HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on : 20.09.2022
Pronounced on : 28.09.2022

WP(C) No.135/2021

Syeda Afshana Bhat ...Petitioner(s)

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

V/s

University of Kashmir and others ...Respondent(s)

Through:- Mr. Tasaduq H. Khawja, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioner is an Associate Professor in Media Education and Research Centre of the University of Kashmir ['the University']. She is aggrieved of and has sought a writ in the nature of certiorari for quashing following orders/communications issued by the University:-

(a) Order No. F (Placement. Sr. Scale-CAS) RC/KU/10/124 dated 19-05-2010;

(b) Communication No. F(Seniority-Ap. MERC) Admn TW/KU/19/6176 dated 27-04-2019; and

(c) F(MERC-Seniority)Adm-TW-218464 dated 08-01-2021.

The order/communications hereinabove shall be hereinafter referred to as impugned order/communications respectively.

2. Before adverting to the grounds of challenge urged on behalf of the petitioner and the rebuttal thereto given by the respondents, it would be appropriate to notice material facts.

3. The petitioner and respondent No.6 applied for the solitary post of Lecturer in Media Education and Research Centre [MERC] of the University, notified for direct recruitment vide advertisement notice No. F.10 (Apptt-Gen)Adm/TW dated 22.01.2002. In the selection process, the petitioner came to be selected against the post and was, accordingly, appointed by the University vide Order No. F.10 (Apptt-Gen) Adm/TW/02 dated 16.05.2002 as Lecturer MERC. Vide same order the respondent No.6 too was appointed as Lecturer MERC on regular temporary basis. The order of appointment dated 16.05.2002 was, however, subject to approval of the Syndicate of the University. The Syndicate in its meeting held on 06.12.2003 cleared the appointment of the petitioner and, accordingly, the University vide its order dated 03-04-2004 confirmed the services of the petitioner as Lecturer, MERC with effect from 17.06.2003. The respondent No.6, however, continued on regular temporary basis. In the year 2007, the University vide its advertisement notification No. F.10 (Apptt-Gen) RC/KU dated 20.07.2007 invited applications for making recruitment against various posts which included two posts of Lecturer (Migrant), MERC. The respondent No. 6, who was already in temporary employment of the University, made it to the selection against one of the two posts and was, accordingly, vide Order No. F10 (Apptt-Gen) RC/KU dated 08-12-2007 appointed as Lecturer purely on temporary basis against

migrant vacancy in MERC. This appointment of the respondent No.6 was subject to ratification by the Syndicate and to the decision, if any, taken by the Syndicate with regard to filling up of the migrant vacancies. It seems that pursuant to the decision taken by the University to fill up the migrant vacancy on permanent basis in its meeting held on 21-09-2017, the temporary services of the respondent No.6 were confirmed and as a result the University vide its order dated 20-10-2017 confirmed the respondent No.6 as Assistant Professor (earlier Lecturer), MERC with effect from 08-12-2008.

Vide order impugned dated 19-05-2010, both the petitioner and respondent No.6 were placed in the senior scale of Assistant Professors in MERC with effect from 17-05-2008 and 17-05-2007 respectively. This is where respondent No.6 stole a march ahead of the petitioner. It is important to note that both the petitioner and respondent No.6 were given the benefit of senior scale of Assistant professor by a common order dated 19-05-2010, the order impugned in this petition.

The impugned order dated 19-05-2010 was acted upon in letter and spirit. It was only in the year 2019, a representation came to be made by the petitioner against the placement of respondent No.6 ahead of the petitioner. Vide impugned communication dated 27-04-2019, the petitioner was informed that respondent No.6 was senior to the petitioner. By the later communication dated 08-01-2021 the petitioner was informed that the services put in by respondent No.6 as Assistant Professor on temporary basis too have been considered under Carrier Advancement Scheme

[‘CAS’] in the light of University Grants Commission Regulations. Feeling aggrieved and dissatisfied with the reply tendered by the University in respect of grant of seniority to respondent No.6 over and above the petitioner, the petitioner has come up before this Court through the medium of instant petition.

4. On being put on notice, the University through its counsel Mr. T. Khawja, has filed objections. On the statement made by learned counsel appearing for respondent No.6, the objections filed by the University are treated as objections on behalf of respondent No.6 as well.

5. Apart from taking preliminary objection to the maintainability of the writ petition on account of delay and latches, the University has also contested the petition on merits. A great deal of emphasis has been laid on the fact that the petitioner has not assailed the order bearing No. F (Promotion-CAS) Rectt.KU dated 19-10-2020 whereby the petitioner and respondent No.6 have been promoted as Associate Professors in MERC with effect from 17-08-2016 and 17-05-2015 respectively. It is submitted that in the cadre of Associate Professor the respondent No.6 is senior to the petitioner by virtue of Order dated 19-10-2020, which order the petitioner has not called in question in this petition. On merits, it is contended that respondent No.6 stole march over the petitioner on account of her qualification of M.Phil and also as per UGC norms the *ad hoc* and temporary services rendered by the respondent No.6 have been counted for giving the benefit of promotion to the next higher level under CAS. On

these twin submissions the impugned communications and the impugned order of 2010 are sought to be justified by the University.

6. Having heard learned counsel for the parties and perused the material on record, it is appropriate to first deal with the preliminary objection to the maintainability of petition taken by the learned counsel for the respondents.

