
(1998) 06 J&K CK 0029
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 772/1995

Rita Sharma

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 01-06-1998

Acts Referred:

Citation : (1999) 1 SriLJ 18 : (1999) SriLJ 18

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : M.M.Baru, D.K.Khajuria, Advocates appearing for the Parties

Judgement

1. The petitioner came to be appointed as teacher in leave arrangement way back in the year 1986 and is still continuing. The background in which

she was appointed has been succinctly summarised by the 4th respondent in his letter dated 11.08.1992. to the address of District Education

officer, Rajouri, which is reproduced as under:

the factual position of the case is submitted here under:a). Shrimati Rita Sharma was appointed as a teacher in the leave vacancy of Smt. Swarn

Lata Master in Govt Girls Middle School Nagora (Sunderbani} for different spells of period as indicated below:

i). Two months from 16.10.1986 to 16.12.1986 vide Add. DEO Rajouri's No: 6631 dated 15.10.1986 and TEO Sunderbani's order No:

501503 dated 16.10.86.

ii). One month from 5.1.1987 to 4.2.1987 vide DEO Rajouri's endt No:8692 dated 8.12.1986 and TEO Sunderbani's order No:67779 dated

11.12.1986.

iii). Two months from 5.2.1987 to 3.4.1987 as per orders of the Hon'ble

Education Minister conveyed vide DEO Rajouri's Endt. No: 13602

dated 12.1.1987 and issued vide TEO Sunderbani's order No:83436 dated 30.1.87.

iv}. As per the order of the Hon'ble Agriculture Minister conveyed vide DEO Rajouri's No: 14721 dated 14.2.1987, Shrimati Sharma was

allowed to continue as teacher vide this office order No:91014 dated 20.3.1987 till the rejoining of Smt. Swarn Lata against whose leave vacancy

she was appointed, with a break of one day after every 89 days,

b). The service of said candidate who was already working as a teacher in long leave arrangement of smt. Swarn Lata as stated at (iv).....ousted

vide TEO Sunderbani's order No:43842 dated 4.1.1989 (copy enclosed for ready reference)

c). Smt. Rita Sharma filed a writ petition No: 117/89 in the Hon'ble High court of J and K against her termination order. The case is subjudice in

the Hon'ble High court.

d). Again she was allowed to continue in the leave arrangement in the said school vide TEO Sunderbani's order No:46164 dated 2.2.1989, in the

light of directions issued by the Hon'ble High Court Jammu and Kashmir vide No:1825 dated 25.1.1989 from 27.1.1989 (both the copies

attached).As such, keeping in view the directive of the Hon'ble High Court, the candidate is continuing in the leave arrangement after giving one

day break after the expiry of 89 days and the disallowing the winter break, summer vacations and the other holidays allowed to the Education

Department.

It is further added that Smt.Swarn lata Master who was on long leave had applied for premature retirement w.e.f. her pension case has already

been submitted to your office.... However, the 4th respondent by his order dated 22.06.1995 directed as under

Smt.Rita Sharma appointed on long leave arrangement as per court order dated 17.1.1993 against Smt. Swarn Lata (master) from time to time

by giving one day break after every 89 days is hereby terminated from the said leave arrangement w.e.f. 6.6.1995 in pursuance to the

commission/Secretary to Govt Education Department No: Edu/ 1 Apph/294/5411 dated 21.4.1995 and Director School Education Jammu's

No:DSEJ/Writ/903940dated 19.5.1995, as the post of Master G.M.S Nagora

against which she was working had already been filled up on substantive basis.

2. The petitioner challenges the order of her termination on the ground that her appointment in this leave arrangement was in essence on adhoc appointment on which she was continuing on the date Government order No;1220GAD of 1989 dated 11.09.1989 came to be issued which entitles her regularisation.

3. In the counter filed on behalf of the respondents, it has been stated that leave arrangement is not adhoc appointment and as such she is not entitled to her regularisation. It is also submitted that the petitioner was continued in service in view of the judgment of this court in writ petition No:117 of 1989 filed by the petitioner which was decided on 12.07.1993, the operative portion of which reads as under:

In the absence of objections and in view of the fact that the petitioner was allowed to continue to hold the post in leave arrangement, this petition

is disposed of with the direction to the respondents to permit the petitioner to hold the post of teacher in the leave arrangement of Smt. Swarn lata

teacher, GMS Nagora subject to the conditions of giving one days break after every 89 days in terms of the rules as incorporated order AnnexC.

This order shall however not prevent the respondents from filling the post substantively if the service of Smt. Swarn Lata is terminated at any stage.

In view of this direction, the impugned order in so far as it directs the ousting of the petitioner is hereby set aside.

4. The question involved for consideration is, whether the petitioner was"" appointed on adhoc basis or otherwise?

It cannot be disputed that adhoc appointment can also be made against a vacancy of a person who proceeds on long leave. Otherwise the

appointment against leave vacancy could be made coterminus with the termination of the leave. In this case, admittedly the petitioner was

appointed against a vacancy of a teacher who had proceeded on long leave preparatory to retirement, as is evident from the facts stated in the

counter, admitting that Smt. Swarn Lata had sought premature retirement with effect from 18.02.1989. Moreover, the letter dated 11.08.92

(Supra) indicates that the petitioner continued to be appointed only for 89 days with a break of one day after every spell of 89 days. This means

that her appointment was on adhoc basis though against arrangement. Therefore, her case is squarely covered under Govt order No: 1220GAD of

1989 dated 11.09.1989 because she was continuing in service in terms of Para I of the said order. Since the post became available subsequently

she had acquired a right to be regularised against that post. It was, therefore, not an appointment against leave arrangement simplicitor but

appointment on adhoc basis against a clear vacancy, though absent teacher holding a lien until acceptance of her resignation. The petitioner is thus

entitled to regularisation in terms of Govt order dated 11.09.1989 and the attempts made to terminate her when the vacancy became available is

against the spirit of said Govt order.

5. In view of the above, this petition is allowed and the respondents are directed to regularise her services in terms of Government order

No:1220GAD of 1989 dated 11.09.1989.