
(2001) 11 J&K CK 0036
In the Jammu And Kashmir High Court
Case No : LPA(SW) No. 300/1998

Rajni Rani

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 385 : (2002) 3 SCT 842

Hon'ble Judges : H.K.Sema, C.J and S.K.Gupta, J

Bench : Division Bench

Advocate : Subash Bhat, Anil Sethi, Advocates appearing for the Parties

Judgement

1. This appeal has been pending since 1998 and is accordingly admitted to hearing.

2. We have heard Mr Anil Sethi, counsel for the appellant as well as Mr Subash Bhat, SCGSC, for the respondents.

3. This appeal is directed against the judgement and order dated 1491998 passed by learned single judge in SWP No: 57/1995. By the aforesaid

order, the learned single judge while dismissing the civil rule has made the following observations:

In view of the admitted facts explained hereinabove, there is no merit in this writ petition which is accordingly dismissed. Interim order passed on

3rd February, 1994 (3.2.1995) shall stand vacated forthwith. Before parting, it may be noticed that learned counsel appearing for the petitioner

urged that vacancies are available in the office of respondent at Jammu. If that be so and in case the petitioner qualifies the requisite test and is

eligible in accordance with the recruitment rules, then her case will be considered by the respondents as per law.

4. The facts leading to the filing of the present appeal are somewhat pathetic and are recited briefly.

5. The appellant was appointed by order dated 1611991 to the post of Stenographer in the office of Assistant Commissioner of Income Tax,

Jammu for a period of 89 days. It would appear that even after the expiry of the period of 89 days, the appellant continued on the post and

pursuant to para 3 of the circular, under which, a scheme has been formulated for regularising the adhoc employees, she appeared in the test which

was conducted in 1993 for regularisation of her services. She, however, could not succeed in the said test, resulting in the termination of her

services by an order dated 19121994. Being aggrieved, the appellant preferred SWP No. 57/1995, praying interalia for regularisation of her

services. It is also the case of the appellant that the concerned authority recommended the regularisation of her services by communications dated

10th January, 1995, 4th January, 1995 and 30th May, 1994. On the application being filed, this court granted an interim stay on 3021995,

allowing the appellant to hold the post of stenographer till her writ petition stood dismissed on 1491998.

6. Against the order of learned Single Judge dated 1491998, the present Letters Patent Appeal has been preferred and this court on 6101998

granted interim order. By virtue of the order passed by this on 6101998, the appellant is still holding the post of stenographer, to which post she

has been appointed on 611991, till date.

7. In the background of the aforesaid facts, let us now examine the interse merit of the parties.

8. It is contended by Mr Subash Bhat, that the appointment of the appellant was initially for a period of 89 days, that too on adhoc basis. She

faced the test conducted in 1993 for regularisation of her services and she failed to qualify herself and, therefore, her service has been done away

with by order dated 19121994. The counsel for the respondents further urged that her continuance on the post is because of various interim orders

obtained by her and this cannot be termed that she has been allowed to continue in service by the respondents. At the same time, it has been urged

by Mr Anil Sethi that by now she has been serving in the post for almost eleven years and if she is thrown out of her service, she could not secure

another employment as by now she has become age barred for applying to a fresh post.

9. Admittedly her first appointment was for a period of 89 days and that too on adhoc basis. Even after the expiry of 89 days, she was allowed to

continue in her post by extending her adhoc appointment from time to time up to 1993, when she faced regular test and failed to come out.

10. While it is true that she has been continuing in the post because of various interim orders obtained by her from this court, one should not forget

the facts that the appellant has been now continuing in the post for the last eleven years. In normal circumstances, a Government servant seeking

regularisation of his/her service must face the interview/test conducted by the authority. On the other hand, it appears from the record that by

various circumstances, the case of the appellant was also recommended for regularisation by the concerned authority. This has been noticed by the

learned single judge in the impugned judgement as well.

11. After allowing her to continue in the post for almost eleven years (although the continuation appears to be under various interim orders of the

court), it cannot be said at this stage that her appointment was only for 89 days and that too on adhoc basis and since she could not qualify herself in

the examination, her services can be done away with, as sought to be done by order dated 19/12/1994. Doing away with the services of an

incumbent after putting about eleven years, as in the present case, has its chained reactions. By now the appellant must be having a family with

children to feed. In such a situation, school going children will suffer. It is also to be noticed that by now she must have become age barred and if

she is thrown out of the service at this stage, she would not be able to secure another employment. Keeping this view in mind, if the appellant's

service is disturbed at this stage, she would be virtually thrown out to the street with no alternative means for survival.

12. In the backdrop of the aforesaid circumstances, we are of the view that the present case need not to be examined only from the point of legal

aspect. In such a situation, a human element is involved and equity, justice and fair play must have a greater role to play. We are, therefore, of the

view that it will be cruel to throw the appellant out of the job at this stage simply because she could not qualify herself in the test conducted in

1993. We say this because even if after she failed to qualify herself in the test conducted in 1993, she has been allowed to continue till date,

ofcourse because of various orders passed by this court.

13. It must be grasped that the recommendations for regularization of her services has been made by the concerned authority by letter dated 30th

May 1994, 4th January, 1995 and 10th January 1995 certifying that she is sincere, efficient and deserved to be regularised are all subsequent to

1993 when she appeared for the test and failed to qualify herself. It would, therefore, appear that she is now qualify herself for regularisation and

this has virtually rendered the disqualification incurred in 1993 otiose.

14. At the time of hearing of this appeal, Mr Anil Sethi has brought to our notice communications dated 1392001 and 1492001 indicating vacancy

position in the post of stenographer. From the aforesaid communications, it would clearly appear that there are four posts of stenographers

Grade III in existence. If that is so, there will be no difficulty for the respondents to implement the direction which we are going to issue. Accordingly

this appeal is disposed of with the following directions.

a) The respondents shall conduct another test/examination of the appellant within a period of three months from the date of receipt of this order.

Till such time that test/examination is conducted by the respondents, the appellant shall be allowed to continue in the post, she is holding.

If the appellant succeeds in the test to be conducted by the respondents, she shall be regularised in the post held by her. However, if the appellant

fails to succeed in the test to be conducted by the respondents, the respondent is at liberty to pass any order as deemed fit and proper in the facts

and circumstances of the case.

15. We make it clear that while conducting the test, the appropriate authority shall also take into consideration the service rendered by the

appellant and the experience gained by her in the field for the last eleven years, as has been observed by us.

16. With the aforesaid directions, this appeal is disposed of.