
(2004) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 688 Of 2004 and CMP No. 1130-M Of 2004

Ram Pal Sharma, Dr.and others

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Citation : (2005) JKJ 643 Supp : (2006) SriLJ 308 : (2006) 1 SriLJ 308

Hon'ble Judges : Y.P.Nargotra, J

Bench : Single Bench

Advocate : Surinder Kour, Anil Sethi, Advocates appearing for the Parties

Judgement

1. There is deficiency of Lecturers in various disciplines in Government Colleges. During the year 19992000, 20002001,20012002,2002, 2003

and 20032004 contractual appointments with the approval of the Administrative Department of the Government of Jammu and Kashmir were

being made. Under the said arrangement, the petitioners in the present writ petition were also appointed on contract basis for the academic

sessions ending on 31 3 2004 at the consolidated salary of Rs. 8000/ P.M. The contract of the petitioners has already expired and thereafter, they

are not continuing in service under the said arrangement. The petitioners have filed the present writ petition seeking direction to the respondents for

the following relief:

I) to consider the case of the petitioners for confirmation/permanent adjustment/regularisation against the posts of Lecturers in various disciplines

in Govt. GGM. Science College, Jammu, Govt. College for Women, Parade Ground, Jammu, Govt. College for Women, Gandhi Nagar, Jammu,

Govt. Degree College, Rajouri and Govt. Degree College, Doda, where the petitioners are presently working since 2000, 2001, 2002 and 2003

respectively, OR in the alternative to allow the petitioners to continue to work on the posts of lecturers on which the petitioners are

working/appointed in the academic arrangement on consolidated salary of Rs. 8000/ per month till such time the posts are filled up by the

competent authority, by issuance of Writ of Mandamus; and

ii) restraining the respondents to disturb the petitioners from the posts of Lecturers against which the petitioners are working and restraining the

respondents to replace the petitioners by any other adhoc employees or making any temporary arrangement on consolidated basis, by issuance of

Writ of Prohibition; and

iii) to give equal pay to the petitioners on the basis of doctrine of equal pay for equal work as is being paid to

the regularly paid employees or to the Lecturers who are working in the University of Jammu on consolidated basis, by issuance of a Mandamus;

and

iv) to issue any other writ, order or direction which the Hon'ble Court may deem just and proper in the facts and circumstances of the case in

favour of the petitioners and against the respondents with costs.

2. The writ petition of the petitioners was entertained on 842004 and a direction to the following effect was issued:

Meanwhile, till further orders, it is ordered that if the respondents do not require the services of petitioners, they shall be at liberty to dispense with

their services. However, petitioners shall not be replaced by another adhoc arrangement.

Aggrieved by the interim direction passed by this court, the Respondents 1 to 3 and 8 who are State of Jammu and Kashmir, through Chief

Secretary, Government of JandK, Civil Sectt., Jammu, Commissioner cum Secretary to Govt., Higher Education Department, Govt. of JandK, Civil

Sectt., Jammu. Director Colleges, Jammu and Principal, Govt. Degree College, Doda, have filed an application seeking vacation of the interim

directions issued by this Court. It has been contended by these applicants that the engagement of the petitioners was not on ad hoc basis but was

made for the academic year 20032004. It is a practice that in Higher Education Department that Principal GGM Science College, who happens to

be the Nodel Officer, prepares the panel every year from amongst the eligible candidates on the basis of merit and keeping in view the

requirements of different colleges falling in Winter Zone and Summer Zone respectively and such candidates, strictly in order of merit, are engaged

on contract basis for the academic session. After completion of the session, their services are brought to an end and no right accrues to them. In

the affidavits given by the petitioners for appointment on contractual basis, it has been agreed by them that after the expiry of the statutory period

of engagement, they shall not ask for extension of engagement as a matter of right nor shall cls. for permanent adjustment in the Higher Education

Department on account of the contractual engagement.

