

(2023) 02 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1851 Of 2020

Saif-Ud-Din Mir

APPELLANT

Vs

University Of Kashmir & Ors

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 226

Citation : (2023) 02 J&K CK 0018

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Altaf Haqani, Malika, Tasaduq. H. Khawaja

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. To appreciate the gravamen of the controversy involved in the instant petition, exposition of facts in brief are detailed out hereunder:

- The respondent-University of Kashmir (for short, 'University') wherein the petitioner has been working as Assistant Registrar advertised vacant positions of Deputy Registrars/Deputy Controllers of Examination vide advertisement notice/s dated 24.10.2003, 18.2.2005 and 25.6.2007 for filing up the same in the internal quota and the petitioner being eligible thereof applied and consequently was called for interview scheduled on 13.10.2008 which interview, however was not conducted and finally the posts not filled up pursuant to the aforesaid advertisement notice/s.
- The petitioner herein along with one co-employee namely Mohd. Yasin Malik came to be appointed against the post of Deputy Registrar/Deputy Controller of Examination against the available post (internal quota) while working as Assistant Registrar/Assistant Controller of Examinations in the University in their own pay and grade for a period of six months in the first instance subject to the payment of charge allowances as admissible under rules in terms of order No.

F(Promotion-DRs) Adm/KU/07 dated 14.12.2007.

- The respondent-University in terms of Order No. F(Promotion-Dy. Reg) Gen-Adm/KU/09 dated 29.01.2009 accorded sanction to the temporary promotion of the petitioner against the post of Deputy Registrar in the pay scale of Rs. 12000-18300 w.e.f. 29.01.2009.
- The petitioner prior to the issuance of the order dated 29.01.2009 is stated to have submitted a representation before the respondent-University along with his above named co-employee for their regular promotion against the post of Deputy Registrar/Deputy Controller of Examinations with a regular scale of pay of Rs. 12000-18300 as also having agitated the issue through Kashmir University Officers' Association before the respondent-University.

A further representation is also stated to have been submitted by the petitioner in this regard separately before the Controller of Examinations on 10.1.2009 requesting therein for consideration of his case for placement in the pay scale of Deputy Registrar/Deputy Controller of Examination w.e.f., 14.12.2007 on account of his ensuing superannuation on 31.1.2009.

- The petitioner superannuated on 31.1.2009 and the respondent-University, however, did not accord consideration to his case for placement in the grade of Rs. 12000-18300 w.e.f., 14.12.2007 i.e. when the petitioner came to be appointed against the post of Deputy Controller of Examinations in his own pay and grade along with his above named co-employee.
- After the superannuation of the petitioner, his above named co-employee came to also be promoted as Deputy Registrar in terms of Order dated 27.5.2009, however, the charge allowances drawn by him while working as acting Deputy Registrar/Deputy Controller of Examinations in terms of order dated 14.12.2007 were directed to be recovered from the arrears payable to him, aggrieved whereof, he filed SWP no. 592/2011 before this Court which came to be disposed of on 16.9.2013 and while allowing the same, the order under challenge in the petition whereunder charge allowances drawn by him were directed to be recovered w.e.f 14.12.2007 came to be quashed.
- The respondent-University complied with the judgment (supra) dated 16.09.2013 earned by the above named co-employee of the petitioner whereby the promotion against the post of Deputy Registrar/Deputy Controller of Examinations came to be given effect to w.e.f., 14.12.2007 and consequently the arrears of pay released in his favour.
- The petitioner though have had prior to his retirement also sought effect to his promotion as Deputy Registrar/Deputy Controller of Examinations from the respondent-University w.e.f., 14.12.2007 instead of 29.1.2009 and had sought the same while submitting representations even after his retirement continued to seek the extension of said benefit from the respondent-University after coming to know about the grant of said benefit to his above named co-employee pursuant

to the directions by this Court passed in SWP No. 592/2011 (supra), which the respondents did not consider resulting into filing of the instant petition by the petitioner.

