

S. No. 49

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case:- LPA No. 20/2021
CM No. 946/2021
CM No. 7842/2021

1. **Union Territory of Jammu and Kashmir (erstwhile State),
Through its Commissioner-cum-Secretary to Government,
Education Department, Civil
Secretariat, Jammu/Srinagar.** ...Appellant(s)/Petitioner(s)
2. **Director, School Education
Kashmir.**
3. **Chief Accounts Officer, Migrant
Cell, Jammu.**

Through: Mr. Raman Sharma, AAG

Vs.

**Susheela Raina,
W/o Shri Anil Kumar Raina,
R/o Kundi Khaas, Tehsil Handwara,
District Kupwara At present Qtr. No.
8, Block-D, Channi Himmat, Jammu.**

...Respondent(s)

Through: Mr. K.L. Pandita, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER

07.11.2024

01. This intra-Court appeal by the then State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir) is directed against the judgment dated 25.11.2019 passed by the learned Single Judge of this

Court (Writ Court) in SWP No. 1438/2011 titled '*Susheela Raina Vs. State of J&K and Ors.*' whereby the Writ Court has granted the benefit of notional appointment to the respondent w.e.f 05.08.1996 i.e. the date on which all other similarly situated persons were appointed as teachers pursuant to Advertisement Notification dated 30.03.1995. The Writ Court has also held the respondent entitled to seniority as per her merit in the select list and other consequential service benefits including the revision of pay, increments etc within a period of three months from the date, a copy of the judgment was to be served upon the appellants.

02. Briefly stated, the facts leading to the filing of the instant appeal are that, prior to filing of SWP No. 1438/2011, the respondent had filed SWP No. 1164/1997 along with four others seeking *inter alia* a direction to the appellants to appoint her as teacher with effect from the date, the persons similarly situated were appointed. This writ petition was allowed by the learned Single Judge vide order dated 13.07.1998 by directing respondents to offer the job of teacher to the respondent herein within a period of one month. It was provided that the period of one month would begin from the date, a copy of the order would be served upon the appellants. The aforesaid judgment was not implemented by the appellants and was challenged in LPA(S) No. 252/2000, which was dismissed by a Division Bench of this Court on 10.10.2001 and the respondents were directed to consider the case of the respondent herein for appointment within a period of six months. This was so ordered by the

Division Bench keeping in view the uncontroverted case setup by the respondent in the writ petition.

03. In compliance with the Division Bench judgment passed by this Court, the Chief Education Officer, Kupwara vide order No. 14655-57 dated 13.01.2003, appointed the petitioner as teacher in District Kupwara with immediate effect.

04. Feeling aggrieved, the respondent filed SWP No. 1438/2011 seeking *inter alia* a direction to the appellants herein to treat her appointment w.e.f 05.08.1996 i.e. the date on which all other similarly situated persons were appointed as teachers pursuant to Advertisement Notification dated 30.03.1995. The writ petition has been allowed by the Writ Court vide its judgment dated 25.11.2019 and the respondent has been held entitled to the appointment as teacher w.e.f 05.08.1996 notionally and monetarily from the expiry of three months from the date a copy of the judgment was delivered to the appellants. It is this judgment of the Writ Court, which is called in question before us.

05. Having heard learned counsel for the parties and perused the material on record, we find that vide judgment dated 13.07.1998 passed by learned Single Judge in SWP No. 1164/1997, there was a clear direction issued to the appellants to offer appointment to the respondent as teacher within a period of one month. Had the appellants not preferred an appeal against the aforesaid judgment, the respondent would have been entitled to be appointed as teacher by or before 13.08.1998. However, as is gatherable from the records, order dated 13.07.1998 was assailed by the

appellants before the Division Bench in LPA(S) No. 252/2000 and LPA(C) No. 103/2000, which were disposed of by a Division Bench of this Court vide order dated 10.10.2001 and the judgment passed by learned Single Judge was modified only to the extent of providing that instead of directing the appellants to offer the appointment of post of teacher to the respondent, a direction was issued to consider issuance of order of appointment within a period of six months. It is true that the judgment passed by the learned Single Judge was modified to the extent aforesaid for the reason that ordinarily this Court, in exercise of writ jurisdiction, does not issue direction to appoint a candidate.

06. Nonetheless, the fact remains that upon consideration, the appellants found the respondent entitled to appointment and this entitlement of respondent to appointment as teacher emanates from the judgment passed by the learned Single Judge. That being so, the respondent could not be denied the appointment to the respondent at least w.e.f 13.08.1998. The Writ Court did not appreciate that matter by directing the appellants to offer appointment to the respondent within one from the date of judgment, the prayer of the respondent for retrospective appointment from the year 1996 stood impliedly rejected. That being so, the judgment of the Writ Court to the extent of providing the retrospective benefit to the appointment of respondent as teacher w.e.f 05.08.1996 is not correct in law.

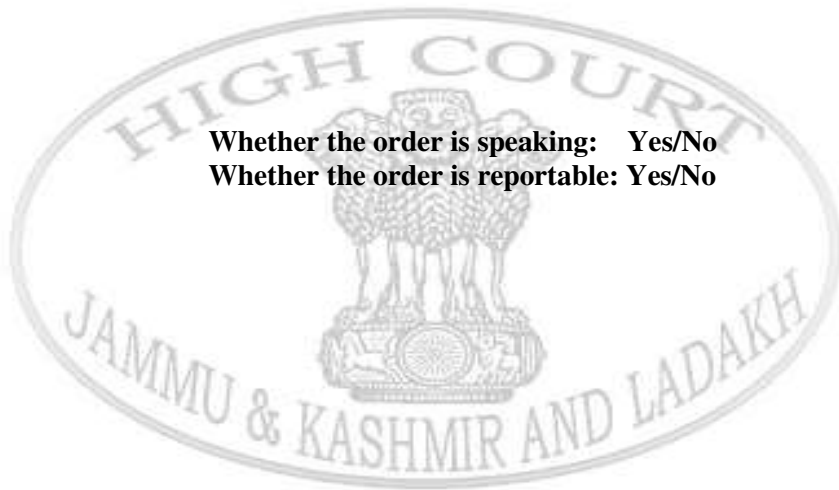
07. For the foregoing reasons, we allow this appeal partially and provide that the respondent (writ petitioner) shall be deemed to have been

appointed on 13.08.1998 notionally and monetarily with effect from the date, she has been actually appointed. The judgment impugned is modified to the aforesaid extent and the appeal is, accordingly, *disposed of* along with connected application(s).

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
07.11.2024
Mihul



Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No