3. It has also been submitted by respondents that College of Respondent No.8 is situated in Winter Zone where the admissions are already over

and the session has already started. But in absence of the teachers very grave prejudice is being caused to the students as regards the petitioners, it

is submitted that the petitioners whose term expired in 2004 have since been relieved and no longer are in position. The respondents seek

modification of the order for enabling Respondent No.8 to over come the difficulty being faced in view of the interim order of the court.

Mr. Sethi, learned AAG appearing on behalf of Respondents seeks permission, and craves indulgence of this Court to treat CMP NO:

1130M/2004 for vacation of interim direction dated 842004, as objections to the main writ petition as well as application for interim relief, in order

to expedite the disposal of this case.

4. The prayer made by Mr. Sethi, learned counsel for the respondents is innocuous, hence the same is allowed. CMP NO: 1130M/2004 is treated

as objections to the writ petition as well application for interim relief.

5. Heard learned counsel for the parties. Petition is admitted to hearing and is taken up for final disposal with the consent of learned counsel for the

parties.

6. Mr. Sethi, learned counsel for the Respondents submits that since the petitioners have already been relieved from their contractual service after

expiry of their term, they have no right of appointment/reengagement and they

cannot be treated at par with ad hoc employees.

7. Whereas, Mrs. Koir learned counsel for the petitioners submits that in view of the judgement dated 8102003 rendered in SWPNO: 866/

2003, entitled Jaswant Singh Khaira V. State of JandK and others, the petitioners are entitled to be allowed to continue till the vacancies occupied

by the petitioners are filled up on substantive basis by the competent authority.

8. In the aforesaid judgement, a learned Single Judge of this Court has observed:

The only relief has been debated before me is whether the petitioners can be allowed to continue till the vacancies occupied by them are filled up

on substantive basis by the competent authority. Petitioners' engagement is temporary and on consolidated basis, that too for spell of 60 days and

their continuance thereafter with intermittent breaks after the expiry of every spell of 60 days. Mr. Johal has contended that the petitioner have

been engaged on contract basis and after accepting their contractual engagements. They also submitted affidavits that after the expiry of period of

engagement they shall not seek extension as a matter of right.

Admittedly petitioners have been allowed to work after the initial spell of 60 days and number of extensions have been granted by the respondents

on their own. It is under these circumstances, that petitioners are continuing even now. The appointments orders, whereby these petitioner's were

engaged, and even extension orders do not indicate that their engagement is on contract basis. Though these orders specifically mention that they

are engaged on academic arrangement on consolidated basis.

Be that as it may the fact remains that the petitioners are continuing for the last so many years. If the respondents do not require their services, they

are at liberty to dispense with the services of petitioners. However, in the event the respondents need persons to impart necessary

training/education to the students, the petitioners, who are already working and have gain sufficient experience cannot be replaced by adhoc

arrangement. As and when the vacancies are filled up by the competent authority and substantive appointments are made. The petitioners will have

no right to continue even for a day. However, the settled proposition of Jaw is that adhoc employees, even if the respondents do not need services

of some of the adhoc employees amongst the petitioners, the doctrine of first come last go and last come first go will apply.

9. The judgement relied upon by Mrs. Kour is clearly distinguishable as in that case it was not clear from the appointment orders or even from the extension orders that the engagement of the petitioners was on contractual basis. In the present case admittedly the case of the petitioners is that they have been appointed/engaged on contractual basis. In that case the petitioners were continuing in service whereas in the present case the period of contract of the petitioners has expired and they stand relieved from posts. There is distinction between contractual appointment and ad hoc appointment. In case of Mufti Imtiaz Vs. State of JandK and others, reported in 2003(1) SLJ 203, a Division Bench of this court observed:

It is not in dispute that appellant has been appointed for a period of one year on consolidated salary of Rs. 5000/ or till such time the post is filled

up under rules, whichever is earlier, The appointment of the appellant is not governed under Rule 14 of the Jammu and Kashmir Civil Services

