
(2014) 09 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : SWP No. 1146 Of 2013

Khurshid Ahmad Tarzan

APPELLANT

Vs

University of Kashmir and Others

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2015) 2 JKJ 214

Hon'ble Judges : Hasnain Massodi, J.

Bench : Single Bench

Advocate : Jahangir Iqbal Ganai, Advocate, for the Appellant; T.H. Khawja, for the Respondent

Final Decision : Allowed

Judgement

Hasnain Massodi, J.â?"Petitioner while serving as Assistant Students Welfare Officer in Sher-i-Kashmir University of Agricultural Sciences and

Technology (SKUAST)-respondent No. 4 in the petition, responded to advertisement notice dated 2nd of September, 1986, issued by University

of Kashmir-respondent No. 1 herein, inviting applications from eligible candidates for post of Director, Physical Education in the respondent

University. While selection process was in progress, respondent No. 1 vide order dated 13th April, 1987 appointed petitioner as Director Physical

Education on ad hoc basis for a period of six months or till the post was filled up on substantive basis. The order was made subject to condition

that petitioner produced ""No Objection Certification"" (NOC) from his employer, i.e. respondent No. 4 in the petition.

2. Respondent No. 1 thereafter vide order dated 5th of Oct., 1987 appointed the petitioner as Director Physical Education on probation for one

year in the pay scale of Rs. 1200-50-1900 (unrevised UGC scale) plus usual allowances under rules subject to the condition that he severed his

relation with respondent No. 4 University. The order dated 5th of Oct, 1987 was passed after selection process was finalized and petitioner found

to be most meritorious candidate amongst the candidates who responded to the advertisement notice.

3. Petitioner vide communication dated 26th of December, 1988 was informed by Deputy Registrar (Administration) that he will be confirmed

retrospectively subject to the condition he severs his relation with respondent No. 4. However, respondent No. 1 in April, 1988 confirmed the

petitioner as Director Physical Education, w.e.f. 5th Oct, 1988 though petitioner initially joined respondent No. 1 university on 13th April, 1987.

The order was issued only after petitioner severed his relation with respondent No. 4 and his lien in the respondent No. 4 was terminated.

4. The net effect of the order dated 5.10.1988 whereby the petitioner was confirmed is that i) petitioner would face interruption in his service from

the date he joined respondent No. 1-University till the date of his confirmation, ii) that petitioner would be disentitled from having his service

rendered with respondent No. 4 counted by respondent No. 1 while computing retrial benefits.

5. Aggrieved with the order passed in April 1989 petitioner has come up with the writ petition on hand. He on the strength of averments urged in

the petition, seeks following relief:-

(i) A writ, direction or order in the nature of certiorari quashing the communication No. FA-KU/13.Com/12 dated 29.02.2012 of respondent No.

3.

(ii) A writ, direction or order in the nature of certiorari quashing the decision taken by the University Council in its meeting held on 24.04.2013 and

communicated to the petitioner under and in terms of communication bearing No. F(UC-2013)Gen/KU/13 dated 29.05.2013.

(iii) A Writ of mandamus declaring ""ad hoc"" in the order of appointment issued in favour of the petitioner under no F. (APP-DPE/ADM/KU/87

dated April 13, 1987 as illegal and the petitioner be deemed to have been appointed on regular basis w.e.f. 13.04.1987.

(iv) A Writ of certiorari quashing the order bearing no F(Conf-DP-E) Adm/KU

dated April, 1989 to the extent it confirms the services of the petitioner w.e.f., 05.10.1988? instead of 13.04.1987.

(v) A Writ of mandamus commanding respondent No. 1 to 3 be directed to count the services rendered by the petitioner with respondent No. 4

from 27.10.1976 to 13.04.1987 and the services rendered from 14.04.1987 to 04.10.1987 with Respondent No. 1 University for determination

of petitioner's pension and to release pensionary benefits in favour of the petitioner.

