

(2019) 03 J&K CK 0161

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeals (LPASW) No. 24 Of 2019

Rafat Tabasum

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Jammu & Kashmir Civil Services Regulations, 1956 — Section 34B

Citation : (2019) 03 J&K CK 0161

Hon'ble Judges : Dhiraj Singh Thakur, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : S. H Thakur, Mir Suhail

Final Decision : Disposed Off

Judgement

1. The present Letters Patent Appeal has been preferred against the judgment and order dated 14.11.2018 passed by the learned Single Judge in SWP No.610/2014, whereby the Writ Court has rejected the prayer of the petitioner for regularization against the tenure post of Demonstrator.

2. Briefly stated, the material facts are as under:

3. Petitioner came to be appointed as a Tutor Demonstrator in the department of Anatomy vide order dated 03.07.1999 in the Sheri-i-Kashmir Institute of Medical Sciences Medical College, Bemina, for a tenure of two years. Experience gained by a candidate as a Tutor Demonstrator or as a Registrar in the Medical College furnishes eligibility to such a candidate to compete for a teaching post in the Medical College. In the ordinary course, the

petitioner would have no right to continue on the said tenure post of Tutor Demonstrator beyond the period of two years, however, the petitioner had other designs. It appears that even then the petitioner's tenure was to end after two years i.e. in July, 2001, she obtained extensions against the said post from time to time and continued as such till 2005 when she was finally relieved on 16.12.2005.

Civil Suit in the court of 4th Additional District Judge, Srinagar:

4. The Sher-i-Kashmir Institute of Medical Sciences issued an advertisement notice dated 21.04.2005 inviting applications from eligible candidates' inter-alia for the post of Tutor Demonstrator in the Anatomy Department which post earlier had been held by the petitioner. A suit was thus filed by the petitioner in the court of 4th Additional District Judge, Srinagar, for putting on hold the advertisement (supra) to the extent of the post which had been held by her. The Court below vide order dated 07.05.2005 granted an interim relief in favour of the petitioner restraining the authorities from terminating her tenure engagement. Later on, vide order dated 13th May, 2005, the interim relief granted was vacated which led to her ouster finally on 16.12.2005. The post vacated by her was thus filled up from the panel prepared by the Institute.

SWP No.615/2006:

5. The petitioner then filed SWP No.615/2006 in which the writ court vide order dated 13th November, 2006 while admitting the writ petition directed as under:

"Reply has already been filed.

Admit. Respondents' counsel acknowledges post admission notice. He may filed counter affidavit within six weeks from now. Rejoinder, if any, within three weeks thereafter. In the meanwhile, respondent-department may also examine/ explore the possibility of adjusting the petitioner against any available vacancy in any lib of the department without adversely affecting the rights of other persons who are not party before this Court."

6. Equipped with the interim order passed in the aforementioned writ petition, it appears that right from 2006 when the writ petition was filed, a lot of political pressure was brought to bear upon the authorities in the Sher-i-Kashmir Institute of Medical Sciences. Some of the authorities which have been approached by the petitioner and the recommendations elicited from them are as under:

Date

Name of the Dignitaries who recommended for Implementation of Hon'ble High Court orders

08.12.2006

Minister Health and Medical Education Department.

24.08.2009

Chief Minister's Office.

10.09.2009

Chief Minister's Office Reminder 1

12.10.2009

Chief Minister's Office Reminder 2.

17.11.2009

Advisor to Chief Minister.

22.02.2000

Rajha Sabha Secretariat Delhi.

03.03.2001

Prime Minister's Office New Delhi

10.10.2009

Minister Medical Education Department

03.04.2011

Deputy Chairman Rajha Sabha Delhi.

05.09.2011

Minister Medical Education Department.

18.10.2011

Minister Medical Education Department

26.12.2001

Minister Medical Education Department.

7. It appears that the authorities in the SKIMS could not face the pressure brought to bear upon them and finally gave in when an understanding appears to have been arrived at between the petitioner and the said authorities as can be seen from a communication dated 23rd January, 2013 addressed by Dr. Syed Khurshid, Consultant Academics in the SKIMS Medical College, Bemina, to the petitioner whereby the petitioner was assured of engagement in the following terms:

"You are hereby directed to withdraw the court cases what so ever against the SKIMS-MC. You will be engaged on some terms & conditions in any limb of the SKIMS-MC."

8. Immediately thereafter, on 26th February, 2013, an application was filed by the petitioner withdrawing the writ petition (SWP) bearing no.615/2006.

Order dated 9th March, 2013 followed immediately thereafter issued by the Principal, SKIMS Medical College, Bemina, appointing the petitioner in the Department of Physiology on tenure basis as a Tutor Demonstrator for a tenure of one year. The order specifically stated that it would not confer any right on her

to claim continuance of further extension against the said post. She was also required to furnish an undertaking duly attested by Judicial Magistrate Ist Class.