- The petitioner under the cover and shade of the aforesaid facts thus seeks quashment of order dated 29.01.2009 to the extent of releasing the grade of the post in his favour w.e.f. 29.01.2009 instead of 14.12.2007 as well as release all of the arrears thereof while fixing and drawing his retiral benefits accordingly.

2. Per contra, the respondent-University has filed objections to the petition. It is being inter alia averred therein that the petition is grossly misconceived and that the petitioner is not entitled to any of the reliefs claimed. It is being further averred that the petitioner has projected a cause after ten years and has thrown challenge to the impugned order in the year 2020 and that the petition as such suffers from vice of laches as the delay has not been explained.

It is being further stated in the objections that the petitioner has sought implementation of judgment earned by his co-employee which judgment is in personam and not a judgment in-rem and, as such, the petitioner cannot claim any benefit thereof under the said judgment.

Heard the counsel for the parties and perused the record.

3. Before proceeding to advert to the grievance projected and claim lodged by the petitioner in the petition, it would be appropriate in the first instance to deal with the issue of delay and laches urged by the respondents.

Law is no more res integra that Article 226 of the Constitution confers extraordinary writ jurisdiction on the High Courts to issue prerogative writs for enforcement of the fundamental rights or for any other purpose. Article 226 of the Constitution is couched in the widest possible terms and the Constitution does not place any fetter on the exercise of the said extraordinary jurisdiction rather, it is left to the discretion of the High Court. Every action of State or its instrumentality, which is illegal, in contravention of prescribed procedure, unreasonable, irrational or malafide is open to judicial review and every executive or administrative action of the State or other statutory or public body, legally treated to be authority, which is violative of fundamental right or any statute is open to judicial review. Though the powers of the High Court under Article 226 are discretionary and no limits can be placed upon that discretion, yet, it has to be exercised along recognized lines and subject to certain self imposed limitations and one amongst them being delay and laches which, however, is not an absolute bar more so where delay either has been explained or has been caused by the party raising the same. As regards the lapse of time, that would be considered as constituting delay, it has been consistent view of Courts that no hard and fast rule can be laid down in the matter and each case has to be decided according to its circumstances, without adhering to any fixed period, long or short. It is also an admitted position of law that refusal to entertain a belated cause under Article 226 of the Constitution is only a rule of

discretion and not of law.

4. Keeping in mind the aforesaid principles of law and reverting back to the case in hand, the record bears testimony to the fact that the petitioner upon being appointed as Deputy Registrar/Deputy Controller of Examinations by the respondent-University on acting basis against an available post (internal quota) in terms of order dated 14.12.2007 during his working as such had sought his promotion against the post in question with grade and the matter seemingly has been taken up even by the officials of the Kashmir University Officers' Association on 18.1.2009, so much so a recommendation had been made on one such representation of the petitioner by the Controller of Examinations on 14.1.2009 i.e., prior to the retirement of the petitioner on 31.1.2009 which recommendation is extracted and reproduced hereunder:

"The Vice Chancellor may kindly peruse the application of the applicant Mr. Saif Ud Din Mir (Dy. Controller) and consider his request of placement in the pay scale of Deputy Registrar/Deputy Controller of Examinations w.e.f., 14.12.2007 from the date he was appointed as acting Deputy Registrar/Deputy Controller of Examinations"

5. A further representation submitted by the petitioner annexed with the petition dated 29.1.2009 also lends support to the fact that the petitioner prior to his superannuation has been insisting for his regular promotion as also effect thereof to the same w.e.f. 14.12.007. Another representation forming Annexure-IX with the petition dated 2.5.2018 submitted before the respondent no. 2 in this behalf cannot as well be overlooked wherein the petitioner had sought extension of the benefit as had been extended in favour of his above named co-employee while making reference to his earlier representations submitted by him before the respondents. The petitioner in these facts and circumstances cannot said to have been non-vigilant or else having acquiesced, more so, when the respondents in their reply have nowhere specifically denied the claim having been agitated by the petitioner in the said representation either prior to his superannuation or thereafter.

