

AT JAMMU

Case: SWP No. 2424/2003 CMP No. 42/2005

Date of order: 27.10.2011

Dr. Ram Murti Sharma v. State of J&K and ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

1. Whether approved for Law Journal? **Yes.**
2. Whether approved for publication in press?

Appearing counsel:

For petitioner(s) : Mr. K. S. Johal, Sr. Advocate with
Mr. Amit Gupta, Advocate

For respondent(s): Mrs. N. Goswami, Dy. AG

(Oral)

Vide Government Order No. 526/HE of 1983 dated 12.10.1983, petitioner was appointed as Lecturer in Education on adhoc basis in Degree College Kathua against the vacancy caused due to reversion of Sh. Bhagat Bushan to School Department. The said appointment order provided that same shall be valid only for six months or till the selection is made by the Public Service Commission or till the original incumbent rejoins whichever is earlier. Petitioner was ordered to be relieved for taking up the assignments of the College Lecturer by the Director School Education, Jammu vide Order dated 20.10.1983. Petitioner

was relieved and was permitted to join on 25.04.1984 as Lecturer. Thereafter, vide order No. 54 dated 28.05.1987, the Director School Education, Jammu issued sanction to the exchange of posts of Master grade held by the petitioner and petitioner was posted in Government College of Education, Jammu. Petitioner made a representation to the Government through Commissioner/Secretary Higher Education Department Jammu and Kashmir Government Civil Secretariat, Jammu praying therein that she be appointed/absorbed as Lecturer in the State Higher Education Department. When the claim of the petitioners for regularization of her services did not bear any fruit, she was constrained to file this petition.

On notice issued, respondents have filed objections/reply affidavit.

Heard learned counsel for the parties. Considered the matter.

Mr. Johal, learned Senior counsel appearing for the petitioner submitted that in almost identical circumstances respondents have regularized the services of one Om Prakash Sharma, petitioner in W.P. No. 222/83 decided on

05.10.1988, whereas petitioner has been subjected to invidious discrimination. Learned counsel submitted that petitioner, during the pendency of this writ petition, superannuated from service and her claim for regularization is to be considered only for payment of post retiral benefits. Learned counsel submitted that petitioner all along worked as Lecturer in the Higher Education Department and the denial of regularization of service violated mandate contained in Articles 16 and 21 of the Constitution of India. Learned counsel submitted that in the earlier round of litigation petitioner had not sought regularization of her service as Lecturer, but had prayed for grant of relaxation in her upper age limit, so as to make her eligible for seeking consideration for being selected and appointed as Lecturer as a candidate in the direct recruitment process. Learned counsel submitted that along with objections/reply affidavit, Government order placed on record does not pertain to the claim of the petitioner for regularization of service but her claim for relaxation of upper age limit. Learned counsel further submitted that respondents can be directed to refer the case the petitioner to PSC/DPC and the authorities

concerned be directed to consider the case of the petitioner in the manner same was considered in the case of Om Prakash Sharma and his services were regularized as Lecturer.

Mrs. Goswami, learned Dy. AG appearing for respondents submitted that the petition merits dismissal inter alia on the ground that petitioner has withheld the information from the Court in respect of her filing of earlier writ petition; the regularization of the service of the petitioner can not be ordered in breach of recruitment rules. Learned counsel in this behalf referred to and relied upon judgment in case titled The Chancellor and another (appellant) v. Dr. Bijayananda Kar and ors. (respondents); reported in AIR 1994 Supreme Court 579 and case titled Secretary, State of Karnataka and ors. (appellant) v. Umadevi and ors. (respondents); reported in 2006 (3) Supreme 415 and submitted that claim of the petitioner cannot be considered by observing recruitment rules in breach.

The issue involved in the earlier writ petition filed by the petitioner did not pertain to the regularization of her

services as Lecturer in Higher Education Department. Petitioner in earlier writ petition had sought consideration for being selected and appointed on the post of Lecturer as a candidate in the direct recruitment process. She was found to be over age and her candidature was not entertained, which constrained her to file the writ petition praying therein that the respondents be directed to relax upper age limit, so as to enable her to compete in the selection process as a candidate in the direct recruitment process which was initiated by the respondents. The consideration order passed by the respondents pertains to her aforesaid claim and has been negatived in terms of Government Order No. 65-HE of 2003 dated 12.03.2003.

Om Prakash Sharma, who was writ petitioner in W.P No. 222/83, was also appointed on adhoc basis. Admittedly, his services have been regularized from the year 1984, the date of his first appointment on ad-hoc basis. The only objection raised is that Om Prakash Sharma's case was recommended by the PSC/DPC, whereas petitioner is not similarly circumstanced and could not be given same treatment. The submission of the learned counsel for

respondents could find favour only if the case of the petitioner was referred to the PSC/DPC for consideration for regularization of her services as Lecturer in the Higher Education Department. From the pleadings available on the record, it appears that her case was not referred to the PSC/DPC. Mere bald denial in the pleadings of the respondents would not absolve them of their obligation to consider the claim of the petitioner and to deal with the case of the petitioner in the manner they have dealt with the case of Om Prakash Sharma. Respondents were duty bound to refer the case of the petitioner to PSC/DPC and it is only thereafter any decision could be taken. That having not been done, injustice has been meted out to the petitioner. Respondents are duty bound to follow the mandate of law and consider the claim of the petitioner as has been done in the case of Om Prakash Sharma. Judgments referred to and relied upon by the learned counsel for the respondents provide that appointment cannot be made in breach of recruitment rules. No such direction is being issued in this case.

For the above stated reasons and in view of the mandate of law this petition is disposed of in the following manner:

By issuance of writ of mandamus, respondents are directed to refer the case of the petitioner to PSC/DPC for consideration of her claim for promotion/regularization of her services on the post of Lecturer in the Higher Education Department from the date she was appointed on the said post and consideration be accorded on the touchstone of Om Prakash Sharma's case. The respondents are further directed to refer the case of the petitioner to PSC/DPC within a period of four weeks from the date copy of this order is served upon them. Respondents to pass appropriate orders in consequence to the recommendations of the PSC/DPC and in the event petitioner is recommended for promotion/regularization of her services as Lecturer in the Higher Education Department, then petitioner's retiral benefits will be calculated accordingly and paid preferably within a period of twelve weeks thereafter.

Disposed of along with all connected CMP(s).

(Muzaffar Hussain Attar)
Judge

JAMMU
27.10.2011
Paramjeet