The tenure so prescribed thus had to come to end on 9th March, 2014. However, vide order dated 20th March, 2014, post-facto sanction was granted to the extension of tenure engagement of the petitioner by three months or till interview for the post occupied by her were held.

SWP No.610/2014:

9. This petition was filed by the petitioner in March, 2014, in which it was asserted that on account of petitioner having worked against the post of Demonstrator, she had not only become ineligible to secure appointment in the State Services but a right had accrued to her to seek regularization against the post of Tutor Demonstrator. It was stated that the petitioner had every right to continue against the post till she attains the age of superannuation.

10. The writ petition, upon having been considered by the writ court, was dismissed vide judgment and order impugned dated 14th November, 2018 and hence the present Letters Patent Appeal.

11. Counsel for the appellants assailed the judgment and order impugned on the ground that the post of Tutor Demonstrator was not a tenure post at all. Reliance is placed upon a Government order bearing No. 24-IMS of 1999 dated 20 th July, 1999, whereby sanction was accorded to creation of posts inter alia those of Registrar/ Demonstrators/ Tutors. With reference to the said order, it was sought to be highlighted that the posts were regular posts and were not declared as tenure posts.

12. This argument on the face of it is fallacious. Section 34-B of the Jammu & Kashmir Civil Services Regulations defines a tenure post as under:

"34-B Tenure Post means a permanent post which an individual Government servant may not hold for more than a limited period."

13. A reference to the order of engagement as Tutor Demonstrator issued in the year 1999 clearly indicates that petitioner was to occupy the post for only two years in the department of Anatomy. No doubt the post which was created is permanent but it becomes a tenure post because of the limited and specific period for which an incumbent is permitted to occupy the same.

14. The rights of an appointee/incumbent against a tenure post came to be considered by the Apex Court in Dr. L. P. Aggarwal v. Union of India,: 1992 SC 1872, and it was held that a tenure means a term during which an office is held and that once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable reasons. Such a person, it was held, does not superannuate, he only goes out of the office on completion of his tenure.

15. A lot of emphasis was laid by the learned counsel for the appellant on the

judgment in *Neena Gupta v. State and others* : 2001 KLJ 477 rendered by a Single Bench of this Court. The learned Single Judge while interpreting Rule 34-B of the J&K Civil Service Regulations in regard to the post of a Demonstrator held as under:

"19..... It is accordingly urged that if the definition of 'tenure post' as given in R 34 B of the Civil Services Regulation is taken into consideration, then it would mean a permanent post which an individual Government servant may not hold for more than a period limite in the order of appointment. It is on this basis and also on the basis of plea taken in para 16 of the petition, it is urged that the tenure of the petitioner cannot be limited and she cannot be ousted. Infact, the prayer made is that she should be treated as a permanent demonstrator as she being the only non medical increment is entitled to continue in terms of R. 5(b) of the rules of 1979 referred to above.

20. I am of the opinion that the argument put across the petitioner deserves to be accepted. Her appointment is apparently under the rules of 1979. Her claims that she is within the limits prescribed in the rules above i.e. being a non medical Demonstrator, she should have been appointed permanently, is an argument which deserves to be accepted. The need is permanent. The practice of appointing a person for a limited tenure would not be in consonance with the public policy....."

16. With respects, the finding recorded by the learned Single goes contrary to the established law on the subject of tenure appointments and in total ignorance of the judgment rendered by the Apex Court in *Dr. L. P. Aggarwal v. Union of India*. We, accordingly, hold that the said judgment and order does not reflect the correct law and is thus held to be per incuriam.

17. The entire process of the claim of regularization of the petitioner against the tenure post of Demonstrator defies logic and is contrary to the settled principles of service jurisprudence of tenure appointments. The writ court has rightly rejected the prayer of the appellant for such a regularization. The judgment and order to that extent is perfectly legal and thus deserves no interference.

18. Even when the writ court in the impugned judgment and order rejected the prayer of the petitioner/appellant for regularization, yet while disposing of the writ petition, the writ court proceeded to record as under:

"19..... Resultantly, no ground is made out for issuance of such direction. Petition is, accordingly, held liable for dismissal, as such, is dismissed. This judgment, however, shall not come in the way of the respondents in considering the case of the petitioner in any other limb of the Organization in terms of the policy, if any, in vogue or adhered to till date vis-à-vis similarly situated persons, on the merits of the case of the petitioner herein and on such consideration, the age factor may also be borne in mind."

19. We, however, feel that such a direction is capable of being misused by the

appellant considering the fact that a similar direction was passed in SWP No.615/2006 which was used as a pressure point by the appellant to seek re-engagement as a Tutor Demonstrator.

20. We, accordingly, while upholding the order of the dismissal of the writ petition by the writ court, set-aside the observations/ directions issued by the writ court granting liberty to the respondents to consider the case of the petitioner for adjustment in any other limb of the Organization.

21. Disposed of accordingly.