

(2018) 12 J&K CK 0086

Jammu & Kashmir High Court

Case No: Service Writ Petition (SWP) 556 Of 2015

Pawan Kumar
@APPELLANT@Hash State And
Ors

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 27, 2018

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Rahul Pant, Amit Gupta

Final Decision: Disposed Off

Judgement

1. The petitioner, who is working as 10+2 Lecturer in School Education Department on contractual basis has filed the present writ petition, seeking a direction to the official respondents to treat the petitioner as inservice candidate for the purpose of granting him relaxation in age, for considering his candidature for the post of Cultural Assistant as advertised vide Advertisement Notification No. 01 of 2011 dated 31st January, 2011.
2. Learned counsel for the petitioner submitted that vide order dated 03rd June, 2006, the petitioner was appointed as Teacher in Higher Secondary School for the period of sixty days. The engagement continued thereafter as the period was extended from time to time, for the reason that no regular recruitment had been made. As the petitioner apprehended his replacement by another contractual teacher, he filed SWP No. 1857/2007, wherein vide order dated 17th October, 2007, he was allowed to continue as Lecturer.
3. The Service Selection Board (for short, "the Board") issued advertisement No. 01 of 2011 for recruitment of Cultural Assistant (Junior

Grade) on 31st January, 2011. In terms of the conditions laid down in the advertisement, the age limit as on 01.01.2011 for inservice candidate was 40

years. The applications were to be routed through proper channel. The petitioner filed the application, the same was forwarded to the Board by the

competent authority. In the select list the petitioner was at serial no. 1, in the Open Merit Category. However, finally his candidature was withheld,

mentioning the reason that the applicant is required to produce the order, showing his appointment as a contractual teacher. Vide letter dated 20th

December, 2013, Chief Education Officer, Doda wrote to the Director School Education, Jammu that the petitioner was engaged as contractual

Lecturer and worked as such from 06th June, 2006 to 20th December, 2013 on academic arrangement. Vide communication dated 25nd February,

2014, sent by the Education Department to the Board, it was clarified that the petitioner had been working on contractual basis on academic

arrangement as Lecturer from 06th June, 2006 to 20th December, 2013. Still his candidature was not considered.

4. Learned counsel referred to Government order No. 102 GAD- of 2007 dated 27th January, 2007, which provided that even contractual appointees

shall be deemed to be inservice candidates for the purpose of age limit for direct recruitment in government service. He further referred to the

minutes of meeting of the Board held on 22nd December, 2014, wherein against agenda item in the case of the petitioner, it was decided that a

clarification be sought from the General Administrative Department (for short, "the GAD") as to whether a candidate engaged on academic

arrangement basis has to be treated at par with that of contractual appointee. He further submitted that the petitioner had continued working as

lecturer on contractual basis till year 2015. All other appointments from the select list have already been made and only the petitioner is left out.

Despite being most meritorious candidate in the select list, he is being denied appointment arbitrarily.

5. On the other hand, learned counsel for the Board submitted that he had sought clarification from the GAD, but the same is not on record. The State

in its reply states that they have no role to play in this process. It is nothing else, but shirking their responsibility.

6. Heard learned counsel for the parties and peruse the paper book.

7. Some of the basic facts, which are not in dispute in the present petition are that the petitioner was engaged on Contractual basis as lecturer in

School on 03rd June, 2006 and had continued working even as per the certificate issued by the education department from 06th June, 2006 to 20th

December, 2013, however, the petitioner claims that he had been working there till 2015.

8. The issue is as to whether the petitioner is entitled to relaxation in upper age for the purpose of recruitment as Cultural Assistant, being a

contractual employee.

9. Advertisement for the purpose of recruitment for various posts was issued by the Board on 31st January, 2011. One of the post was Cultural

Assistant. As per the conditions laid down in the advertisement, a candidate should not be below 18 years of age as on 01.01.2011 and not more than

48 years of age for different categories of applicants, as in certain cases, relaxation in age was permitted. The relevant clause from the advertisement

is extracted below:-

“(D) Age as on 01.01.2011 should not be:-

(i) below the age of 18 years

(ii) above the age of:

(a) 37 years in case of Open Merit.

