

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 05.09.2023

Pronounced on 18.09.2023

LPA No.57/2022

1. Sher-e-Kashmir University of
Agricultural Sciences and Technology,
Kashmir (SKUAST-K)
Shalimar, Srinagar,
through its Registrar

2. The Vice Chancellor,
Sher-e-Kashmir University of
Agricultural Sciences and Technology,
Kashmir (SKUAST-K)
Shalimar, Srinagar.

.....Appellants

Through: Mr. Anuj Dewan Raina, Advocate

versus

Dr. Moti Lal Bhat,
S/o Sh. K.L. Bhat,
R/o Dharbagh, Harwan, Kashmir
At Present: 4-Mohinder Nagar, Jammu.

.....Respondent(s)

Through: Mr. R.K. Gupta, Sr. Advocate, with Mr.
Udhay Bhaskar, Advocate

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

Tashi Rabstan - J

1. This Letters Patent Appeal is directed against the judgment and order dated 22.03.2022 delivered by the learned Single Judge in SWP No.1030/2016, whereby the learned Single Judge allowed the writ petition holding the writ petitioner-Moti Lal Bhat entitled to the benefit of promotion to the post of Professor-cum-Chief Scientist (agronomy) with effect from 27.07.1998 instead of 01.05.2006 with all consequential benefits.

2. Admittedly, when in SWP No.1748/2005, filed by the writ petitioner-Moti Lal Bhat, the Writ Court vide judgment dated 11.09.2009 directed the writ respondents-University to consider the case of writ petitioner for promotion under Career Advancement Scheme, the writ respondents-University issued order dated 08.06.2012 thereby according promotion to the writ petitioner-Moti Lal Bhat against the post of Professor-cum-Chief Scientist (Agronomy) with effect from 01.05.2006. Feeling aggrieved, the writ petitioner-Moti Lal Bhat challenged the order dated 08.06.2012 in SWP No.1030/2016 claiming that instead of 01.05.2006 he was entitled to be promoted with effect from 28.07.1998. The learned Single Judge vide judgment dated 22.03.2022 allowed the writ petition and the writ petitioner was held entitled to the benefit of promotion to the post of Professor-cum-Chief Scientist (agronomy) with effect from 27.07.1998 instead of 01.05.2006 with all consequential benefits on the analogy of one Dr. Mohd. Sidique. The arrears were also directed to be payable to the writ petitioner at the rate of 6.5% per annum with effect from 27.07.1998 till the same are actually released in his favour. Hence, the present appeal on behalf of Sher-e-Kashmir University of Agricultural Sciences and Technology.

3. Heard learned counsel appearing for the parties, considered their rival contentions and perused the appeal file.

4. Admittedly, the writ respondent-University has not denied the eligibility of writ petitioner for promotion to the post of Professor under Rule 2.5 of the University Statutes. In the appeal it is also specifically admitted by the respondent-University that the writ petitioner was holding the migrant status since the year 1990 and he remained associated with teaching and research at

Research Stations, Jammu with effect from 01.11.1991 till 05.01.2001 as averred in ground-IV of the appeal. Therefore, we do not find any force in the argument of learned counsel for appellants and as projected in ground-IX of the appeal that the writ petitioner was not actively involved in teaching, research and extension education activities. As such we are in full agreement with the findings of learned Single Judge that the case of writ petitioner was similarly situated with that of one Dr. Mohd. Sidique. Even the writ respondent-University has admitted that the selection committee had recommended the name of writ petitioner for his promotion as Professor/Chief Scientist under Career Advancement Scheme.

5. The only ground taken by the writ respondent-University objecting the promotion of writ petitioner against the post of Professor/Chief Scientist with effect from 27.07.1998 is that in terms of Government Communication No.GAD(Adm) 2014/200-1 dated 29.03.2001 the writ petitioner did not report back for duties at the valley after his name was cleared by the selection committee for promotion.

6. Communication dated 29.03.2001 specifically provides that such migrant employees who are cleared by the concerned DPCs are entitled to the benefit of promotion only if they join their new places of posting in the Valley against which they have been so promoted; meaning thereby only after getting promotion such migrant employees were required to join at their new place of postings in the Valley. In the present case although the name of writ petitioner had been cleared by the DPC, but his promotion order had yet not been issued. Once the promotion order of writ petitioner had not been issued or he had not been given promotion to the post of Chief Scientist, then how it could be

expected from the writ petitioner to join at his new place of posting in the Valley against a promotional post in the absence of any promotion order. It seems the appellants herein well understand the meaning and essence of Government Communication dated 29.03.2001 (supra), but just to deny promotion to the writ petitioner from a retrospective date, the appellants are taking such a clumsy plea that too when the writ petitioner himself had been filing representations to the appellant-University showing his willingness to serve in the Valley against the promotional post.

7. Therefore, in view of above, we are not inclined to take a view other than the one taken by the learned Single Judge. However, since the writ petitioner agitated the matter for the first time in the year 2005 when he filed SWP No.1748/2005, as such we deem it proper to allow interest at the rate of 6.5% per annum on the arrears from the date SWP No.1748/2005 came to be filed instead of 27.07.1998 as directed by the learned Single Judge. Ordered accordingly. Judgment dated 22.03.2022 is modified only to the extent as indicated above.

Jammu
18.09.2023
(Anil Sanhotra)

(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No