

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7009 OF 2019
(Arising out of SLP (Civil) No.15610/2019)

STATE OF JAMMU & KASHMIR & ORS.

Appellants

VERSUS

NISHA SHARMA

Respondent

J U D G M E N T

Uday Umesh Lalit, J.

Leave granted.

This appeal arises out of the judgment and order dated 31.08.2018 passed in LPASW No.45 of 2018 passed by the High Court of Jammu & Kashmir at Jammu.

The facts leading to the filing of the present appeal are as under:

In the selection undertaken for posts of Teachers pursuant to notification dated 12.10.1995, adequate weightage having not been given for the Post Graduate qualification, some candidates including the present respondent had approached the High Court by filing SWP No.686 of 1997. This writ petition was dismissed qua others but was allowed as regards the respondent with a direction to the appellants to consider her case on the basis of her M.Ed. qualification.

Therefore, the case of the respondent was considered and she was appointed as Teacher vide order dated 08.08.2003.

Thereafter, SWP No.523 of 2009 was filed by the respondent claiming retrospective effect to her appointment as Teacher and contending that she was entitled to be conferred benefits and advantages as if she was selected in the initial selection process. This Writ Petition was disposed of by the High Court vide order dated 26.04.2011 directing the appellants to consider her claim .

In pursuance of the aforesaid direction, the matter was considered and the claim raised by the respondent was rejected vide order dated 30.08.2012. While rejecting the claim, it was stated:

"whereas the Adm. Department desired that the appointments can not be given retrospective effect because such action may adversely affect the seniority of persons appointed earlier vide letter No.Edu/legal/J/504/2012 dated 17.07.2012".

This led to the filing of the instant proceedings i.e. SWP No.674 of 2013 by the respondent seeking following reliefs:

- i) To issue writ, order or direction in the nature of writ of certiorari quashing the order of respondent no.2 issued vide order No.DSEJ/Legal/1141-43 dated 30th August, 2012;
- ii) To issue writ, order or direction in the nature of writ of mandamus commanding upon the respondents to give the appointment of the petitioner as teacher made vide Order No:CEOK/6241-45 dated 8th August, 2003 by the Respondent No.3, retrospective effect with effect from the date the candidates selected in the select list published on 5th February, 1997 in pursuance to Advertisement Notification No.07 of 1995 dated 12th October, 1995, with all consequential benefits of seniority, pay fixation and arrears of salary etc.;

iii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be granted in favour of the petitioner and against the respondents along with cost of the petition."

The submissions of the respondent were accepted by the Single Judge of the High Court, who allowed the writ petition and passed the following directions:

"7. Viewed thus, the impugned order is not sustainable and is quashed. By issue of a writ of mandamus respondents are directed to give retrospective effect to the appointment of the petitioner notionally in accordance with her merit position in the select list prepared pursuant to and in furtherance of Advertisement Notification No.07 of 1995, dated 12.10.1995, from the date of the appointment of the candidate next in merit to her and to fix her seniority and salary accordingly. The monetary benefit, however, shall be given from the date of impugned order, that is, 30.08.2012. Let this judgment be complied within four weeks after petitioner produces its copy in the office of respondent No.2."

The appeal preferred by the appellants came to be rejected by the Division Bench while affirming the aforesaid view of the Single Judge.

The learned counsel for the appellants submitted that the relief claimed by the original writ petitioner was not only in the nature of consequential benefits of seniority but included "arrears of salary" as well.

The learned counsel for the respondent fairly submitted that the relief as regards "arrears of salary" stood denied by the learned Single Judge and the directions issued by the Single Judge were never appealed against by the respondent and thus became final. He further submitted that in any case the respondent is no longer claiming any arrears in respect of the period 1995-2003.

The claim of arrears of salary having been negated by the Single Judge, that issue need not detain us.

As regards claim for seniority, the reason given by the Department while rejecting the claim cannot be said to be incorrect or illegal. If, at this juncture, seniority with effect from the initial selection is conferred upon the respondent, it may upset various intervening claims of persons who are not even before the Court. In the circumstances, such a relief can also not be extended in favour of the respondent.

In the peculiar facts and circumstances of the case, we may however observe that for the purposes of reckoning the service for pensionary and other retiral benefit, the earlier period, namely, from the day when all others were selected in the initial process till the date when the respondent was given appointment, shall be taken into account. It is however clarified that no monetary benefit in terms of arrears of salary and no benefit on account of any seniority as contended shall be conferred upon the respondent.

The appeal, therefore, stands allowed to the aforesaid extent.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
SEPTEMBER 4, 2019

ITEM NO.70

COURT NO.7

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.15610/2019

(Arising out of impugned final judgment and order dated 31-08-2018
in LPASW No.45/2018 passed by the High Court Of J&K At Jammu)

STATE OF JAMMU & KASHMIR & ORS.

Petitioner(s)

VERSUS

NISHA SHARMA

Respondent(s)

(FOR ADMISSION and I.R.; and, IA No.85495/2019 - FOR CONDONATION
OF DELAY IN FILING)

Date : 04-09-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. G.M. Kawoosa, Adv.
Mr. M. Shoeb Alam, AOR

For Respondent(s) Mr. Rahul Joshi, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER