

(2018) 12 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 815 Of 2017, IA No. 01 Of 2018

**Sheikh Iftikhar Ahmad APPELLANT@Hash National Institute Of
Technology & Anr**

Date of Decision : 14-12-2018

Acts Referred:

Citation : (2018) 12 J&K CK 0043

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Arif Sikandar Mir, Aabid Bashir Kathoo

Final Decision : Disposed Off

Judgement

1. The petitioner came to be appointed as daily wager in the College Workshop of the Regional Engineering College, Srinagar (hereafter referred to as 'the College') on 17th August, 1983. While he was in service of the College, he responded to an advertisement notice dated 27.12.1993 issued by the Registrar of the College for making selection to the post of Jr. Laboratory Assistant Grade-I in the pay scale of 1200-2040. He was selected for the post but was offered appointment as Jr. Laboratory Assistant Grade-II in the pay scale of 950-1500. This is apparent from the order of his appointment issued by the Registrar, of the College bearing No.776 of 1996 dated 19.04.1996.

2. Feeling aggrieved, the petitioner filed representation on 29.09.1997 before the Principal, of the College for appointing him as Jr. Laboratory Assistant Grade-I w.e.f 1996 and for release of pay scale of Rs.1200-2040 attached to the aforesaid post. When the representation of the petitioner failed to evoke any response from the respondents, he filed SWP No.314 of 2000. This Court vide its interim order dated 31st March, 2000 passed in the aforesaid writ petition directed the respondents-authorities to consider and dispose of the representation of the petitioner for his entitlement to higher grade.

3. It appears that the representation of the petitioner was considered by the respondents and vide order No.422 of 2000 dated 10.07.2000, the petitioner was

placed in the higher grade of Jr. Laboratory Assistant Grade-I. This, however, was done by way of promotion. Subsequently, the order of promotion/placement of petitioner as Jr. Laboratory Assistant Grade-I was kept in abeyance till the petitioner would withdraw his court case. This is apparent from order no.440 of 2000 dated 14.07.2000 appended with the writ petition as annexure P-8. As is apparent, the petitioner did not withdraw the writ petition and as a result whereof the respondents rescinded the order of his promotion to the post of Jr. Laboratory Assistant Grade-I vide Order No.219 of 2001 dated 13.03.2001.

4. The writ petition remained pending for long and on 19.11.2009 the same was dismissed for non-prosecution due to failure of petitioner and his counsel to cause appearance on the aforesaid date. The Court was persuaded to dismiss the writ petition for non-prosecution on statement of learned counsel for respondents that the grievance projected by the writ petitioner in the writ petition had been redressed and, therefore, the petitioner had lost interest in prosecuting the petition.

5. Be that as it may, the aforesaid writ petition was dismissed for non-prosecution on 19.11.2009. In the meanwhile, another development took place. The Regional Engineering College, Srinagar came to be changed into National Institute of Technology, Srinagar with a new hierarchical structure of the staff. Accordingly, on the recommendations of the Departmental Promotion Committee, the petitioner was promoted as Sr. Laboratory Assistant in the pay scale of 5000-8000 vide order no.271 of 2007 dated 22.06.2007. The petitioner was later on designated as Jr. Technician and was posted in Mechanical Section of the College.

6. So far so good, but the grievance of the petitioner, as was projected by him in SWP No.314 of 2000, remained unredressed. The order of his promotion made by the erstwhile Regional Engineering College as Jr. Laboratory Assistant Grade-I continued to remain rescinded. Accordingly, the matter of the petitioner was placed by the competent authority before the Grievance Redressal Committee (hereafter for short 'the Committee'). The Committee after considering the grievance of the petitioner made the following recommendations:-

- i. The back date effect of the proper grade of Jr. Laboratory Assistant Grade-I, as requested by the petitioner, does not merit for consideration as the Selection Committee itself had recommended appointment of the petitioner in lower grade.
- ii. That the petitioner was later on placed in the pay scale of 1200-2040 pursuant to the consideration of his claim in terms of the Court directions with further recommendation that his placement in the Grade-I be not considered as promotion but as deferment for his placement in the proper scale.