(Classification, Control and Appeal) Rules, 1956(hereinafter referred to as"" the CCA Rules) which provides for filling up of posts on ad hoc basis

for a period of three months extendable up to nine months. The appellant has been appointed for a period of one year, therefore, it cannot be said

that the appellant has been appointed on adhoc basis in exercise of the power under Rule 14 of the CCA Rules. The appointment of the appellant

is contractual and has elapsed by efflux of time. The terms of the appointment have been accepted by the appellant. The stipulation contained in the

appointment order that ""the appointment is for one year or till such time the post is filled up under rules, which ever is earlier"" has to be given a

harmonious construction, which means that in case the post is filled up before the expiry of the period of one year the appointment of the appellant

will come to an end on the happening of selection against the post. Therefore, the argument of the learned counsel for the appellant the appointment

of the appellant was to continue till the post is filled up by selection under rules has no substance. The stipulation 'whichever is earlier' postulates

that incase the appointment on the post is made on selection within one year the appellant would have no right to continue till the completion of one

year. The expression 'or till such time' cannot be said to mean that the appointment will be treated as extended beyond the period of one year as

the appointment order has not been couched in such a language. The stipulation has to be read in conjunction. The words 'whichever is earlier'

places rider of reducing and curtailing the period of appointment of the appointee, if the post is filled up under rules even during the currency of

the period of appointment mentioned in the order. Filling up of the post under rules further does not mean only by selection of a suitable candidate,

it may be filled up even by transfer.

6. Learned counsel for the appellant has placed reliance on the judgements of this Court in *Mst. Mehbooba Akhtar Vs. State of JandK* 1988SLJ

138, *Mohd Yousuf Pukhta Vs. State of JandK*, 1989 SLJ 62 and *Khalida Vs. State of JandK* 1989 SLJ 337 to impress upon this Court that the

stipulation in the appointment order 'whichever is earlier' has no significance. The judgements cited at the Bar besides being Single Bench

judgements, deal with the case of adhoc appointments and not contractual appointment. Adhoc appointment is governed by statutory rules

whereas the contractual appointment is governed by the terms of the appointment order accepted by the parties. It is accepted by the appellant

that his appointment will be for one year or till it is filled up under rules, whichever is earlier, which means that if it is filled up before the completion

of the period of appointment of one year, the appointment of the appellant from the date of filing up of the post will cease to operate.

10. Learned counsel for the petitioners submits that this judgement has no application in the present case. The appointment referred to in the

judgment is adhoc appointment made in the subordinate service and not to Gazetted level post to which rules of CCA Rules have no application. I

am not in agreement with the contention of learned counsel for the petitioner. The nature of the appointment whether Gazetted or NonGazetted is

not relevant in understanding the ratio of the judgement. The ratio of the judgement of the learned Division Bench is that a person appointed on

contractual basis has no right to seek continuance in service after expiry of the period of contract. Even if order of contract or contractual

appointment envisages that appointment will continue till the regular selection is made, the contractual appointment in that case comes to an end on

the date when the regular appointment is made, even before the expiry of the contractual period. After the expiry of period of contract such an

employee has no legal right to continue. In the present case, admittedly, the contract period of the petitioners has expired. The petitioners have

been ousted from the job. They have no right to continue on the basis of the same contract, which is not in existence. The petitioners, therefore, cannot be directed to continue or reengage the petitioners and not to replace them by another temporary arrangement. In my view, such an embargo interferes with the right of the employer to make contractual appointment on the need basis. The petitioners can have only right of reconsideration for their appointment, in case the respondents are to again make the contractual appointments.

11. In view of the consensus arrived at between learned counsel for the parties, this petition is disposed of with a direction to the respondents to make fresh contractual appointments for which, if any panel is to be prepared, the case of the petitioners shall also be considered for appointment depending upon their experience, merit and suitability alongwith other eligible candidates who may apply for being included in the panel for appointment on contractual basis. Connected CMP shall also stand disposed of.