(b) 40 years in case of SC/ST/RBA/ALC/OSC candidates.

(c) 39 years in case of Physically challenged candidates.

(d) 48 years in case of Ex-Servicemen.

(e) 40 years in case of candidates already in Government Service/Contractual employees.”

10. The case of the petitioner will fall in Clause (e) thereof, as this provides for maximum age of 40 years in case of a candidate in government

service/contractual employees. Clarification vide Cabinet decision 19/2 dated 24th January, 2007 was circulated by the State GAD vide Government

order 102-GAD of 2007, which clarified that the contractual employees shall be deemed to be inservice candidates as far as relaxation in upper age

limit prescribed for direct recruitment is concerned.

11. There is no dispute that application filed by the petitioner was forwarded by his parent department. He was at No. 1 in the select list in Open Merit

Category, however, when the final select list was notified on 19th December, 2013, recommendation in his case was withheld with the following

reasons:-

“Recommendation withheld subject to the production of order mentioning that the applicant was appointed as contractual Lecturer.”

12. The Education Department vide communication dated 25th February, 2014 addressed to the Board, clarified that the petitioner had been

working on contractual basis on academic arrangement as Lecturer from 06th June, 2006 to 20th December, 2013. Apparently, the Board did not

appreciate the fact that the aforesaid communication clearly mentioned that the petitioner was working on contractual basis, hence, in his case, the

upper age limit was to be taken as 40 years. The matter was taken up in the meeting of the Board held on 22nd December, 2014 and it was decided

that a clarification be sought from the GAD in this regard. There is nothing on record produced by the Board as to whether such clarification was

sought in terms of the decision taken by the Board in the aforesaid meeting.

13. In reply, filed by the respondent Nos. 1 and 4, the stand taken is that the answering respondents had referred the post to the Board for recruitment

and they have no role to play. Whatever recommendations are made by the Board, requisite action shall be taken as per rules.

14. In the aforesaid factual matrix, in my view, the reason on which the candidature of the petitioner sought to be rejected though being at merit

position No. 1 in the select list, cannot stand in judicial scrutiny. The petitioner was appointed as Lecturer on contractual basis in a school in the

Subject of Botany being a Post-Graduate candidate. His contractual engagement was extended from time to time, as no regular recruitment had been

made. Initial orders of appointment and extension do not mention the words “academic arrangement”. Even if these words have been mentioned

in the subsequent communications, granting extension to the teachers engaged on contractual basis, the same will not change the nature of

appointment of the petitioner, as in any education institution, any candidate appointed on contractual basis for teaching would be for academic purpose

only. Only explanation sought to be given for using these words was that there was a day's break being given to the petitioner while extending his

contractual engagement. The same can hardly be treated as a reason, not to consider the petitioner's engagement as contractual specially when the

Education Department vide Communication dated 25th February, 2014 had specifically clarified to the Board that the petitioner had been working on

contractual basis from 06th June, 2006 to 22nd December, 2013. Advertisement was issued on 31st January, 2011. Hence, on the date thereof, the

petitioner was working on contractual basis.

15. For the reasons mentioned above, present writ petition is allowed. The petitioner is to be treated as a contractual employee, working with

Education Department for the purpose of upper age limit for selection as Cultural Assistant. He being No. 1 in the select list in Open Merit is directed

to be recommended for appointment to the concerned department. As the petitioner was not at fault, it is directed that he shall be given same deemed

date of appointment on which the candidates selected in the same advertisement were appointed, for the purpose of fixation of his pay and seniority,

however, actual benefit be paid to him from the date, he join service. Needful be done within one month from the date of receipt of copy of the order.

16. Writ petition is disposed of, accordingly.