

(2001) 11 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 420/2001

Sher-i-Kashmir University of Agriculture, Sciences and
Technology, Jammu

APPELLANT

Vs

Narinder Singh

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 388 : (2002) 3 SCT 848 : (2002) 1 SriLJ 13 : (2002) SriLJ 13

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

Bench : Division Bench

Advocate : W.S.Nargal, R.S.Pura, M.K.Bhardwaj, Advocates appearing for the Parties

Judgement

1. We have heard Mr Nargal, learned counsel for the appellant as well as Mr Bhardwaj, Advocate, learned counsel for the respondent.

2. This appeal is directed against the judgement and order dated 9102001 passed by learned single judge in SWP No: 2664/1999, directing the

respondent/appellant to consider the case of the writ petitioner for appointment to the post of Assistant ProfessorcumJunior Scientist, Agro

Forestry. The aforesaid writ petition has been allowed by the learned single judge in terms of the following directions:

This petition is accordingly allowed. Petitioner is held entitled to get his claims considered in terms of his position in the waiting list. This would be

done within a period of six weeks from the date copy of the order passed by this court is made available by the petitioner to the respondents. Fact

that another interim order has been passed on 3172000 directing the respondents to keep one post vacant has also been taken note of with a view

to grant relief noticed above. It be seen that University which has come in existence in Jammu is a successor University and all the assets and liabilities, right and obligation which were supposed to be discharged by the parent university has come to vest in successor university, therefore, it would remain bound by the earlier decision of the university"".

3. The facts which are relevant for disposal of this appeal may be noticed.

4. Pursuant to the advertisement issued by the SheriKashmir University of Agriculture, Sciences and Technology, (for short SKUAST) under No.

02 of 1997 dated 27111997, the respondent alongwith other eligible candidates applied for the post. As per the advertisement notice, the

selection was to made against three existing vacancies. Some time in 1999, selection was made, recommending four candidates in the order of

merit. The name of the respondent figured in serial No. 4. Thereafter selected candidates were appointed by order dated 1261999. One Manoj

Kumar, who has been appointed to the post by order dated 126 1999 did not join the post. The respondent writ petitioner being in serial No. 4

has approached the appropriate authority to appoint him in place of Mr Manoj Kumar. His request was not considered, resulting in the filing of the

writ petition registered as SWP No: 2664/1999.

5. The said writ petition came up for motion hearing on 8121999, on which date, the court passed the following interim order:

The petitioner case is that in terms of advertisement notice No. 2 of 1997 dated 27111997, he applied for the post of Assistant

ProfessorcumJunior Scientist in Agro Forestry. The selection committee on the basis of interview prepared a panel in accordance with their merit,

wherefrom the respondents vide order No. 312 dated 1261999 issued appointment orders by which three persons got appointed.

Petitioner's further case is that one of the appointees namely Sh. Manoj Kumar has opted not to join on the post of Assistant Professor and the

post is lying vacant. It is further averred that vide University Order No. 346 (Est) of 1998 dated 7111998 eight candidates were selected and

appointment orders were issued whereof three did not join, consequent upon which the respondentUniversity vide its order No. 212 (Est) of 1999

dated 1541999 operated upon the wailing list, drawn up for the discipline of soil science and appointed three other persons mentioned in the order

against the said vacant posts. The petitioner thus seeks that he being similar situated deserves to be considered by the respondents for appointment

against the post of Assistant Professor/Junior Scientist against the vacant post. Notice as above in the CMP. In the meanwhile, the respondents

shall accord active consideration to the petitioner's claim for the appointment. This consideration shall be accorded within the life span of the

waiting list/panel. The results of the consideration to be disclosed in the objections".

6. Thereafter another interim order was passed on 31/7/2000, directing the respondents to keep one post vacant till disposal of the writ petition. In

the facts and circumstances stated above the learned Single Judge was of the view that when the appointment was made on 12/6/1999 and the

interim order was passed on 8/12/1999, it was within the warranty of select list, which according to the university rules, shall be valid for six months, it

was incumbent on the part of the university authority to consider the case of the writ petitioner/respondent herein and accordingly directed the

university authority to consider the case of the respondent in terms of his position as serial No. 4 in the select list.

7. Mr Nargal, learned counsel for the appellant strenuously urged that the validity of the select list is now over and the post has been readvertised

subsequently and the selected candidate has been appointed and, therefore, the case of the respondent cannot be considered at this belated stage.

Alternately it is urged by the counsel for the appellant that the selected candidate has no right to be appointed to the post which he applied for.

8. With regard to the validity of the select list, the submission of the counsel for the appellant that the select list has been lapsed when the

respondent claimed for consideration of his case is well misplaced. The admitted fact is that the selection was made in 1999, although the

advertisement was issued in 1997 and pursuant to the select list, selected candidates were appointed by order dated 12/6/1999 and the respondent

submitted his claim and filed SWP No.2446/1999 on 18/12/1999 on which date this court passed an interim order, as referred to above. The claim

of the respondent was well within warranty of six months and by no stretch of imagination, it can be said that the claim of the writ petitioner was

barred as select list has been lapsed. This contention of the appellant is accordingly rejected.

9. The next contention of the appellant that the select candidate has no right to be appointed is well settled principle of law enunciated by a catena

of decisions by the Apex Court as well by this court. However, the aforesaid principle laid down does not take away the right of the selected

candidates from consideration. There is no record to show that the claim of the writ petitioner was either considered pursuant to the interim

direction passed by this court on 8121999 nor on his own request. Normally when the last selected candidate in the merit refused to accept

appointment, the necessary corollary is that the next man in the list should have been offered when the list was within the warranty.

10. We have already said, that the select list was valid as the same was made for a period of six months when the respondent based his claim.

From the documents available on record, it clearly appears that the appellant/appropriate authority never considered the case of the writ petitioner

as claimed by him. Non consideration of the case of the writ petitioner would amount to depriving him of his right for consideration. It is not the

question of appointment. It is the question to be considered which has been denied in the instant case.

11. The third contention of the appellant that by now the post has been advertised and the candidate selected has also been appointed is belied by

the another interim order passed by this court. As already said, another interim order was passed by this court on 3172000, directing the

respondents/appellant to keep one post of Assistant ProfessorcumJunior Scientist in Agro Forestry vacant till the disposal of the civil rule. The

aforesaid civil rule was ultimately disposed on 9102001. Since there was a specific direction passed by this court on 3172000 for keeping one

post vacant, it was not open to the University authority to advertise the vacant post by subsequent advertisement and appoint the selected

candidate, even if the submission of the appellant is found to be correct.

12. There is another controversy raised by the appellant that the advertisement was issued by the university before bifurcation. In that, according to

the appellant, the University has been bifurcated on 2091999 into two namely SKUAST Kashmir and SKUAST Jammu. According to the counsel

for the appellant, since advertisement has been issued by university before bifurcation, it is the burden of the SKUAST Kashmir to implement the

court order. This point has been made amply clear by the learned single judge in terms of the direction as referred to above. The learned single

judge was of the view that the University which has come in existence in Jammu is a successor University of all the assets and liabilities, right and

obligation, it is the duty of the University namely SKUAST Jammu to discharge that obligation. We are entirely in agreement with the observations

made by learned single judge.

13. In the result, this appeal being devoid of any merit, is accordingly dismissed. The directions of the learned single judge shall be carried out by

the appellant.