7. These recommendations came up for consideration before the competent authority i.e the Director who did not agree with the recommendations and prima facie found the grievance projected by the petitioner genuine. The matter was again placed before the Committee. The matter was reconsidered and the

Committee made the following observations:-

"Perusal of the case reveals that since the applicant had applied for the post of Jr. Laboratory Assistant Grade-I and should have been considered for the post advertised after ensuring the eligibility criteria or in alternate could have been rejected for non-fulfilment of the eligibility criteria. On the contrary the applicant was selected for the post which was not advertised. This action of the Selection Committee has paved the way for the applicant to rightly represent for retrospective effect of proper grade which needs to be considered."

8. These observations were made by the Committee on 16.06.2014 but the same were not taken to the logical end by the respondents-competent authority. This has made the petitioner to come again to this Court through the medium of this petition.

9. Respondents have filed reply and have taken the stand that the grievance of the petitioner as projected in this petition was considered by the respondents pursuant to the interim direction passed in SWP No.314/2000 and he was granted higher pay scale and, therefore, this petition is without any cause of action and deserves dismissal.

10. Having heard learned counsel for the parties and perused the record, I am of the view that the petitioner cannot be denied the benefit of pay scale attached to the post of Jr. Laboratory Assistant Grade-I. This is so because the advertisement notification issued by the respondents was for the post of Jr. Lab. Assistant Grade-I. The petitioner had applied for the aforesaid post and participated in the selection process. He was, thus, required to be selected on the aforesaid post and, therefore, should have been appointed as Jr. Laboratory Assistant Grade-I.

11. The plea of the respondents that the petitioner was not meeting eligibility requirements, as is found in the minutes of Grievance Redressal Committee, cannot be accepted at this stage for the simple reason that; had the petitioner not been found eligible for the post in question, he would have been simply declared ineligible and not selected. Respondents having selected and appointed the petitioner against the post notified, could not have placed him in the lower pay scale. It is true that he had come to this Court with SWP No.314/2000 but the same was not pursued by him, as such, was dismissed for non-prosecution. However, from the perusal of order dated 19.11.2009, passed in the aforesaid writ petition, copy whereof was passed on to this Court by learned counsel for the petitioner and was taken on record, it is abundantly clear that the Court was persuaded to dismiss the writ petition for non-prosecution by the statement made by learned counsel for the respondents that grievance of the petitioner had been redressed and he had been promoted to the next grade of Jr. Laboratory Assistant i.e Grade-I. This, however, was factually incorrect. The petitioner, as noted above, had been granted promotion to the post of Jr. Assistant Grade-I but the said order of promotion was later on rescinded on account of failure of the petitioner to withdraw the writ petition, a condition imposed by the respondents

for grant of higher pay scale. That apart, after dismissal of the writ petition and on the representation of the petitioner, matter was re-considered by the Grievance Redressal Committee and the grievance of the petitioner as projected in the writ petition was found to be genuine.

12. In view of the above said facts and circumstances, the benefit of pay scale attached to the post of Jr. Laboratory Assistant Grade-I cannot be denied to the petitioner. The grievance Redressal Committee gave its recommendation as far back as on 16.06.2014, no decision whereon was taken by the respondents, and later on the recommendations of the Committee were also confirmed by the Chairman of the Committee on 15.08.2015 but the same were not taken to its logical end.

13. For all these reasons, this petition is allowed and the petitioner is held entitled to the pay scale of Jr. Laboratory Assistant Grade-I w.e.f 27.04.1996 with consequential benefits.

14. Let the respondents consider the case of the petitioner in light of the observations made hereinabove and pass appropriate orders for placement of the petitioner in the pay scale of Jr. Laboratory Assistant Grade-I w.e.f 27.4.1996. The consequential benefits, to which the petitioner may also be found entitled to because of his placement in the higher pay scale of Jr. Lab Assistant Grade-I, be also granted to him. Let the consideration as above be accorded to the petitioner within a period of two months from the date certified copy of this order is made available to the respondents.

Disposed of.