

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Dated: This 23rd day of June 2020

HON'BLE Dr. BHAGWAN, MEMBER – A

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

OA No. 062/00018/2020

Gawhar Abdulla (Age 50 years) S/o Mohammad Shaban Dar r/o Panzgam District Pulwama (I/C Lecturer presently posted in Government Girls Higher Secondary School, Khanyar, Srinagar)

“

.....Applicant

By Advocate: Mr. M.I.Dar, advocate

Versus

1. Union Territory of Jammu & Kashmir through Principal Secretary to Government, School Education Department, Civil Secretariat, Srinagar  
(Email : [schedujk@gmail.com](mailto:schedujk@gmail.com))
2. Director, School Education, Kashmir-Srinagar  
(Email : [dsekplg@gmail.com](mailto:dsekplg@gmail.com))
3. Principal, Government Girls Higher Secondary School, Khanyar (Srinagar)  
(Email : [gghsskhanyar2@gmail.com](mailto:gghsskhanyar2@gmail.com))

...Respondents

By Advocate: Mr. Amit Gupta, AAG

ORDER

Per Mr.Rakesh Sagar Jain, Member (J)

1. Applicant Gawhar Abdulla Dar has filed the present O.A. seeking the following reliefs:

- i. Impugned order No. 342-DSEK of 2020 dated 27.05.2020 issued by the Director School Education, Kashmir (Respondent No. 2 ) bearing endorsement No. DSEK/Estt.I/1023 dated 27.05.2020 forming Annexure A-1 to this Application may be quashed.
  - ii. The respondents be directed to allow the applicant to continue to work at his present place of posting as I/C Lecturer at Government Girls Higher Secondary School, Khanyar Srinagar, which post is still held by him.
2. Case of applicant Gawhar Abdulla Dar is that while in service of the Government as General Line teacher, he completed Masters in Mathematics in the year 1997-98. It is his case that he had applied for pursuing the Master in Mathematics and his case was sought to be dealt with, as per, Circular No. Estt-III/A/5361-5511 dated 02.11.2000 (Annexure A3) as is clear from letter of Chief Education Officer, Pulwama (Annexure A2). Applicant was promoted to the post of Master in 2009. Vide Government Order No. 298-Edu of 2019 dated 16.09.2019(Annexure A4), pending clearance by DPC, applicant amongst other teachers was temporarily placed as I/c Lecturers in his own pay and grade in Mathematics for a period of six months or till the post is filled up on regular basis whichever is earlier and the same would not confer any claim or right for regularization/confirmation and consequently applicant was posted as I/c lecturer in Government Girls Higher Secondary School, Khanyar, Srinagar.
3. It is the further case of applicant that adjustment subject to the fulfilment of certain conditions including that the leave had been properly sanctioned for pursuing regular academic, the Government issued letter No. Edu-II/359/19 dated 13.04.2020 (Annexure A6) according post facto sanction of study leave for acquiring higher educational qualification without seeking proper permission granted in favour of candidates placed as I/c lecturers subject to fulfilment of certain conditions mentioned in the order itself. However, the Directorate of School Education, Kashmir issued impugned Order No. 342-DSEK of 2020 dated 27.05.2020 (Annexure A1) whereby the posting of applicant as I/c lecturer, Government Higher Secondary School,

Khanyar, Srinagar has been withdrawn abinitio which has been challenged on the following grounds:

- I. Impugned order withdrawn by respondent No. 2 who had no power to withdraw;
  - II. Impugned passed without affording opportunity to applicant to be heard;
  - III. Case of applicant is covered by the various circulars as mentioned above;
  - IV. That being in service and having applied for permission for doing Post Graduation (Annexure A-2) he should be treated to have been granted permission as well as applicant is protected as per decision of the Education Department in its order Annexure A-6 whereby post-facto sanction of study leave was granted in favour of teachers including the applicant;
  - V. There are similar cases pending as such there was no need to withdraw the posting order of the applicant;
  - VI. In similar cases, respondents have granted post-facto sanction not only to placement of PG Master as in charge lecturer in Mathematics (Annexure A-7).
4. In their counter affidavit, respondents have taken the pleas that the applicant completed his Masters in Mathematics in regular mode while being in service without proper permission and without availing the leave for regular studies from the competent authority. Applicant had completed his Masters in 1997-1998 and as per Annexure A-2 applied for permission somewhere in 2000-2001. That the circular dated 2.11.2000 (Annexure A-3) does not apply to candidates in regular mode since the applicant had obtained his PG through regular mode.
5. The respondents have also taken a plea that “the plea of post facto sanction taken by the applicant is not tenable because post facto sanction issued vide communication No. Edu-II/359/19 dated 13.4.2020 applies only to the persons who have not drawn their salary during the period of regular study, where the leave has properly been sanctioned by the competent authority in favour of in-service teacher/master for

