

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

Reserved on: 22.08.2023

Pronounced on:01.09.2023

**SWP No.1283/2011**

**DR. PARVAIZ AHMAD MIR**

**...PETITIONER(S)**

*Through: - Mr. M. A. Qayoom, Advocate.*

Vs.

**ISLAMIC UNIVERSITY OF SCIENCE  
AND TECHNOLOGY & OTHERS**

**...RESPONDENT(S)**

*Through: - Mr. Mubashir Malik, Dy. Ag, with  
Mr. Mohammad Younis, Advocate.*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**1)** The petitioner has challenged order No.87(Est) of 2011 dated 06.06.2011, issued by respondents No.1 and 2, whereby the petitioner has been removed from the post of Reader retrospectively. Challenge has also been thrown to advertisement notice No.03 of 2011 dated 10.06.2011, so far as the same relates to the filling up of the post of Associate Professor/Reader, Business Studies, in the Islamic University of Science & Technology, Awantipora.

**2)** The facts which emerge from the pleadings of the parties are that vide advertisement notice No.01 of 2009 dated 17.06.2009, issued by the respondent University, applications were invited, *inter alia*, for the post of Reader in Business Studies. The petitioner, who was already working as a Lecturer in Management Studies in the same University, responded

to the aforesaid advertisement notice. After completion of selection process, the respondents by virtue of order No.03(Est) of 2010 dated 22.02.2010, appointed the petitioner as Reader in Business Studies. However, vide communication dated 28.04.2010 issued by respondent No.3, a notice was issued to the petitioner whereby it was conveyed to him that certain discrepancies have been observed in the documents submitted by him in support of his eligibility as regards the experience for the post of Reader. The petitioner, vide his communication dated 14<sup>th</sup> May 2010, filed reply to the aforesaid notice but the respondents did not feel satisfied with the explanation tendered by the petitioner and concluded that the petitioner had secured his appointment by misrepresentation and concealment of material facts. Accordingly, the respondents invoked condition No.(iv) of the appointment letter of the petitioner and issued the impugned order thereby directing his removal from the post of Reader retrospectively.

**3)** The petitioner has challenged the impugned order on the grounds that the same has been issued without holding any enquiry and without issuing any show cause notice to him informing him about the proposed punishment. It has been further contended that the petitioner did not submit any false information in his application form and as per the rules in vogue, the petitioner was holding the requisite experience. The petitioner has also levelled allegations of *mala fides* against respondent No.3.

4) The respondents have contested the writ petition by denying the contentions raised by the petitioner. According to the respondents, the petitioner had concealed material information as regards his experience and had also furnished contradictory information, inasmuch as while filling up his form for the post of Reader, he had shown his period of experience as contractual Lecturer in the Department of Management Studies in Kashmir University from May, 2004, to December, 2005 but while filling up his form for the post of Reader, he had shown his period of experience as Lecturer in the Department of Management Studies in Kashmir University from 1<sup>st</sup> March, 2004 to 15<sup>th</sup> June, 2006. It is contended that as per the advertisement notice, the period spent for obtaining the Research Degree had to be excluded while computing the experience of teaching but the petitioner had concealed the fact that from the year 2004 to 2007 he had undergone Ph.D. course which is a research degree.

5) I have heard learned counsel for parties and perused the record of the case including the record produced by the respondents.

6) The record shows that the petitioner was appointed as Reader in terms of University Order No.03(Est) of 2010 dated 22.02.2010 pursuant to advertisement notice No.01 of 2009 dated 17.06.2009. One of the conditions of the aforesaid appointment order, which is relevant to the issue at hand, is condition No.(iv). The same is reproduced as under

*(iv) If any declaration given or information furnished by him proves to be false or is found to have wilfully suppressed any material information, he will be liable for removal from service and such other action as may be deemed necessary.*

7) From a perusal of the afore-quoted condition, it is clear that if it is found that the appointed candidate has given a false information or has suppressed any material information, he will be liable for removal from service or such other action as may be necessary. It is not in dispute that the impugned order of removal of petitioner from the service has been passed by the respondents when his services were yet to be confirmed though the initial period of probation of one year had expired. Therefore, if from the records, it is established that the petitioner had furnished any false information or had suppressed any material information, the respondents would be well within their jurisdiction to invoke Condition No.(iv) of the appointment letter and terminate his services.

