

(2018) 09 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1760 Of 2018

Gulzar Hussain @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 05-09-2018

Acts Referred:

Citation : (2018) 09 J&K CK 0005

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Judgement

1. Pursuant to the directions issued by this Court in SWPÂ No. 247/2006 on 01.01.2009, theÂ claim of the petitioner along with five others persons

retrospective promotion by respondent No.1. Vide Govt. Order No.684-Edu of 2011 dated 02.12.2011, theÂ came to be considered forÂ

petitionerÂ wasÂ granted Â promotionÂ asÂ Lecturer retrospectively w.e.f. 03.05.1992, from the date he joined. While the petitioner had beenÂ

notionally and regular fighting for his regularization as Lecturer, the respondent No.1 vide Govt. Order No.370-Edu of 2003 dated 01.04.2003

accorded sanction to the placement of eligible candidates as Senior Lecturers. The aforesaid Govt. Order included the name of one Sh. Lal Hussain

figuring at S.No.165 of the seniority of Senior Lecturers under ST category. His placement as Senior Lecturer, however, was given w.e.f.

01.01.1999. The said Sh. Lal Hussain was further regularized as Principal 10+2 w.e.f. 01.02.2005 vide Govt. Order No.592-Edu of 2009 dated

27.07.2009. Since the petitioner had been regularized as Lecturer w.e.f. 03.05.1992 in terms of Order dated 02.12.2011 (supra), as such, as a

consequence thereof, he was further placed as Senior Lecturer w.e.f. 01.01.1999 and his seniority as Senior Lecturer was fixed at S.No. 964-A. In

short the submission of learned counsel for the petitioner is that by virtue of Govt. Order No. 562-Edu of 2012 dated 10.07.2012 the petitioner became

senior to Sh. Lal Hussain in the cadre of Senior Lecturers, therefore, had a superior right of being placed as Principal and Incharge Chief Education

Officer. It is further submitted that though wrong done in the case of the petitioner was rectified and he was placed at the appropriate place in the

seniority list of Senior Lecturers yet its effect was not given in so far as further promotion as Principal 10+2 and Incharge Chief Education Officer is

concerned, and on the other hand Sh. Lal Hussain was not only regularized as Principal 10+2 w.e.f. 01.02.2005 but was further placed as Incharge

Chief Education Officer and even the Joint Director.Â

2. Aggrieved, the petitioner approached this Court by way of SWP No.128/2015 which was disposed of by this Court on 22.01.2015 directing the

respondent No.1Â to accord consideration to the claim of the petitioner for regularization as Principal 10+2 as also Incharge Chief Education Officer.

It is alleged that the judgment passed by this Court was not complied with which constrained the petitioner to file contempt petition which is still

subjudice in the Court.

3. The pith and substance of the grievance projected by the petitioner in this case is that while as on one hand the respondents are yet to comply with

the directions issued by this Court and give him the actual benefits accrued to him by virtue of his promotion as Lecturer on 03.05.1992 and Senior

Lecturer w.e.f. 01.01.1999, on the other hand, the respondents have not only placed Sh. Lal Hussain his immediate junior as Incharge Chief

Education Officer but have also picked up the respondents 04 to 06 for their placement as Incharge Chief Education Officer. Learned counsel for the

petitioner would urge that the moment the petitioner is treated to be senior to Lal Hussain, he becomes entitled to be regularized as Principal w.e.f.

01.02.2005 and that being the position he would have superior right of being placed as Incharge Chief Education Officer before any of the private

respondents. Learned counsel for the petitioner has taken me to the seniority position to substantiate his contentions.

4. I have learned counsel for the parties and considered the submissions made with reference to the documents on record.

5. Apparently, the petitioner having been promoted as Lecturer w.e.f 03.05.1992

and Senior Lecturer w.e.f. 01.01.1999 is entitled to be regularized as Principal w.e.f. 01.02.2005 and that being the position he would prima facie rank senior not only to Lal Hussain but also other private respondents. The petitioner has prima-facie right of prior consideration than the private respondents.

6. Prima-facie case is made out for interim relief.

7. Issue notice returnable within four weeks. Notice in IA returnable within the same period.

8. List on 08.10.2018

9. In the meanwhile, subject to objections from the other side, it is provided that promotions/placements as Chief Education Officers, shall defer till the next date of hearing or till the case of the petitioner for his regularization as Principal 10+2 is considered by the respondents in terms of the judgment dated 22.01.2015 passed in SWP No.128 of 2015, whichever is earlier.