6. Respondents resist the petition on the grounds that service rendered by petitioner on ad-hoc basis, does not qualify to be counted and therefore

his request for retrospective confirmation with effect from his initial appointment was rightly rejected by respondent No. 1. It is next pleaded that

even if petitioner's service was confirmed retrospectively from the date of his initial appointment, he still would not be entitled to benefits in as much

as such benefit is not available where petitioner has two or more spells of services. It is pleaded that as the petitioner before his appointment as

Director Physical Education in respondent No. 1 University has served different University, petitioner cannot as a matter of right, claim retirement

benefits on the strength of service rendered in respondent No. 4 University. It is pleaded that the decision taken by the Principal Secretary to

Government Finance Department vide No. FA-KU/13.Com/12 dated 29.02.2012 (Annexure-O) redresses petitioner's grievance in accordance

with rules.

7. I have gone through the pleadings and have heard learned counsel for the parties.

8. It is admitted case of the respondent No. 1 that petitioner responded to advertisement notice and offered his candidature for the post of

Director Physical Education in respondent No. 1 University. The respondents, for one or other reason did not proceed with the selection process

with due dispatch. They decided to appoint one of the aspirants against advertised post, though on ad hoc basis, for a period of six months. In said

background petitioner was appointed as Director Physical Education in respondent No. 1 University on ad hoc basis for a period of six months

subject to NOC from his earlier employer i.e. respondent No. 4. Petitioner was thereafter found to be most suitable candidate for the advertised

post appointed on 05.10.1987 as Director Physical Education in the pay scale of Rs. 1200-50-1300-60-1900 (unrevised UGC scale).

9. It would be profitable to extract the initial appointment order of petitioner dated 13th of April, 1987 whereby the petitioner was appointed on

ad hoc basis as also appointment order dated 5.10.1987 on substantively appointing him against the post

Sanction is accorded to the ad-hoc appointment of Dr. Khurshid Ahmad Tarzan S/O Mr. Ghulam Rasool R/O Wanganpora, Nowakadal,

Srinagar as Director Physical Education in the Pay scale of Rs. 1200-1900 plus other allowances as admissible under rules for a period of six

months or till the post is filled in substantively, whichever is earlier, subject to the condition that he produces necessary "no objection Certificate

from his employer within a week's time.

10. A bare look at the appointment order dated 5.10.1987 would reveal that the respondent No. 1 conscious that petitioner was serving another

University asked him to sever his relation with his first employer. Petitioner thereafter approached the respondent No. 1 with repeated requests

and reminders to confirm his appointment w.e.f. the date he was initially appointed i.e. 13th of April 1987. It would be appropriate to reproduce

the response of the respondent No. 1 to the requests/reminders so made by the petitioner as reflected in communication dated December 26th,

1988 addressed to the petitioner.

In pursuance of the decision of the University Council you will be confirmed retrospectively subject to the conditions that you sever your

connections with the Sheri Kashmir University of Agricultural Sciences and Technology within a period of one month from the date of issuance of

this letter",

11. Respondent No. 1 vide communication dated 26th December, 1988 extended a promise to the petitioner that his services would be confirmed

'retrospectively' provided he severed his connection with respondent No. 4 University. The expression "retrospectively" in peculiar facts and

circumstance assumes importance and would refer to the date of his initial appointment i.e. 13.04.1987. The communication did not qualify that

retrospective confirmation would be operative from the date of substantive appointment on finalization of selection process or confirmation on

completion of period of probation.

12. It may be stated at the cost of repetition that petitioner made respondents aware that he was serving in respondent No. 4 University and

respondent No. 1 knowing that petitioner was serving in respondent No. 4 University, decided to appoint him though initially on ad hoc basis the

respondent No. 1 University unmindful of assurance extended confirmed petitioner w.e.f. 5.10.1988, thereby excluding the period of ad hoc

appointment as well as period of probation.

13. Once the petitioner was prompted and persuaded to sever his relation with respondent No. 4 University on assurance that after he severs

relation with respondent No. 4 University, he would be confirmed retrospectively, it would not be open to respondent No. 1 University to make

confirmation effective from the date of substantive appointment.

14. The decision taken is bound to work harshly against the petitioner and allow a big gap in his service career. It is well settled law that Service

Rules are to be interpreted in a manner that serves the interest of a Government employee and not expose him to any prejudice without he being

contributory to the situation in which he is caught.