The failure of the respondents to render any decision on any of the aforesaid representation of the petitioner cannot also be overlooked suggesting that the cause of the petitioner have had been alive and recurring.

Thus, the plea of delay and laches raised by the respondents cannot said to be convincing or tenable more so, in view of the principle of law noticed in the preceding paras that no hard and fast rule can be laid down in the matter and each case has to be decided according to its circumstances, without adhering to any fixed period, long or short. The said plea of delay and laches thus accordingly is rejected.

6. Now coming to the claim lodged by the petitioner in the instant petition that he is entitled to the pay and grade attached to the post of Deputy Registrar/ Deputy Controller of Examinations w.e.f. 14.12.2007 instead of 29.1.2009 and

consequently to the arrears thereof on the lines the respondents allowed in favour of his above named co-employee under and in terms of order dated 16.9.2013 passed by this Court.

7. It is an admitted fact that the petitioner along with his above named co-employee came to be appointed as Deputy Registrar/Deputy Controller of Examinations against available posts (internal quota) initially in their own pay and grade in terms of order dated 14.12.2007 and subsequently the petitioner came to be temporarily promoted against the available post of Deputy Registrar in the pay scale of Rs. 12000-18300 w.e.f. 29.1.2009. It is also not in dispute that the above named co-employee of the petitioner as well came to be promoted against the post of Deputy Registrar/Deputy Controller of Examinations in terms of order dated 27.5.2009 subject to the rider that the charge allowances drawn by him are recoverable which order of recovery came to be quashed by this Court in his petition SWP No. 592/2011 (supra).

8. It is also not being denied by the respondents that the said above named co-employee of the petitioner came to be extended the benefit of promotion without effecting any recovery w.e.f., 14.12.2007 i.e., the same date when the petitioner as well came to be appointed against the post in question on acting basis along with his above named co-employee. The petitioner thus in the aforesaid backdrop formed, in essence, one class with his above named co-employee in the matter qua his initial appointment against the post in question in terms of order dated 14.12.2007. The respondent-University being an Authority under Article 12 of the Constitution thus could not have, in law, by any sense of imagination discriminated the petitioner or treated him differently vis a vis his above named co-employee qua the grant of effect to his promotion on any grounds much less those urged in their objections more so, in view of law laid down by the Apex Court in "Ajay Hasia and Others vs. Khalid Mujib Sehravardi and ors" reported in 1981 (1) SCC 722 wherein at para 16 following has been observed:-

"16. If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification.

Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in E.P. Royappa v. State of Tamil Nadu that this Court laid

bare a new dimension of Article

14 and pointed out that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said :

"The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbled, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa's case and it was reaffirmed and elaborated by this Court in Maneka Gandhi v. Union of India where this Court again speaking through one of us (Bhagwati, J.) observed :

"Now the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

This was again reiterated by this Court in International Airport Authority's case (supra) at page 1042 of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of

classification which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

9. Having regard to the aforesaid principle of law, it is manifest that the respondents have acted in the matter unfairly, unreasonably and arbitrarily having subjected the petitioner to hostile discrimination vis a vis his above named co-employee which inaction of the respondents per se is affront to the concept of equality enshrined in the constitution.

10. In this view of the matter, the writ petition, therefore, deserves to be allowed. Accordingly the petition is allowed and by issuance of a writ of Certiorari, impugned Order No. F(Promotion-Dy. Reg) Gen-Adm/KU/09 dated 29.01.2009 to the extent the same directs promotion of the petitioner in the pay scale of Rs. 12000-18300 w.e.f 29.1.2009 is quashed and consequently by issuance of a writ of mandamus while moulding the relief (B) prayed in the petition, the respondents are commanded to grant the benefits of pay and grade attached to the post of Deputy Registrar/Deputy Controller of Examinations to the petitioner w.e.f 14.1.2007 instead of 29.01.2009 and release all arrears thereof in favour of the petitioner besides fixing and drawing his retiral benefits accordingly.

11. Disposed of accordingly.