

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.2350/2012

Date of Order:28.07.2015

Dr. Mohammad Inam Zaroo **Vs.**

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir,
Judge

Appearing Counsel:

For the petitioner(s)/Appellant(s): Mr. Azhar-ul-Amin.
For the respondent(s): Mr. Shah Aamir, Dy. AG.

- 1) Admittedly, petitioner has been appointed as Lecturer in the Department of Plastic Surgery SKIMS vide order No.13-IMS of 1997 dated August 11, 1997. Then vide order No.14-IMS of 2001 dated June 30, 2001 has been appointed as Associate Professor.
- 2) In the year 2003, petitioner had applied for special leave for one year with effect from 16th February, 2004. Same had been sanctioned vide order No.1112-HME of 2003 dated 20.10.2003. The leave so sanctioned was treated as extraordinary leave without pay and allowances. Petitioner on expiry of leave did not rejoin but had sought extension thereof on certain grounds and had undertaken to resume back his duties in the month of April, 2007.

3) Absence of the petitioner was enquired into, unauthorized absence was established, disciplinary action was recommended as against which petitioner had filed representation. Finally, petitioner submitted his joining report on 11th April, 2007. Subsequent thereto, in terms of order No.17-SKIMS of 2007 dated April 13, 2007 petitioner had been removed from the rolls of the Institute. Then again was re-appointed vide order No.38-SKIMS of 2007 dated September 12, 2007.

4) Both the aforesaid orders were challenged whereby order of removal was sought to be quashed whereas order of re-appointment was sought to be quashed to the extent it did not provide for regularizing previous services rendered by the petitioner. Petitioner has also sought Mandamus so as to command the respondents to treat the period of absence with effect from 01.10.2005 to 14.04.2007 as on leave whatever kind due otherwise the period may be treated as dies-non in terms of Article 163 of J&K SCR read with SRO 321 of 1995.

5) Petitioner in the petition has highlighted as to how he has worked for the development of Plastic Surgery in

the Institute and while joining was promised to be treated sympathetically. He had undertaken to work with great care, zeal and enthusiasm so as to advance the functioning of the Discipline of Plastic Surgery in the Institute.

6) The respondents have filed reply but after admission of the writ petition to hearing counter affidavit has not been filed.

7) Petitioner seem to have filed representation, copy of which is on the records, wherein he had requested the respondent-authorities that his period of absence may be treated as dies-non on the analogy it had been done in the case of Dr. Showkat Ahmad Zargar, Professor & Head of the Department of Gastroenterology (at present Director, SKIMS) and Dr. Ghulam Nabi Yatoo, Additional Professor, Department of Gastroenterology.

8) The respondent-authorities seem to have constituted a Committee to examine the cases of some faculty members for bridging the gap between two spells of their appointment at SKIMS for protection of pensionary benefits. The constituted Committee in its report has noticed the case of the petitioner at serial

No.3 and has made recommendations which reads as under:

“In view of the above facts, the committee recommends the case for consideration to bridge the gap treating the period of overstay as Dies Non.”

The competent authority has not agreed to the recommendations of the constituted Committee as has been conveyed to him vide communication dated 06.06.2012.

9) case of the petitioner requires re-consideration in the light of recommendations as made by the constituted Committee as referred to hereinabove and in the light of SRO 321 dated 07.12.1995 read with amendment in Article 163 of J&K CSR as notified by the Finance Department vide notification i.e. SRO 514 dated 22nd November, 1999, and deserves to be decided on the analogy of similarly situated settled two cases i.e. case of Dr. Showkat Ahmad Zargar and Dr. Ghulam Nabi Yatoo. The exercise of according fresh consideration in the aforesaid background be initiated and completed within a period of six weeks for the date copy of the order is served upon respondents, result of which shall be conveyed to the petitioner. Right is

reserved to the petitioner to re-agitate if thereafter cause survives.

10) Disposed of as above.

(Mohammad Yaqoob Mir)
Judge

Srinagar
28.07.2015
"Mohammad Altaf"