
(2014) 01 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 997 Of 2013 and C.M.A. Nos. 1414, 2600 and 3887 Of 2013

Neetu Gandotra

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 4 JKJ 45

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : W.S. Nargal, Advocates for the Appellant; Ravinder Sharma, A.A.G, Advocates for the Respondent

Judgement

Mohammad Yaqoob Mir, J.—Pursuant to Govt. Order No. 491-Edu of 2013 dated 23.04.2013, sanction has been accorded to the

change of date of regularization of petitioner (Neetu Gandotra), Senior Lecturer (Mathematics) as Lecturer w.e.f. 29.11.1995 instead of

03.09.1993 on notional basis. Furthermore, change of date of regularization of Miss Pinki Gupta (respondent No. 3) Senior Lecturer

(Mathematics) w.e.f. 03.09.1993 on notional basis and on regular basis w.e.f. 07.06.2006. Aggrieved thereof, the petitioner has challenged the

said order by the medium of writ petition-in-hand contending therein that order has been passed in arbitrary manner that too after a long gap to the

disadvantage of the petitioner. For appreciating the controversy, it shall be appropriate to notice the factual background as emerge from the

pleadings of the parties.

2. The petitioner has been appointed as Teacher in the Education Department on 18.11.1992 then was promoted as Master on 01.10.1994

whereas respondent No. 3 has been appointed as Teacher on 05.09.1985 and promoted as Master on 21.01.2004. At the level of first

appointment as Teacher, admittedly respondent No. 3 was appointed prior to the petitioner.

3. Government Order No. 1491-Edu of 2002 dated 31.12.2002 pertains to regularization of Incharge Lecturers + 2 Schools of School Education

Department. In the said order, it has been mentioned that issue of regularization of services of various gazetted cadres, who were working in the

Incharge capacities was discussed a number of times and it was considered opinion of the Department that one time departure from the prescribed

procedure shall have to be made and all officers at all gazetted levels working at present in their own pay and grade should be confirmed by

relaxing the rules requiring regular promotion. This was practically the only option available with the Department to clear the huge backlog of

promotions including those who were placed as such irrespective of their seniority positions. The case was re-examined in the department and

submitted to the cabinet with the following resolution for approval:-

All officers of the Education Department presently working as incharge principals incharge zonal education officers, incharge headmasters and

incharge lecturers will be confirmed from the dates the post became available or from the date they were adjusted on these posts which ever be

later. The Education Department without reference to the public service commission/DPC will issue necessary orders.

5% vacancies in each cadre will be kept as for disposal of such cases as have been left out over the years for one reason or the other. Their cases

will also be disposed off by the department with the approval of the Hon'ble Education Minister.

4. Cabinet vide decision No. 165/15 dated 21.10.1998 is stated to have conveyed the approval to the said proposal of the Education

Department. When said cabinet decision was not implemented, Incharge Lecturers filed various writ petitions seeking implementation of cabinet

decision, whereas some Incharge Lecturers in Math discipline also filed writ petition bearing SWP No. 1752/1999, and interim direction is shown

to have been issued. In pursuance whereof regularization of the Incharge Lecturer in Math discipline was totally stopped. Numbers of all the writ

petitions have been quoted in Govt. Order No. 1491 of 2002. Finally, in pursuance of said Cabinet decision No. 165/15 dated 21.10.1998 and

directions of the High Court in various writ petitions, sanction has been accorded to the regularization of Incharge Lecturers as shown against each

in various disciplines including Math as per Annexure 'A' to the order from the dates they have been placed as Incharge Lecturers through various

Government orders. The petitioner was regularized as Lecturer w.e.f. 03.09.1993, which on the representation of the petitioner has been changed

and given effect from 29.11.1995. Hence, the instant petition.

5. Firstly, it is contended that the petitioner was appointed as Teacher on 18.11.1992 then promoted as Master on 01.10.1994 whereas

respondent No. 3 was promoted as Teacher on 05.09.1985 and Master on 22.01.2004. Respondent No. 3 was promoted as Lecturer vide

Govt. Order No. 322-HME of 2006 dated 23.05.2006 notionally w.e.f. 29.11.1995 and regular from the date she joined whereas the petitioner

was promoted as Lecturer notionally w.e.f. 03.09.1993 and regular from 29.11.1995.

