



**Central Administrative Tribunal
Jammu Bench, Jammu**

TA No.2904/2020
(SWP No. 136/2007)

Tuesday, this the 13th day of July, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Smt. Parkash Kumari
Wd/o Late Shri Som Nath
R/o House No.377, Mohalla Rehari, Jammu
Aged 45 years.

...Applicant

(Mr. Dinesh Singh Chauhan, Advocate)

Versus

1. State of Jammu & Kashmir
Through its Chief Secretary
J & K Government
Civil Secretariat, Jammu.
2. Secretary to Govt.
School Education Department
J & K Government
Civil Secretariat, Jammu.
3. Director School Education, Jammu.
4. Chief Education Officer, Jammu.
5. Zonal Education Officer, Bhalwal.

...Respondents

(Mr. Sudesh Mangotra, Deputy Advocate General)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant is working as Under Graduate (UG) Teacher in the Directorate of School Education, Jammu. The next promotion is to the post of Senior Teacher. Many UG Teachers, who were juniors to the applicant, were promoted vide order dated 25.05.2005. Obviously, acting on the representation of the applicant, the Director passed an order dated 20.10.05, extending the benefit to the applicant also, by citing the promotion of her juniors. About one year thereafter, the Director passed an order dated 01.12.2006, withdrawing the promotion of the applicant. It is stated that the promotion of UG Teachers ordered on 25.05.2005, was cancelled and withdrawn on 19.08.2006, and since the promotion of the applicant was dependent upon the promotion of her juniors, the promotion extended to the applicant also deserves to be withdrawn, once the so called juniors were reverted.

2. The applicant filed SWP No. 136/2007 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 01.12.2006. She contends that neither any notice was issued, nor was any inquiry conducted before the impugned order was

Item No. 3



passed. According to the applicant, the impugned was passed in utter violation of the principles of natural justice.

3. The respondents filed a detailed counter affidavit, stating that the impugned order came to be passed on account of the fact that the persons, who were promoted earlier to the applicant, were reverted and the same result followed in the case of the applicant also.

4. The SWP has since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as T.A. No. 2904/2020.

5. Today, we heard Mr. Dinesh Singh Chauhan, learned counsel for applicant and Mr. Sudesh Mangotra, learned Deputy Advocate General.

6. In a way, the impugned order is self-explanatory. It is not in dispute that several UG Teachers, who are juniors to the applicant herein, were promoted vide order dated 25.05.2005, even while the applicant was left over. She seems to have made a representation ventilating her grievance about her being left out, even while her juniors were promoted. The Director passed an

Item No. 3



order dated 20.10.2005. The relevant portion of the order reads as under:

“Subject to clearance by the D.P.C. sanction is hereby accorded to the placement of:-

a) 45 Trained under graduate teachers (dropout cases) as Sr. Teachers in the pay scale of 5500-9000 w.e.f. 25-05-2005 i.e. the date from their junior counterpart trained under graduate teachers have been placed as Sr. teachers as per Annexure-“A”.

b) 274 trained under graduate teachers as Sr. teachers w.e.f. the date of issue of this order in the grade of Rs.5500-9000 as per Annexure-“B”.”

7. It is evident that the very promotion of the applicant was on the basis of the fact that her juniors were promoted earlier. Second is that the applicant was not subjected to any Departmental Promotion Committee (DPC) and the promotion was subject to clearance by DPC.

8. The UG Teachers, who were promoted on 25.05.2005, were reverted vide order dated 19.08.2006. However, they started making representations, stating that the applicant, who was promoted long after their promotion, is being continued, whereas they were reverted. Faced with this peculiar situation, the Director passed the impugned order, reverting the applicant also.

Item No. 3



9. It is true that the withdrawal of promotion would result in reduction of wages for the applicant. Learned counsel for applicant placed reliance upon the judgment of the Hon'ble Supreme Court in **Divisional Superintendent, Eastern Railway, Danapur & others v. L N Kashri & others**, AIR 1974 SC 1889. The occasion for application of principles of natural justice would have arisen, if only the promotion of the applicant was on regular basis and it was withdrawn without any notice or inquiry. As mentioned earlier, in the instant case, the only basis for promoting the applicant was that her juniors were promoted earlier, whereas she was dropped out. The Director passed an order dated 20.10.2005, promoting the applicant just by citing the said fact. This is not a case in which the applicant came to be promoted in the ordinary course on being cleared by the DPC. The 1st sentence in the impugned order reads that "promotion is being made subject to clearance by DPC". Such a procedure is not known to law.

10. Whatever be the circumstances in which the applicant came to be promoted, once the very foundation on which the promotion was made ceases to exist, the applicant has to follow the suit. It cannot be a case where the persons, who are promoted earlier to the applicant, are discontinued or reverted, whereas the

Item No. 3



applicant, who was promoted by citing their cases, would be continued. The effort is to demonstrate that the very promotion of the applicant was dependent upon several factors and completely out of turn, and without any basis or foundation of law. Therefore, the question of issuance of notice does not arise and the principle laid down in **L N Kashri's** case does not apply to the facts of the case.

11. We do not find any merit in the T.A. and accordingly the same is dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 13, 2021
/sunil/jyoti/