

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW No. 139/2004

Mp No. 184/2004

Date of order: 17.11.2015

Jatinder Pal Singh, Aged 38 years,
S/o Avtar Singh R/o Nowshera
District Rajouri.

.....Appellant.....

Versus

1. State of Jammu and Kashmir
Through Principal Secretary,
Education Department,
Civil Secretariat, Jammu.
2. Commissioner/Secretary,
Education Department,
Civil Secretariat, Jammu.
3. Shri Desh Kumar Hangloo,
Lecturer in Physics,
Higher Secondary School,
Rajouri.
4. Avtar Krishan Raina,
Lecturer in Physics,
Higher Secondary School,
Nagrota, Jammu.
5. Rakesh Gupta,
Lecturer in Physics,
Higher Secondary School,
Rajouri.
6. Rashpal Singh,
Lecturer Attached with
Director School Education,
Jammu.
7. Suresh Kumar Manhas,
Lecturer in Physics,
Higher Secondary School,
Bhaderwah,
District Doda.
8. Iftikar Ali Shah,
Lecturer in Physics,
Girls Higher Secondary School,
Surankot (District Poonch)
9. Mohd. Rakib Khan,
Lecturer in Physics,
Higher Secondary School,
Mankot (District Udhampur).
10. Jagdish Singh,
Lecturer in Physics,
Higher Secondary School,
Nowabad (Jammu).

.....Respondents.....

Coram:
Hon’ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon’ble Mr. Justice Dhiraj Singh Thakur, Judge

Appearing counsel:
For the appellant(s) : Mr. S. K. Shukla, Advocate.
For the respondent(s) : Mr. Ravinder Gupta, AAG.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar-CJ:

1. This appeal is preferred by the appellant against the order made in SWP No.1023 of 2000 dated 30.04.2004, whereby the writ petition filed by the appellant seeking directions to the official respondents to promote him substantively to the post of Lecturer with effect from 09.01.1991, was dismissed.

2. The case of the appellant before the learned Single Judge was that he is a permanent resident of Jammu and Kashmir State and a citizen of India. He passed Post Graduation in Physics from Jammu University in the year 1987 and did his B.Ed from the same University in the year 1999. He was appointed as Teacher on *ad hoc* basis on 12.08.1987 and continued as such till 1989. On 03.05.1989, he was appointed as Teacher on substantive basis on the basis of recommendations made by the Jammu and Kashmir Service Selection Board. He was promoted as In-charge Lecturer by the Government considering his Post Graduation qualification by Government Order No.33(Edu) of 1991 dated 09.01.1991 and posted at Government Higher Secondary School, Leh. He was ordered to get charge allowance.

3. According to appellant, the posts of Lecturers have to be filled up 50% by direct recruitment and 50% by promotion as per the

Jammu and Kashmir Education (Gazetted) Service Recruitment Rules, 1992. The post of Lecturer is gazetted post and minimum qualification required for the post is Post Graduation in the concerned subject, which qualification the appellant acquired in the year 1987. Respondent No.3 did his Post Graduation in Physics after grant of in-charge promotion to the appellant. Respondent No.4 was also appointed as In-charge Lecturer on 27.04.1994 as he did his Post Graduation in the year 1991. Respondent Nos.5 to 10 also did their Post Graduation in the years 1992, 1993, 1991, 1991, 1991 and 1992 respectively. Respondent Nos.4 to 9 were promoted as In-charge Lecturers long after the appellant was made as In-charge Lecturer. Respondent No.10 was promoted as Lecturer on 31.08.1999, however, with retrospective effect from 17.09.1992. According to the appellant, none of the respondent Nos.3 to 10 were eligible for promotion on the post of Lecturer as they were not possessing the required minimum qualification when the appellant was appointed as In-charge Lecturer on 09.01.1991. However, the respondents were given retrospective promotion with effect from the date when they were put as In-charge Lecturers and the appellant was given regular promotion as Lecturer only from 12.04.1993 on the alleged ground that he was not having the required experience as teacher for being promoted as Lecturer. The appellant was admittedly appointed as Teacher in the year 1987 which demonstrates that he was having more than three years of teaching experience when he was made as In-charge Lecturer. He challenged the said action of official respondents in the writ petition

and the learned Single Judge rejected the contentions of the appellant by relying upon the service rules and dismissed the writ petition.

4. The learned counsel appearing for the appellant argued that as per Schedule II Class 9 of the J&K Education (Gazetted) Recruitment Rules of 1992, for getting promotion as Lecturer by a teacher, he must have three years experience as a teacher and as on 01.01.1991 the appellant was having more than three years experience as a teacher as admittedly he was appointed as teacher on 12.08.1987. The learned counsel, relying on the said Rule, argued that when the rule says three years experience as a teacher, which is the eligibility for getting promotion to the post of Lecturer on 50% promotion quota and when the rule do not stipulate that the experience of teacher should be on substantive basis, it is not open to the official respondents to contend that appellant's service as teacher can be counted only from the date of his substantive appointment as teacher.

5. The learned counsel appearing for the official respondents as well as the private respondents argued that learned Single Judge was right in dismissing the writ petition as the appellant was not having requisite experience of three years after his appointment as a teacher on substantive basis.

6. We have considered the rival submissions and gone through the Rules.

7. The point arises for consideration in this appeal is as to whether the official respondents were justified in interpreting the rule

i.e. experience of three years as teacher as a whole or only after the substantive appointment. The J&K Education (Gazetted) Recruitment Rules of 1992, Schedule II, clause 9 reads thus:-

“(i) 50% by direct recruitment.
 (ii) 50% by promotion from Masters in the grade of 1300-2500 and in case no suitable candidate is available from Master’s grade then by promotion from Sr. Teachers (1075-2325) and if no suitable candidate is available then by promotion from General Line Teachers (900-1830) with at least 3 years experience as teacher.”

8. On perusal of the above rule it is evident that what is required is three years experience as General Line Teacher and the capacity under which the teacher should have served is not mentioned. In the absence of said stipulation in the statutory rules, the official respondents are not justified in taking a stand that the experience should be counted only from the date of substantive appointment and not from the date of initial appointment. It is a well settled principle of law that when the statute is clear and without any ambiguity the same should be strictly construed and giving a different meaning to the statute by the authorities or Court is impermissible.

9. The official respondents having granted retrospective effect in substantive post of Lecturers to the private respondents from the date/dates when they were made In-charge Lecturers from the date of possessing Post Graduate qualification, the denial of the same to the appellant is arbitrary and discriminatory. No other point except the lack of three years experience was argued to uphold the order of the learned Single Judge.

10. Thus the stand of the official respondents is erroneous and the learned Single Judge also failed to appreciate this aspect. In such circumstances the order of the learned Single Judge is set aside and the writ petition filed by the appellant is allowed as prayed for. The official respondents are directed to treat the appellant as Lecturer from 09.01.1991 and pay consequential benefits. This order is directed to be implemented by the official respondents within two months from the date copy of this order is received by them. No costs.

(Dhiraj Singh Thakur)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
17.11.2015
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