pursuing regular academic course and the HOD's/ZEO's/CEO's/DSE has granted the permission for pursuing the particular course. The applicant fails to qualify the accord of post facto sanction on all these counts as neither leave has been properly sanctioned by the competent authority nor proper permission has been granted in his favour. Besides also the applicant has taken salary for said period, as such ipso facto applicants claim for post facto sanction fails, because the applicant has a sanctioned leave of just 70 days out of this whole period of study and the remaining period stands paid in the form of salary.

6. It has been further averred in the counter affidavit that the applicant was promoted as I/c Lecturer subject to condition that this PG Degree is found to be genuine, however, after the issuance of the placement order dated 09.12.2019, it was found that inadvertently applicant was included in the posting order and since he has completed his PG in Mathematics while being an in-service candidate and that too without permission from the competent authority and therefore, the error was rectified by issuance of withdrawal of the posting orders of the applicant. It is the stand of respondents that applicant's reliance on post-facto sanction (Annexure A-6) is misplaced since the said sanction does not apply to the applicant as he failed to qualify the condition required for applicability to his case. It is the further case of respondents that the impugned order is not in contravention of the basis promotion order of the applicant since the respondents have only withdrawn the posting orders of the applicant. A specific plea has been taken by the respondents that "in reply to paras 5.7 and 5.8, it is respectfully submitted that similarly situated claims as claimed by the applicant are under examination with the answering whatever decision is reached out in the same, shall also be applicable to the case of the present applicant. As such the impugned order has not been issued not bitterly but in fact issued with proper application of mind and in the interest of department".
7. We have heard and considered the arguments of learned counsel for the applicant and learned AAG for respondents and gone through the material on record. Both the learned counsel have reiterated the pleas taken by them in their respective pleadings.

8. It would be pertinent to note the contention of the respondent-State that the promotion order of the applicant has not been interfered with by the respondents. By way of the impugned order, it is only the order of his posting which has been withdrawn as ab-initio. As per the respondents, the impugned order has been passed with the intention to see whether the applicant obtained his PG in Mathematics in accordance with Rules. The status of applicant still remains as I/c Lecturer. It is also the case of respondents that the applicant has not been singled out but that cases, similar in nature to applicant are also being scrutinised.
  
9. Looking to the facts of the case, the action of the respondents to examine the individual cases to see whether the candidates obtained their PG in Mathematics or other subjects cannot be faulted with. In fact, nobody can have a grouse against the action of the respondents in scrutinising as to whether the PG in Mathematics or other subjects was obtained in accordance with Rules or not. Rather the action of the respondents is that illegality or irregularity, if any, committed by any individual/s be brought to light so as to ensure cleanliness in the administration.
  
10. In the present case, the impugned order does not interfere with the promotion of the applicant but only touches his place of posting. The status of applicant still remains as that of I/c Lecturer. Looking to the facts and circumstances of the case and the objective behind the action of respondents in passing the impugned order, we find no ground to interfere with the impugned order. However, we would expect the Directorate of School Education to ensure that the scrutinize of the documents of the promotees is carried out within a reasonable period. A quick action would not only settle the uncertain position of the promotees but also ensure that the students are not deprived of their education due to delay in action by the Administrators in School Education Department. We would also say that Delay breeds greed which can be avoided by a quick action in settling the uncertainty which has arisen in the present case and does not involve complicated questions.

11. In view of the facts and circumstances of the case, we are of the view that Original Application has no merit and is accordingly dismissed. No order as to costs.

(Rakesh sagar Jain)  
Member (J)

(Dr. Bhagwan Sahai)  
Member (A)

ND\*