

HIGH COURT OF JAMMU & KASHMIR, JAMMU

SWP No.977/2002

Dated:15.9.2009

Santosh Sharma

vs

State of J&K & ors.

Hon'ble Mr. Justice Mansoor Ahmad Mir

Whether approved for reporting? Yes

For petitioners : Mr. K. S. Johal, Advocate.

For respondents : Mrs. Neeru Goswami, Dy. A. G.

The petitioner has questioned Letter No.Edu/III/Sen/90/HM dated 14.7.1992 made by Under Secretary to Government, Education Department to the Director School Education, Jammu (who are not parties in this petition), on the grounds taken in the writ petition.

The respondents have not filed the reply.

It appears that the petitioner was appointed as a Teacher on 18.2.1959, came to be promoted as Master vide Government Order No.1465 of 1961 dated 9.12.1961 with effect from 1.11.1970 and

was shown at Sr. No.159 in the seniority list, constrained her to make a representation to the respondents to place her at appropriate place in the seniority list. Accordingly, the Government issued Order No.222-Edu of 1989 dated 2.3.1989 and fixed her seniority at Sr. No.3.

It is further contended that she was entitled to salary and arrears of pay in the grade of Master right from 9.12.1961 to 30.10.1970, which she was denied vide Order No.736-Edu (GR) of 1990 dated 6.12.1990. Thereafter she made a representation, but in vain and ultimately communication dated 14.7.1992, impugned herein, came to be passed.

The writ petition on the face of it merits to be dismissed for the following reasons:

The petitioner has not questioned Order No.736-Edu (GR) of 1990 dated 6.12.1990 (Annexure “B”). It is apt to reproduce the same.

“Government of Jammu and Kashmir
Education Department

Subject:- Promotion to the Gazetted cadre of Smt. Santosh Sharma, Ex-Master Girls High School, Bhore Camp Jammu.

Ref: Director School Education Jammu's letter no.DSE/ANG/1440-41 dated: 18.7.1988.

Order No. :736-EDU(GR) of 1990

Dated :6-12-1990

....

Sanction is accorded to the promotion of Smt. Santosh Sharma Ex-Master Govt. Girls High School Bhore Camp, Jammu as the admistress w.e.f. 27-11-1978 to 31-08-1983 (the date of her voluntarily retirement) on notional basis. The notional promotion is allowed to the Master for reputation of her pensionary benefits. No arrears are allowed to be paid.

By

order of the Governor.

Sd/-

Commr./Secretary to Government
Education Department."

While going through this order, it appears that the promotion came to be granted to the petitioner with effect from 27.11.1978 to 31.8.1988 on notional basis and it was allowed to her just for recomputation of her pensionary benefits and no arrears were allowed. The petitioner has not questioned this order, but has questioned the communication, impugned in the writ petition. In the

impugned communication the order dated 6.12.1990 (supra) came to be noticed and, accordingly, it was conveyed to the Director School Education that the petitioner is not entitled to the arrears.

The said order came to be passed on 6.12.1990 and the impugned communication came to be passed on 14.7.1992. The petitioner accepted the position, came out of deep slumber after a lapse of 10 to 12 years and filed this writ petition, which on the face of it is belated.

The Apex Court in a case, titled, Ram Chandra Yadav vs The State of Bihar, Civil Appeal No.14077/1987 decided on 8.3.1998, reported in Supreme Court Service Rulings 20 Vol.4, held that an employee is not entitled to the back wages if he approaches the Court after a long delay.

The Apex Court in a case, titled, State of Andhra Pradesh vs Tuljaram Balaji, AIR 2000 SC 3605 held that the delay disentitles the petitioners to seek discretionary relief. The same view was taken by the Apex Court in cases, titled, S.D.O. Grid Corporation of Orissa Ltd. vs Timudu Oram, 2005 SCW 3715 and Sub-

Divisional Officer, Telegraph Bijnor vs P.O., C.G.I.T.-cum-Labour Court, AIR 2006 SCW 900.

Learned counsel for writ petitioner has argued that the denial of back wages to the petitioner amounts to breach of her legal as well as fundamental rights, thus the delay will not come in her way.

In support of his argument he has cited a case, titled, R. S. Deodhar vs State of Maharashtra, AIR 1974 SC 259. The said judgment came to be passed in the year 1974, whereas the judgments (supra) came to be passed in 1998, 2000, 2005 and 2006 and the Supreme Court has specifically answered the question in Ram Chandra Yadav's case (supra).

A Division Bench of this Court also allowed LPA Nos.218/2005, 219/2005 and 109/2006 and dismissed the writ petition, reported in 2008 (1) JKJ HC 566, filed by the Government employees, whose services came to be terminated, on the ground of delay alone.

Having glance of the above discussion, this writ petition is, accordingly, dismissed along with all CMPs.

Jammu

(Mansoor Ahmad Mir)

Dated:15.9.2009

Judge

(Anil)