

(2018) 08 J&K CK 0082

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 929 Of 2009

**Vijay Kumar @APPELLANT@Hash Sher-e-Kashmir University of
Agriculture Sciences and Technology, Jammu through its Registrar and
ors**

Date of Decision : 30-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 J&K CK 0082

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Through the instant writ petition, petitioner seeks the following reliefs:

â??a) quash the Order No. AUJ/Adm/06-07/2367-71 dated 21st July, 2006 issued by respondent No. 3 through the medium of which respondent No.

4 was appointed as Medical Assistant in Sher-e-Kashmir, University of Agriculture Sciences & Technology, Jammu by way of backdoor appointment

and without advertising the post of inviting applications from other eligible candidates including the petitioner.

b) Command and direct the respondents to consider and consequently appoint the petitioner as Medical Assistant in Sher-e-Kashmir, University of

Agriculture Sciences & Technology, Jammu.â??

2. The case of the petitioner is that vide order dated 8th September, 2006, he was initially engaged as Laboratory Assistant on Adhoc basis in the pay

scale of Rs.3050-4590 for a period of 89 days and thereafter the official respondents granted various extensions in his favour. The last extension was

granted for a period of 89 days w.e.f. 30th May, 2008 which was extended upto 30th August, 2008. However, the respondents extracted the work

from the petitioner as Laboratory Assistant upto December, 2008. In this regard reliance is placed on attendance sheet.

3. Learned counsel for the petitioner states that petitioner moved various representations requesting the respondents to regularize his services on the ground that during his continuance as Laboratory Assistant in the respondent-Department, he became over-age, therefore, rendered himself ineligible to seek employment elsewhere. It is further stated that before engagement of the petitioner on Adhoc basis, the respondents had issued a Notification No. 23/Est. of 2005 dated 31st March 2005, inviting applications for various posts including that of Medical Assistant and accordingly, pursuant to the said Notification, the petitioner also applied for the post of Medical Assistant and consequently, one Deepak Sharma came to be selected and appointed against the post of Medical Assistant.

4. Learned counsel for the petitioner states that after the disengagement of the petitioner, he came to know in the year 2009 that private respondent

No. 4- Sanjeev Kumar has been appointed as Medical Assistant in the respondent-department without advertising the post in the news paper inviting applications from the eligible candidates. Petitioner applied before the official respondents under Right to Information Act for issuance of appointment order of respondent No. 4. Thereafter, vide communication dated 18.05.2009, appointment order of respondent No. 4- Sanjeev Kumar dated 31.07.2006 was provided to the petitioner.

5. Through the instant writ petition, the petitioner has challenged the appointment order of respondent No. 4 dated 31.07.2006, passed by respondent No. 3, on the grounds that respondent No. 4 has been appointment as Medical Assistant by the official respondents without inviting applications from the eligible candidates by advertising the post in Newspaper. It is stated that respondent No. 4 was appointed by the official respondents through the medium of backdoor entry, as the post was never advertised and that respondent No. 4 was not eligible to seek consideration for the reason that he was overage at the time of appointment as Medical Assistant. It is further stated that appointment of respondent No. 4 as Medical Assistant is the result of favoritism and nepotism.

6. Respondents 1 to 3 have filed their objections.

7. The stand taken by the official respondents is that the instant petition is

barred by inordinate delay and laches as the selection/appointment of respondent No. 4 has been called in question after a period of more than three years. In the objections, it has been admitted that respondent No. 4 came to be appointed as Medical Assistant pursuant to the recommendations of the Selection Committee by virtue of order dated 31.07.2006. The further stand taken by the respondents is that respondent No. 4 applied for the post in question in pursuant to Advertisement Notification No. 23 Est. of 2005 dated 31.03.2005. He was duly recommended by Selection Committee in order of merit for the same panel in which one Deepak Sharma was appointed. It is stated that in the aforesaid Advertisement Notification, it has been manifestly cleared that the University reserves the right to withdraw any or all posts, increase/decrease or defer filling up any or all the posts advertised without assigning any reason. It is further stated that initially one post of Medical Assistant in the grade of Rs. 40006000 was advertised vide Notification 23 Est. of 2005 dated 31.03.2005 and in response of the aforesaid Notification in so far as the post of Medical Assistant is concerned, 35 applications were received by the official respondents. All these applications were screened by the Committee constituted for the purpose and out of 35 candidates only 30 candidates including the petitioner appeared before the Committee so constituted. It is further stated that during the process of selection, one more post of Medical Assistant became available and, accordingly, respondent No. 4 also came to be selected and appointed as Medical Assistant in order of merit from the same panel strictly in conformity with the terms and conditions as reflected in the aforesaid Notification.