8) For determining the aforesaid issue, it would be apt to notice the eligibility condition as regards the experience that was laid down in the advertisement notice dated 17.06.2009. It reads as under:

- i) PhD in the concerned subject from a recognized Institution with first Class Masters Degree.
- ii) Five years of teaching and/or research as lecturer or equivalent excluding the period spent for obtaining the research degree and has made some mark in the areas of scholarship as evidenced by quality of publications, contributions to educational innovation, design of new courses and curricula.

9) A look at clause (ii) of the eligibility condition quoted above shows that for a candidate to be eligible for the post of Reader, he had to possess five years of teaching and/or research as Lecturer or equivalent excluding the period spent for obtaining research degree.

**10)** Learned counsel for the petitioner has contended that the expression “excluding the period spent for obtaining the research degree” has to be read in conjunction with latter part of the said clause which provides making of mark in areas of scholarship evidenced by publications, contributions to educational innovations etc. The argument advanced by learned counsel for the petitioner in this regard is without any merit for the reason that the expression “excluding the period spent for obtaining the research degree” is an exclusionary clause to period of experience of five years laid down in the condition of eligibility, meaning thereby that the period of five years of teaching has to be counted after excluding the period spent by a candidate for obtaining the research degree. A candidate besides having five years of teaching experience (excluding the period spend for obtaining a Research Degree) must have acquired some mark in the areas of scholarship which should be evidenced by publications etc. This is the only possible interpretation of clause (ii) of the eligibility conditions. Thus, it is clear that the period spent by a candidate in obtaining the research degree like Ph.D. has to be excluded while computing his/her experience.

**11)** The question which falls for determination is as to whether the petitioner had given any false information or did he suppress the fact that he had undergone Ph.D. degree. If we have a look at the application form of the petitioner, a copy whereof has been placed on record by the respondents along with their reply, it is revealed that in column (13) of the application, the petitioner has declared that he has worked as a

Lecturer with the respondent University from 16<sup>th</sup> of June, 2006 till the date of submission of application i.e., 14.07.2009. He has further declared in the said column that he has worked as a Lecture in the Department of Management Studies, Kashmir University from 1<sup>st</sup> March, 2004 to 15<sup>th</sup> June, 2006. This declaration of the petitioner is supported by the certificates issued by the concerned universities.

**12)** The contention of the respondents is that the petitioner has undergone Ph.D. course from Kashmir University from the year 2004 to 2007 and this period has to be excluded while computing his experience. It is contended that the petitioner has suppressed that the fact that he had undergone Ph.D. course in the University of Kashmir during the aforesaid period.

**13)** If we have a look at the application form of the petitioner, he has clearly declared in column No.(11) that he has obtained Ph.D. degree from Kashmir University in the year 2007. In column No.(14) of the application form, it is indicated that the petitioner had submitted his certificate evidencing the fact that he had undergone Ph.D. course. Therefore, it cannot be stated that the petitioner had suppressed the fact that he had undergone Ph.D. course in Kashmir University. Whether the period spent by the petitioner while undergoing Ph.D. course could have been counted while computing his experience was a matter to be determined by the Selecting Authority. It is not a case where the petitioner has suppressed any information from the respondents. If at all



anybody is to be blamed, it is the Selecting Authority and the Committee which scrutinized the testimonials of the petitioner while entertaining his application form. The lapse has been on the part of the Screening Committee of the respondent University and not on the part of the petitioner who has disclosed all the information that he was required to disclose as per the application form.

**14)** It has been contended by the respondents that the petitioner while filling up his form for the post of Reader had shown his period of experience as contractual Lecturer with Kashmir University from May, 2004 to December, 2005 but in the application form for the post of Reader, he has mentioned the period of his experience as a Lecturer with Kashmir University from 1<sup>st</sup> March, 2004 to 15<sup>th</sup> June, 2006.

**15)** There cannot be any dispute about the aforesaid factual aspect stated by the respondents but it is to be noted that the petitioner had filled up his application form for the post of Lecturer with the respondent University in the month of June, 2006 and until that date, he continued to work with Kashmir University. It is for this reason that when the petitioner filled up his form on 14<sup>th</sup> June, 2009 for the post of Reader, he reflected the period of his engagement as Lecturer with Kashmir University upto 15<sup>th</sup> June, 2006. In any case, the petitioner had submitted a certificate issued by Kashmir University which showed his experience as Lecturer in the Department of Management Studies from 1<sup>st</sup> March, 2004 to 15<sup>th</sup> June, 2006. It is on the basis of the said certificate, he has

declared the information as regards his experience as a Lecturer with Kashmir University, while filling up his application form for the post of Reader.

