

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 154/2022
CM No. 1472/2024

Afaq Ahmad Khan ...Petitioner(s)/Appellant(s)
Through: Mr. Salih Pirzada, Adv. with Ms. Sharaf Wani, Adv.

Vs.

Union Territory of JK & Ors. ...Respondent(s)
Through: Mr. Mubeen Wani, Dy. AG

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

ORDER
09.05.2024

1. The present appeal has been filed against the judgment and order dated 29th August 2022 passed by the learned Single Judge in WP (C) No. 1855/2022, whereby the writ petition filed by the appellant herein has been dismissed at its threshold.
2. The case as projected by learned counsel for the appellant before the learned Single Judge was that the respondents have issued a notification bearing No. SIMS 302 07 (XXXVIII)/2022-206-10 dated 28.01.2022 issued by Additional Director, SKIMS & Ex-officio Secretary to Government, whereby online applications were invited from in-service faculty members of Sheri-i-Kashmir Institute of Medical Sciences, working at the level of Assistant Professor, Association Professor & Additional Professor for promotion to the next higher post/grade under Assessment Merit Promotion Scheme (AMPS). The eligibility criteria which have been fixed as reproduced hereunder:-

- I) Assistant Professor/Associate Professor with 03 years and Additional Professor with 04 years regular service in the respective grade in SKIMS.
- II) xxxxx
- (III) xxxxx

3. Learned counsel for the appellant submits that he had already submitted before the learned writ court that he is entitled to retrospective notional effect to his appointment as Assistant Professor in the discipline of Clinical Hematology and that he would acquire requisite eligibility for promotion to the next higher post of Associate Professor in the said discipline.
4. In terms of advertisement notification No. 04 of 2015 dated 10th July 2015 whereby applications were invited for filling up of Faculty Positions in various General/Super-Specialty disciplines which included the post of Assistant Professor in the Department of Clinical Hematology. Learned counsel for the appellant submits that he being eligible also submitted his application for the post of Assistant Professor, Clinical Hematology, but the respondent-Institute have taken four years to complete the selection process and subsequently the petitioner have been appointed vide Government Order No. 106-SKIMS of 2019 dated 27.11.2019. It is contended by learned counsel for the appellant that when the process of selection has been delayed by four years, he constrained to approach before the Institute by submitting representation for grant of retrospective notional benefit to his appointment w.e.f. October 2018, when similarly situated persons who have also applied against the same notification and appointment orders have been issued in their favour in the year 2018. However, the respondent-Institute in terms of notice dated 25.08.2022 rejected the claim of the appellant for the promotion to the post of Assistant Professor due to lack of requisite service as per rules by 5 months and 8 days.
5. It is submitted by learned counsel for the appellant that the impugned notice before the learned writ court is against law and rules as the appellant is otherwise entitled to retrospectively along-with other similarly situated persons who have applied under the same notification and have been appointed in the year 2018 itself.
6. The appellant possesses the requisite experience of more than three years. Therefore, the appellant has filed a representation before the respondent-Institute and the said representation has been referred to

Department of Law, Justice and Parliamentary Affairs for opinion, however, no opinion as on date by the Law Department is on record. Thus, the appellant is aggrieved of the notice dated 25.08.2022 before the learned writ court, however, the learned writ court without seeking objections from the other-side have dismissed the writ petition at its threshold.

7. The appellant-writ petitioner also filed an application CM No. 1472/2024 seeking placing on record the Tentative Seniority List of Assistant Professors of SKIMS issued vide office order No. SIMS 819 (PER) of 2022 dated 12.09.2022 so as to properly adjudicate the matter in hand.
8. It is further submitted that the action of the respondents for rejecting the claim of the petitioner-appellant herein through the impugned notice dated 25.08.2022 of the candidature of the writ petitioner is absence of any consolidated seniority list resulting in prejudice caused due to the delay in issuance of the appointment order.
We have heard learned counsel for the parties and perused the record.
9. On perusing the writ record, it reveals that the writ petition has been dismissed at its threshold without seeking objections from the other-side. Even before us, the learned counsel for the appellant has filed an application for taking on record the Tentative Seniority List of Assistant Professors, however, the said list/documents were not before the learned writ court.
10. Learned counsel for the appellant has also referred to the judgments of the Supreme Court which are reported as under:-

Pilla Sitaram Patrudu & Ors. vs. Union of India & Anr.

reported as AIR 1997 SC 250.

*C. Jayachandran vs. State of Kerala & Ors. reported as
AIR 2020 SC 3846*

*Union of India & Ors vs. K. B. Rajoria reported as 2000
(3) SCC 562*

11. At this stage, learned counsel for the appellant submits that the learned writ court ought to have considered the matter after seeking objection from the other-side and thereafter ought to have considered the matter on merits, therefore, the learned counsel prayed that the matter be remanded back to the learned writ court.

12. In view of what has been stated above and argued by learned counsel for the appellant, we are of the opinion that the order passed by the learned writ court dated 29.08.2022 deserves to be set-aside by remanding the matter to the learned Single Judge with a request to him to consider the matter afresh after considering the afore-stated Tentative Seniority List and also after considering the objections filed by the respondents in the instant appeal and the judgments passed by the Supreme Court as cited above.
13. In view of above, we accordingly set-aside the impugned judgment and order passed by the learned writ court dated 29.08.2022 passed in WP (C) No. 1855/2022 with a request to the learned Single Judge to consider the matter afresh in light of observations made above and pass a fresh order.
14. The writ petition WP (C) No. 1855/2022 is restored to its original number and the same be listed on 14th May 2024 for final consideration at the top of the list as per roster.
15. It is made clear that this court has not expressed any opinion on the merits of the case.

(MOHAMMAD YOUSUF WANI)
JUDGE

(TASHI RABSTAN)
JUDGE

SRINAGAR:
09.05.2024
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