15. In the present case a closer look at the facts indicates that petitioner at no point of time was responsible for the situation to which he has been

pushed by the respondent No. 1 University. He at the time of applying for the advertised position made it clear that he was already serving in

another University. Respondent No. 1 as already pointed out, still appointed the petitioner and allowed the petitioner to discharge his duties as

such for next few years. An assurance was extended to him that he would be regularized retrospectively. Respondent 4 University vide University

order No. 100 (Est) of 1989 dated 07.03.1989 terminated his lien w.e.f. 13.04.1987 i.e. date of his initial appointment on ad hoc basis and not his

appointment vide order dated 05.10.1987 on finalization of selection process or on 05.10.1988 when probation come to an end.

16. It is well settled law that once a promise is made or assurance is extended and the person whom to such promise or assurance is extended,

makes change in his circumstance, principle of promissory estoppel would come in play and the authority making the promise or extending

assurance estoppel from withdrawing from such promise. The present case also

attracts principle of promissory estoppel. Petitioner before he got his lien in respondent No. 4 University terminated was made a promise by respondent No. 1 University that he would be confirmed retrospectively. The promise was absolute and unqualified. Petitioner proceeded on the promise made and got his lien terminated in respondent 4 University. Petitioner therefore was induced to change his circumstances. Had the respondent 1 University not made the promise of retrospective confirmation, he had an option not to get his lien terminated in respondent 4 University and instead continue to be an officer of said University. Petitioner instead acted on the promise and got his lien terminated from respondent 4 University. He in a bonafide manner believed that he would get confirmation from initial date that is the date he joined as Director Physical Education in respondent 1 University on ad hoc basis. The respondent No. 1 University therefore cannot wriggle out of the promise made to the petitioner and deny him what is due to him under rules.

17. The decision taken by Principal Secretary to Government Finance Department (Financial Advisor to the University) over ruling decision taken by the Registrar of respondent No. 1 University and recommendation made in petitioner's favour by the University resolution referred to in order dated 29.2.2012 is for the reasons discussed above not untenable.

18. It is nobody's case that Civil Service Classification, Control and appeal) Rules did not apply to employees of the respondent No. 1 University.

Article 205 (a) J&K Civil Service Regulations (CSR) was a complete answer to the anomalous situation created because of initial appointment made by respondent No. 1 on ad hoc basis and thereafter continued without any interruption. The respondent No. 1 University can press into service Article 205(a) to give effect to confirmation retrospectively from 13.04.1987.

19. The other aspect of the matter is whether the petitioner, once directed to be confirmed from the date of initial appointment would be entitled to get benefit of service rendered in respondent No. 4, counted for the pensionary benefits. The question is to be answered on the basis of the Advertisement Notice whereby applications were invited to fill up the post of Director Physical Education and agreement if any between respondent No. 1 and respondent No. 4. A look of the Advertisement Notice

would reveal that condition No. 8 requires in-service candidates, to route their applications through their employer/University. One would say that the condition was put so that an aspirant who had crossed upper age would seek relaxation in upper age limit and age would not come in the way of his appointment. However, the Advertisement Notice did not fix any upper age limit. The condition No. 8 in the Advertisement Notice therefore was not incorporated to help over-age candidates to seek appointment. The requirement obviously reflected intention of respondent No. 1 University to give benefit of past service to the government employees or the employees of any University, selected against the advertisement post. The documents available on record (annexure-A to annexure-P) prima facie lead to such conclusion. However it is for the respondent No. 1 University to take final view regarding this aspect of the matter having regard to the agreement, if any, between respondent No. 1 and respondent No. 4 and rules in vogue.

20. For the reasons discussed, Writ petition is allowed. Communication Nos. FA-KU/13.Com/12 dated 29.02.2012, No. F(UC-2013)

Gen/KU/13 dated 29.05.2013 are quashed and so is the order No. F (Conf-DP-E) Adm/KU dated April, 1989 to the extent it confirms

petitioner w.e.f. 05.10.1988 instead 13.04.1983. The respondent No. 1 University by a writ of mandamus is commanded to treat petitioner to

have been confirmed as Director Physical Education w.e.f. April 13, 1987 and to accord consideration to counting of service rendered by him in

respondent No. 4 University w.e.f. 27.10.1976 to 13.04.1987 in continuation with service rendered in respondent No. 1 University w.e.f.

14.04.1987 to 04.10.1987 for working out his pensionary benefits. The respondent No. 1 University is further directed to compute and purpose

of retrial benefits whatever due to the petitioner in wake of his confirmation w.e.f. 13.04.1987 and to release such benefits to him within six months

from the date of this order. Disposed of along with all connected CMPs.