6. In opposition, respondents Nos. 1 and 2 in their counter-affidavit have stated that the petitioner was not found due for regularization as Lecturer

w.e.f. 03.09.1993 because under relevant rules, i.e., Jammu and Kashmir Education (Gazetted) Service Recruitment Rules, 1992, minimum

experience as a Teacher should be 3 years for the post of Lecturer. Therefore, the petitioner was not eligible for regularization as Lecturer w.e.f.

03.09.1993 as she did not possess requisite three years' experience as Teacher. The same is the stand of respondent No. 3.

7. In the rejoinder filed by the petitioner, relevant entry of Schedule-II Clause IX of Jammu and Kashmir Education (Gazetted) Service

Recruitment Rules, 1992 has been quoted which provides mode and manner for filling the post of Lecturer, i.e., (i) 50% by direct recruitment and

(ii) 50% by promotion from masters in the grade of Rs. 1300-2500 and in case no suitable candidate is available from Master's Grade, then

promotion from Sr. Teachers (1075-2325) and if no suitable candidate is available then promotion from General Line Teachers (900-1830) with

at least three years experience as a Teacher.

8. While considering the rival submissions, it is quite clear that Teacher can be

considered for promotion to the post of Lecturer in case of non-availability of suitable candidate from Master's grade or Senior Teachers. When promotion is granted with retrospective effect, means in the year 1993, it appears that no candidate from Master's grade or from Senior Teacher was available. Therefore, it is only General Line Teacher having three years' experience, who was to be considered. On the own showing of the petitioner, the petitioner was appointed as Teacher on 18.11.1992 and was promoted as Master in the year 1994. In the year 1993, the position was to be considered as that of Teacher when so considered in the year 1993, she did not possess the requisite three years' experience, as such, could not be promoted w.e.f. 03.09.1993. As compared to the petitioner, respondent No. 3 was appointed as Teacher in the year 1985, possessing requisite experience.

9. Respondent No. 3 in the representation filed before official respondents and in the reply as filed, has explained the delay in filing the representation and it is in view of that explanation tendered by respondent No. 3, respondents Nos. 1 and 2 have considered her representation and found merit in the same, as such, have issued order impugned dated 23.04.2013. By issuance of order impugned, respondents have rectified the error of their own, which has in fact advanced the cause of justice. Service particulars of the petitioner and respondent No. 3 have been noticed in the order impugned as under:-

10. It has also been noticed that the petitioner was given proper chance, on opposition she had submitted reply on the basis of which it has been found that she was not eligible for regularization as Lecturer (Mathematics) w.e.f. 03.09.1993 on notional basis as her regularization was effected prior to her appointment as Master. The order impugned issued by the Secretary to Government, School Education Department on 23.04.2013 in the factual background is a step taken for rectifying the wrong. How the petitioner can claim regularization w.e.f. 03.09.1993 when on such date in accordance with applicable service rules, i.e., Jammu and Kashmir Education (Gazetted) Service Recruitment Rules, 1992, she was not eligible lacking requisite three years' experience as General Line Teacher. Her position on becoming Master will not affect the same because her position was to be considered in the year 1993 as that of Teacher not as that of Master to

which she was promoted in the year 1994. The contention of learned counsel for the petitioner that action of respondent No. 3 is belated, in support relied upon AIR 1988 SC 662 , Syed Riyaz Qadiri and Others Vs. State and Others, and Amarjeet Singh and Others Vs. Devi Ratan and Others, . The said judgments are not applicable because the petition has not been filed by respondent No. 3. Respondent No. 3 has filed representation before the official respondents, who have considered the same and in light of the explanation tendered by respondent No. 3 and in position of facts, the error has been rectified. Therefore, this petition merits only dismissal, as such, is dismissed along with connected CMA Nos. 1414/2013, 2600/2013 and 3887/2013.