8. The further stand taken by the official respondents is that the petitioner has applied against the post in question and after having participated in the selection process along with respondent No. 4, he could not make the grade in view of the merit position and accordingly, he is estopped under law to call in question the said selection/appointment at this belated stage after a gap of more than three years. It is stated that in fact the respondent-University had advertised the vacancy of Medical Assistant and during the currency of selection, number of vacancies had increased and with the increase of vacancies, the competition among the candidates has lessened. Thus, the ground that the selection/appointment of respondent No. 4 was in

excess of the post advertised, is not available to the petitioner as he has already participated in the selection process and failed to make the grade. It is

further stated that respondent No. 4 has also applied in pursuant to the aforesaid notification and was figuring in the select panel and pursuant to the

recommendation of the select committee; respondent No. 4 came to be selected in view of his superior merit than the petitioner. Thus, plea of the

petitioner that respondent No. 4 came to be appointed without advertising the post, is against the record.

9. Learned counsel for the petitioner states that selection pursuant to the advertisement should be confined only to the posts those were advertised and

additional posts those were created after the expiry of the recruitment year shall be filled up by issuance of an advertisement afresh.

10. I have considered the rival contentions. Â

11. The stand of respondent-University is that one more post of Medical Assistant became available and, accordingly, respondent No. 4 also came to

be selected and appointed as Medical Assistant in order of merit from the same panel strictly in conformity with the terms and conditions as reflected

in the aforesaid Notification. From the perusal of advertisement Notification No. 23 Est. of 2005 dated 31.03.2005 it is evident that there is a clause

which envisages that â??University reserves the right to withdraw any or all posts, increase/decrease or defer filling up any or all the posts advertised

without assigning any reason.â??

12. Further respondent no.4 was in panel of selected candidates ahead to petitioner, so he was having preferential right. So there was no need to

advertise the post afresh .

13. Further, Chapter-II, Rule 6(a) sub-clause (vi) of the Statutes of Sher-E-Kashmir University of Agricultural Sciences and Technology of Kashmir,

the said sub-clause reads as under:-

â??vi. The period of validity of any panel prepared by the Selection Committee and approved by the appropriate authority/Vice Chancellor of the

university shall be six months from the date of such approval.â??

14. Bare perusal of this clause, it is evident that panel prepared by the Selection Committee and approved by the appropriate authority/Vice Chancellor

of the university shall remain alive for six months from the date of such approval. The respondent no. 4 has been appointed during subsistence of this

panel. One more fact which is required to be noted is that petitioner was serving in same department as Laboratory Assistant on Adhoc basis; he

remained there till upto December, 2008; the appointment in question of respondent no.4 was made vide Order No. AUJ/Adm/06-07/2367-71 dated

21st July 2006, as Medical Assistant in Sher-e-Kashmir, University of Agriculture Sciences & Technology. But writ petition has been filed in 2009

after more than three years. There is no cogent and reasonable explanation shown with regard to this delay especially when the petitioner was already

working in same office. Petitioner had slept over his rights and when his adhoc appointment as laboratory assistant was not extended from August

2008, he has eventually approached the court by filing this petition. The delay or laches is one of the factors which is to be borne in mind by the

High Court when it exercises its discretionary powers under Article 226 of the Constitution. In an appropriate case, the High Court may refuse to

invoke its extraordinary powers, if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the

lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the

discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769).

15. Respondent no.4 is working since 2006 as Medical Assistant in Sher-e-Kashmir, University of Agriculture Sciences & Technology, Jammu i.e.

from last more than 12 years, and record produced by respondent-University with regard to his appointment would show that he had all requisite

qualification for the said post at the time of appointment. Further, he stood at serial no.2 in the select panel. So one cannot say that his appointment is a

back-door appointment.

16. In view of what has been discussed above, I am of considered opinion that no fundamental right of petitioner has been violated. This petition is

dismissed.