequence thereof

had also prayed for re-drawing of the seniority list, showing petitioner immediately below one Dr. Anita Langar, (b) to treat his adhoc service as

Lecturer w.e.f. 16.1.1986 to 21.8.1988, as regular service, and (c) to treat the petitioner's fictional breaks in Summer Vacation from 13.6.1987 to

20.9.1987 and 18.6.1988 to 21.8.1988 as on duty, with all consequential benefits and to allow him UGC revised pay scales from 16.1.1986 with

all benefits of arrears, increments and allowances.

20. The reading of the judgment dated 1.4.1996 passed by Letters Patent Bench, leaves no one in doubt that the petitioner was held entitled only to the salary for the period he was given fictional breaks and period of service from 16.1.1986 to 22.8.1988 was ordered to be treated for purpose of seniority so far as the allotment of staff quarter to him in the University was concerned.. In this behalf reliance was placed on Rattan Lal and Others Vs. State of Haryana and Others, . No other relief was granted in favour of the petitioner. In pursuance of the judgment given in Letters Patent Appeal, petitioner was paid salary for the period of fictional breaks and his case was considered by treating the period of adhoc service for the purpose of allotment of quarter to him. University did not grant him any other relief. Petitioner very well knew the extent of relief granted to him by the Letters Patent Bench and for that matter he did not make any grievance for almost seven years and it was only by serving notice dated 17.5.2003' through his counsel upon the University that a grievance was projected by the petitioner. In my considered view, apart from the two reliefs indicated above, no other relief was granted to the petitioner and, therefore, it is erroneous to contend that right of the petitioner for counting his adhoc service originates from the judgment passed by Letters Patent Bench.

21. In answer to third question, learned counsel for the petitioner submitted that University Grants Commission have issued certain guidelines regarding the minimum qualification for appointment of teachers in the University and for placing them in senior scale selection grade. He contended that as per the guidelines the adhoc service of more than one year duration has to be counted for placement of Lecturer in senior scale

22. The guidelines, inter alia, provide that a Lecturer can be placed in senior scale provided that:-

- (a) the adhoc service was of more than one year duration,
- (b) the incumbent was appointed on the recommendation of duly constituted Selection Committee, and
- (c) the incumbent was selected to the permanent post in continuation to the adhoc service, without any break.

23. On carefully going through the guidelines, I am of the considered view that the case of the petitioner is not covered by the guidelines, for the

reason that admittedly initial appointment of the petitioner was not on the recommendation of duly constituted selection committee. It would have been a different matter had the petitioner been appointed on adhoc basis on the recommendation of the duly constituted selection committee and thereafter selected to the permanent post in continuation to the adhoc service without any break. In fact, the University Grants Commission way back on 19.4.1993, in reference to clarification sought by the University, informed the University that as per the U.G.C. Rules the adhoc service rendered by the teachers is not to be counted for placement in senior scale/selection grade, The initial appointment of the petitioner being de hors the rules, the adhoc service rendered by him cannot, therefore, be counted for placing him as Lecturer in senior scale.

24. The last question to be considered is whether the petitioner is not entitled to any relief on the ground of delay and laches.

25. It is a general principle that the courts in exercise of its discretion are reluctant to grant relief on the ground of inordinate delay and laches. The

application of this principle in matters relating to seniority in particular has been stricter than in relation to many other areas. If seniority is disturbed

after lapse of so many years and in the meantime employers and employees have acted upon it, resulting in promotion being granted in accordance

with the seniority already settled, it would be highly unreasonable and not fair to put such promotions in jeopardy. In the present case, matter was

already settled by the Letters Patent Bench way back on 1.4.1996 and petitioner also came to be promoted as Reader on 7.8.2002, on the basis

of seniority fixed. The present writ petition has been filed on 28.8.2003 and there is no explanation worth the name why the petitioner slept over

the matter for such a long time. In the writ petition, he has also not impleaded the persons, who are going to be affected by disturbing the seniority,

as party respondents and therefore, on this count also petitioner is not entitled to any relief.

26. In view of the above, writ petition is dismissed, with no order as to costs.