**16)** From the foregoing analysis of the facts emerging from the record, it is clear that as per the covenants of the advertisement notice, pursuant to which the petitioner was appointed as a Reader, teaching experience of five years of a candidate had to be computed by excluding the period spent for obtaining the research degree like Ph.D. It also emerges that the petitioner had clearly mentioned in his application form that he had undergone Ph.D. course and had, in fact, annexed the copy of the certificate issued by the University along with his application form. The only thing the petitioner had done is that he had declared his experience as a Lecturer in the Department of Management Studies, Kashmir University, which he had acquired while he was pursuing the Ph.D. course. The Screening Committee of the respondent University while examining the eligibility of the petitioner could have easily ignored the period of experience shown by him during the period, he had undergone Ph.D. course. It appears that the Screening Committee of the respondent University has ignored this aspect of the matter and has not correctly appreciated the tenor of eligibility conditions prescribed in the advertisement notice. This is clear from communication dated 22.10.2010 of the Screening Committee comprising Dr. H. R. Naik, Mr. Qaisar Giri and Dr. A. G. Lone, wherein they have clearly admitted that due to oversight the period spent for obtaining the research degree was



not excluded which is regretted. Thus, it is a case of lapse on the part of the Screening Committee of the respondents and it is not a case of false declaration or concealment of material facts on the part of the petitioner. In these circumstances, the respondents could not have invoked condition No.(iv) of the appointment order dated 22.02.2010.

**17)** Having said that the respondents could not have invoked condition No.(iv) of the appointment order dated 22.02.2010 for removing the petitioner from the service with retrospective effect, the fact remains that the petitioner was not holding the requisite experience of five years in teaching or research as Lecturer if we exclude the period during which he has undergone Ph.D. course. As already stated, as per the conditions of eligibility prescribed in the advertisement notice dated 17.06.2009, the period spent for obtaining a research degree had to be excluded. Therefore, the petitioner did not possess five years of teaching experience, which is an essential condition for appointment to the post of Reader.

**18)** An appointment which is made in violation of the essential eligibility conditions is non-est in the eyes of law. This defect was detected by the respondents after the petitioner had already served for about one year as a Reader. If the essential qualification for recruitment to a post is not satisfied, the same cannot be condoned. Such an act cannot be ratified. An illegality cannot be regularized, particularly when the advertisement notice in no unmistakable terms provided that the

experience of five years in teaching is an essential qualification. It is not the case of the petitioner that essential condition relating to experience in teaching was condoned or relaxed by the respondents. Therefore, in no case the petitioner could have continued in the service once it was detected that his basic appointment is *dehors* the rules.

**19)** Learned counsel for the petitioner has vehemently contended that without holding an enquiry which initiates with the serving of a charge sheet upon the delinquent official, the petitioner could not have been removed from service. It is true that no enquiry has been conducted by the respondents before terminating services of the petitioner nor any charge sheet has been served upon him but then in answer to the show cause notice, the petitioner has admitted the factual position that he was undergoing Ph.D. course during the period he was working as a contractual Lecturer in Kashmir University. As per the advertisement notice, the said period had to be excluded while computing his experience. Therefore, even if an enquiry is held in the matter, this position is not going to alter as these are admitted facts.

**20)** The principles of natural justice and concept of fairness do not require that such principles have to be read in a manner so as to operate as a one-way street. If the facts are admitted, holding of an enquiry would be an empty formality. Therefore, merely because an enquiry has not been held by the respondents before removing the petitioner from the post of Reader, in the facts and circumstances, would not cause any prejudice to the petitioner.

**21)** Lastly, it has been argued by learned counsel for the petitioner that the petitioner has not been removed from service by the competent authority. The argument of the learned counsel in this regard is without any merit for the reason that the decision regarding removal of the petitioner from the service has been approved by the Executive Council of the respondent University which is the competent authority as per the Statutes of the University. This is discernable from the record produced by the respondents.

**22)** For the foregoing reasons and in the peculiar facts and circumstances of the case, while it is held that the respondent University could not have invoked condition N.(iv) dated 22.02.2010 for passing the impugned order of removal of the petitioner from service, the ultimate order of removal of petitioner from service respectively deserves to be upheld and is, accordingly, upheld. The writ petition stands disposed of.

**23)** The record be returned to the learned counsel for the respondents.

**(Sanjay Dhar)**  
**Judge**

**SRINAGAR**  
**01.09.2023**  
**"Bhat Altaf, PS"**

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*