

**(1998) 09 J&K CK 0007**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 2171 of 1991

Mukhtar Ahmad Malik

APPELLANT

Vs

State and Ors.

RESPONDENT

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**Date of Decision :** 09-09-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1999) 1 SCT 724

**Hon'ble Judges :** T.S.Doabia, J

**Bench :** Single Bench

**Advocate :** M.I. Qadiri, M.A. Khan, M.A. Qayoom, Advocates appearing for the Parties

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## **Judgement**

T.S. Doabia, J.

This order shall dispose of writ petition enumerated in the schedule appended to this order. The broad facts which are found mentioned in these

petitions and regarding which there is no dispute between the parties are as under :

i) That the petitioners came to be appointed as Lecturers in the Government Colleges in the valley.

ii) That this appointment was for limited tenure.

iii) That the petitioners have continued in service on account of the interim orders passed by this court from time to time. They have so continued

without there being any break in service.

Petitioners submit that the respondent authorities should now regularise the services of the petitioners. It is also submitted that they should be paid

salaries which are being paid to other lecturers in the Government Colleges in the State of Jammu and Kashmir. It is further submitted that some

lecturers have not been paid their salaries for the last nine months.

Learned counsel appearing for the State submits that so far as question of regularisation is concerned, there are three types of categories, these are :

- i) Those who have been appointed against regular vacancies.
- ii) Those who have been appointed against vacancies caused by persons having left the valley to Jammu and other parts of the country i.e. migrant vacancies.
- iii) The persons who are not working against any clear vacancies or against any migrant vacancy.

The stand of the State government is as under:

So far as first category is concerned, learned counsel appearing for the State submits that posts have been referred to the Public Service

Commission and the Public Service Commission is going to notify the vacancies. Any of the petitioners who is eligible can apply for the same. It is

stated that the State government would abide by the selection/recommendations to be made by the Public Service Commission.

So far as vacancies which have been created on account of persons having migrated from valley to Jammu and others parts of the country, the

matter is under consideration before a Full Bench of this court. It is stated that whatever decision is given by the Full Bench would abide the

events. This would take care of the category mentioned at serial number (ii).

So far as persons who are not working against any clear vacancy or vacancy created by migration, it is stated that they cannot stick to the posts. It

is for the State to take a decision qua them. It is however stated that when their services are to be terminated, then they would be given sufficient

notice and would also be afforded opportunity of hearing.

So far as above stand taken by the learned counsel for the State is concerned, the petitioners cannot have any objection. As a matter of fact, this is

a fair stand.

The question of service tenure of the petitioners would thus be determined as per the above stand of the State.

Learned counsel appearing for the petitioners, however, has urged two additional points. There are:

- i) That the petitioners should be paid their salaries on the same scale as are

attached to the post of lecturers in the Government Colleges;

ii) That in case of lecturers who have become overage in their case, State Government should take steps with a view to relax age qualification.

Learned counsel appearing for the State submits that the petitioners claim parity with lecturers who have been regularly appointed. He submits that

the petitioners should be bound down by the terms and conditions which were accepted by them. He has placed reliance on two decisions of the

Supreme Court of India. These are reported as *State of Tamil Nadu and anr. v. M.R. Alagappan and ors.* AIR 1997 SC 2006 : 1997(2) SCT

531 (SC); and *State of Haryana v. Surinder Kumar and Ors.* AIR 1997 SC 2129 : 1997(2) SCT 553 (SC).

The first decision, on which reliance has been placed by learned counsel for the State, Deputy Agricultural Officers and Agricultural Officers in

State Agricultural services were performing duties which were substantially the same. The educational qualification for Agricultural officers was

B.Sc. Agriculture whereas for District Agriculture Officer it was passing of SSLC examination which was equivalent to 10th standard examination.

It was accordingly observed that the incumbents working on these two posts cannot seek parity. This decision would not be attracted to the facts

of this case. The reasons for this are being given hereafter. Before doing so, the other decision on which reliance has been placed by the State

counsel be also examined. The daily wagers were seeking pay scale of regular clerks. As their recruitment was not in accordance with Rules, it

was observed that they cannot invoke the principle of equal pay for equal work.

So far as Education Department is concerned, the question has been directly considered in several decisions of the Supreme Court. In *Bhagwan*

*Das v. State of Haryana*, AIR 1987 SC 2049, Supervisors were appointed under State Education Scheme. They were required to stay for the

whole day in the villages. They were not part time workers. In these circumstances it was observed that they cannot be denied pay equal to that of

Supervisor appointed on regular basis. In *Duli Chand and Ors. v. Union of India*, AIR 1992 SC 677 : 1992(2) SCT 170 (SC), teachers were

appointed on ad hoc basis. They sought regularisation. It was observed that payment of fixed salary without regular grade would be violative of

Articles 14 and 16 of the Constitution of India. It was observed that from the

date of judgment, every teacher would be paid salary as is admissible to the teacher appointed against permanent posts. Again in State of Haryana and Ors. v. Ram Chander and anr. AIR 1997 SC 2468, claim for parity in pay of language teachers in vocational Education Institutions with lecturer in school cadre was upheld. It was observed that the language teachers are entitled to get uniform pay scales. In State of Himachal Pradesh v. H.P. State Recognised and Aided Schools, 1995(4) SCC 507 : 1995(3) SCT 648 (SC); and Haryana State Adhyapak Sangh v. State of Haryana, 1988(4) SCC 571 teachers employed in recognized and aided private school were held entitled to parity in pay and allowance with their counterparts in Government schools, Reliance was placed on decision reported as 1990 (Supplement) SCC 306.

In view of the aforementioned decisions which deal with the Education Department, it can safely be concluded that when Lecturers are performing similar duties, then they are entitled to the same pay scales which are being given to their counterparts. Educational qualifications, the period for which they impart teaching are same. Therefore, there is no justification to deal with them separately.

The other argument that some of the petitioners have become over aged and it will not be possible for them to apply when the vacancies are notified by the Public Service Commission be also now considered. It would be apt for the State to take notice of the decision given by the

Supreme Court in the case reported as Inspector General of Registration U.P. v. Avdesh Kumar, 1996(9) SCC 217 : 1996(3) SCT 518 (SC) . In

the aforementioned case, persons were appointed on daily wage basis in the office of Inspector General of Registration U.P. They continued in

service. Question arose as to whether their services are to be regularised or not as they had become overage during the period, when the matter

was under consideration. The Supreme Court of India directed that the respondent authorities would consider the question of relaxing age criteria.

Needless to mention that the judgment given by the Supreme Court of India is law of the land under Article 141 of the Constitution; it is binding on

all concerned including the State. The respondent State would take notice of aforementioned decision of the Supreme Court of India and would

consider the question as to whether age criteria is to be refixed and relaxed so

far as this category of employees is concerned.

It is also made clear that till regular selection is made, the petitioners who are in service would continue in service. In case any adverse order is to

be passed, the petitioners be heard. In case any adverse order is actually passed, that be kept in abeyance for fifteen days.

The claims of the petitioner for back wages be also considered.

So far as grant of regular grade is concerned, that would become effective from the date, copy of the order passed by this court along with writ

petition and annexures is made available by the petitioners to the respondent authorities. Respondent authorities would also pay salary for

winter/summer vacations as are being paid to other Lecturers in Government service.

Disposed of accordingly.