

(2018) 12 J&K CK 0078

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 168 Of 2014

Jaswant Kour @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 28-12-2018

Acts Referred:

Citation : (2018) 12 J&K CK 0078

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Surinder Kour, Priyanka Gupta, Ravinder Gupta

Final Decision : Dismissed

Judgement

1. The petitioner, who was working as Incharge Lecturer (Sanskrit), has filed the present writ petition challenging Government Order No. 71-Edu of 2014 dated 20.01.2014, vide which the promotion granted to the petitioner had been withdrawn. Further challenge has been made to Government Order No. 72-Edu of 2014 dated 20.01.2014 vide which respondent No.6 had been promoted/elevated as Incharge Lecturer (Sanskrit) under OSC category.

2. Learned senior counsel appearing for the petitioner submitted that vide Order dated 30.03.2013, the petitioner, who was working as a Teacher, was considered as per her seniority and was promoted as Incharge Lecturer (Sanskrit). The order was implemented and the petitioner was given the charge of the post. Vide order dated 27.07.2013 the petitioner was posted as Incharge Lecturer (Sanskrit) at Higher Secondary School Utterbeni. The fact that she had taken charge of the post was so recorded even in her service book. Vide order date 05.12.2013, respondent No. 6 was also elevated as Incharge Lecturer (Sanskrit). Thereafter two orders were passed simultaneously by the State. By Government Order No. 71-Edu of 2014 dated 20.01.2014 the elevation/promotion of the petitioner as Incharge Lecturer (Sanskrit) was withdrawn, whereas vide Order No. 72-Edu of 2014 dated 20.01.2014 respondent No.6 was given charge as Incharge Lecturer (Sanskrit) in place of the petitioner.

3. Learned senior counsel for the petitioner argued that before passing the

impugned order, the petitioner was not afforded any opportunity of hearing. Further the claim of the respondent No.6 could be from the category of Masters and not from the category of Teachers, to which category the petitioner belongs.

4. On the other hand, learned counsel for the respondents submitted that, there was a specific condition in the order dated 30.03.2013, vide which the petitioner was elevated as Incharge Lecturer (Sanskrit), that claim of any senior, if any, shall be considered by demoting the junior one. The petitioner was in the category of Teacher whereas respondent No. 6 was already working as a Master. Hence, she being senior, was required to be considered before the petitioner. However, as her particulars were not entered in the seniority list, her name could not be considered at that stage and the petitioner was elevated as Incharge Lecturer (Sanskrit). However, when the claim of respondent No.6 was settled, she was elevated as Incharge Lecturer (Sanskrit), by reverting the petitioner back as she was junior most and in fact, was the only teacher who had been elevated as Incharge Lecturer (Sanskrit), whereas all other 17 candidates were Masters.

5. It is further submitted that as per the Jammu and Kashmir Health and Medical (Subordinate) Service Recruitment Rules, 1992, (hereinafter referred as 'the 1992 Rules'), the post of lecturer could be filled up 50% by direct recruitment and 50% by promotion from Masters in the grade of 1,300-2,500 and in case no suitable candidate is available from Master's grade, then by promotion from Senior Teachers (1,075-2,325), and if no suitable candidate is available from that category, then by promotion from General Line Teachers (900-1830) with at least three years' experience as Teacher. As in the case in hand, as the Master was available, the petitioner being only a Teacher could not be elevated as Incharge Lecturer (Sanskrit).

6. He further submitted that opportunity of hearing is not merely a formality to be performed. The facts of the case are not in dispute. Whatever the petitioner wanted to state, she has already argued, hence, there is no merit in this argument. The matter may not be remitted back to the authorities for affording opportunity of hearing to the petitioner. The process may give rise to another round of litigation.

7. Respondent No. 6 in her objections filed, has submitted that the petitioner was appointed as a teacher on 16.05.2002 whereas she was appointed ten years prior thereto in the year 1992 and she is quite senior to the petitioner. Respondent no. 6 was, in fact, promoted as Master on 26.03.2010. The error occurred as the name of respondent No.6 was erroneously not mentioned in the seniority list of Masters. Hence, the order of promotion of the petitioner as Incharge Lecturer (Sanskrit) has rightly been withdrawn as the eligible candidate in the feeder cadre of Masters, was available.

8. Heard learned counsel for the parties and perused the paper book.

9. The facts which have come on record are that respondent No.6 was appointed

as Teacher on 17.11.1992. She was promoted as Master on 26.03.2010, whereas the petitioner was appointed as Teacher in the year 2002. The issue is with regard to elevation as Incharge Lecturer (Sanskrit). The 1992 Rules govern the post of Lecturer. In terms of Schedule II, Class IX of the 1992 Rules, the post of Lecturer has to be filled up 50% by direct recruitment and 50% by promotion from Masters in the grade of and in case no suitable candidate is available from Master's grade, then by promotion from Senior Teachers and if no suitable candidate is available from that category, then by promotion from General Line Teachers with at least three years' experience as Teacher. The relevant Rule is extracted below:

Class

category

designation

Grade

Minimum Qualification for direct recruitment

Method of recruitment

1.

2

3

4

5

6

I

X

X

X

X

X

IX

B

Lecturers

1700- 2900

Master Degree in the relevant subject

(i) 50% by direct recruitment (ii) 50% by promotion from Masters in the grade of 1300-2500 and in case no suitable candidate is available from Master's grade then by promotion from Senior Teachers (1075-2325), and if no suitable candidate is available then by promotion from General Line Teachers (900-1830) with at least three years' experience as Teacher.

10. The petitioner, at the time of her elevation as Incharge Lecturer (Sanskrit), was working as a Teacher. She was the last candidate in the list of candidates elevated as Incharge Lecturers (Sanskrit). In the promotion order 30.03.2013 one of the specific conditions, was that in case there is claim of any senior candidate, the last one in the list will have to make way. The relevant condition (ii) of Government Order No. 411-Edu of 2013 dated 30.03.2013 reads thus:-

" ii) The claim of the superior shall be considered, if any, by demoting the junior one."

11. When the claim of the petitioner as well as respondent No.6 is considered as per the 1992 Rules, the first claim for promotion as Lecturer is of a Master thereafter of a Senior Teacher and then of a Teacher. The claim of respondent No.6 could not be considered at the relevant time because erroneously her name was not mentioned in the seniority list of Masters. Otherwise there is no dispute about her eligibility to be promoted as a Lecturer. When her claim of seniority was settled, vide order dated 20.01.2014 she was elevated as Incharge Lecturer (Sanskrit) after withdrawing the order dated 30.03.2013 passed in favour of the petitioner who was junior most candidate in the list.

12. There is no error in the order passed as the same is strictly in terms of the Rules and the condition incorporated in the order elevating the petitioner as Incharge Lecturer (Sanskrit).

13. As far as the plea raised by the learned counsel for the petitioner regarding opportunity of hearing before passing the impugned order is concerned, the same deserves to be noticed and rejected. Grant of opportunity of hearing to an employee is not a mere ritual to be performed. Once from the facts which have come on record and the argument raised by the learned counsel for the petitioner, she has not been able to make out any case on merits, it will be an exercise in futility to refer the matter back to the authorities to afford an opportunity of hearing to the petitioner and pass the same order. Reliance in this behalf could be placed on the judgment of Hon'ble the Supreme Court in Union of India v. Raghuwar Pal Singh AIR 2018 SC 1411.

14. For the reasons mentioned above, I do not find any merit in the writ petition and the same is, accordingly, dismissed.