Delay and latches/ Waiver and acquiescence:

7. On behalf of respondents, it is strenuously argued that the cause of action, if any, accrued to the petitioner in the year 2002 itself when, as per the petitioner, the respondent No.6 was appointed as Lecturer MERC along with her despite there being no post of Lecturer available. The petitioner also did not challenge the impugned order dated 19-05-2010 at the earliest possible opportunity i.e. in the year 2010 itself, more particularly, when the impugned order whereby the petitioner and respondent No.6 were placed in the senior scale of Assistant professors with effect from 17-05-2008 and 17-05-2007 was a common order deemed to be in the knowledge of the petitioner. It is further submitted by the respondents that the order dated 19-10-2020, whereby the respondent No.6 has been promoted as Associate Professor with effect from 17-05-2017 ahead of the petitioner, who has been similarly promoted with effect from 17-08-2016, is not assailed by the petitioner though this petition was filed in the year 2021.

8. Per contra, Mr. Qayoom, learned counsel for the petitioner argues that delay and latches would not come in the way of the petitioner in view

of the admission of this petition to hearing vide order dated 07-05-2022. He submits that with the admission of the petition and this Court finding a *prima facie* case for adjudication, the plea of delay and latches raised by the respondents in their reply affidavit shall be deemed to have been rejected by this Court. He also justifies the delay in filing of this petition on the ground that the order of appointment of respondent No.6 made in the year 2002 without any selection process and availability of post, is a fraud and limitation cannot come in the way of throwing challenge to such an act of fraud committed by the University to confer wrongful benefit upon the respondent No.6. It is argued that not only the respondent University appointed the respondent No.6 by throwing all norms of selection to winds but the entire affair was kept as a guarded secret. The petitioner got the knowledge only when she applied for requisite information under Right to Information Act and was supplied the information in respect of placement of respondent No.6 ahead of her in all promotions.

9. Having considered the rival contentions, I am of the considered view that petitioner has lost the remedy of invoking the extraordinary writ jurisdiction against the impugned order and the subsequent communications issued by the University by her conduct which clearly is tantamount to acquiescence and waiver. The impugned order dated 19-05-2010 is a common order whereby both the petitioner and respondent No.6 have been cleared and placed as Assistant Professors in Senior Scale with effect from 07-05-2008 and 07-05-2007 respectively. Indisputably, the petitioner and respondent No.6 are colleagues since 2002 and have been

working in the Department of MERC, University of Kashmir, together. It is thus not believable that petitioner was not aware of the impugned order dated 19-05-2010, of which she was also a beneficiary, till the year 2019 when she filed her first representation against the preferential treatment accorded to the respondent No.6. The plea of Mr. Qayoom that the order of initial appointment of respondent No.6 issued by the University on 16-05-2002 is an outcome of fraud and, therefore, nullity *ab initio*, also cannot be accepted. True it is, the order dated 16-05-2002 in respect of respondent No.6 was subject to approval of the Syndicate and was followed by the selection and appointment of the respondent No.6 in terms of order dated 08-12-2007, which order was pursuant to a proper selection process conducted by the University after issuing advertisement and inviting applications from eligible candidates. The University Syndicate, vide its resolution adopted in its meeting held on 21-09-2017 confirmed the appointment of the respondent No.6 and vide Order dated 20-10-2017, the University appointed the respondent No. 6 on substantive basis with effect from 08-12-2008. The appointment of respondent No.6 as Lecturer by the University vide order dated 16-05-2002 may be an irregular appointment but the same cannot be treated as an appointment obtained by respondent No.6 by practicing any fraud. She was a candidate in the selection process initiated by the University vide advertisement notification dated 22-01-2002. The selection process was initiated to fill up only one post of Lecturer in MERC. Against this post the petitioner was selected. It is not discernible from the reply affidavit as to whether respondent No.6 was a candidate next in the order of merit and was engaged on regular temporary

basis against the one of the two available posts of Lecturer (Migrant) in the Department. The order dated 16-05-2002 has remained un-assailed till date. The order in respect of respondent No.6 has been acted upon to the knowledge of the petitioner and, therefore, it would not be permissible to allow the petitioner to raise the plea of fraud after long 20 years.

10. I am also not impressed by the argument of Mr. Qayoom that the plea of delay and latches stands waived with the admission of the writ petition. While I am not disputing the proposition put forth by Mr. Qayoom that admission of writ petition after hearing both sides indicates that the Court has set out the petition for final hearing only after being satisfied that the petition deserves hearing on merits. However, in the instant case, the writ petition, as it appears from the order dated 07-05-2022, has been admitted due to failure of the respondents to appear and the failure of respondent No.6 to file her reply affidavit. It appears that on the date the matter came up for consideration, this Court was persuaded to admit the writ petition in the absence of learned counsel representing the respondents. Indisputably, the University, in its objections has taken a specific preliminary objection to the maintainability of the writ petition. The objection taken by the University was not considered at the time of admission of the writ petition. The order of admission of the writ petition dated 07-05-2022 clearly indicates that the writ petition has been admitted as a matter of course and not after giving hearing to the parties. Such type of admission cannot be taken to be the consideration and rejection of the

objection of the respondents to the maintainability of the writ petition on account of delay and latches.

11. That apart, the delay and latches in the instant case is not only inordinate but is bereft of any cogent explanation by the petitioner. The impugned order has been further acted upon and vide order dated 19-10-2020 issued by the University, respondent No.6 has been promoted to the next level of Associate Professor with effect from 17-05-2015 ahead of the petitioner, who has been so promoted by the same order with effect from 17-08-2016. The order dated 19-10-2020 is again a common order in respect of the petitioner and respondent No.6 and is not assailed by the petitioner in this petition. The judgment, relied upon by the petitioner, do not further her case in any manner. The Division Bench judgment of this Court in ***Shashi Gupta v. Indu Kaul and ors*****,** **2019 (2) JKJ [HC] 418** and another Division Bench judgment of this Court rendered in ***Mohd. Baqir v. State of J&K and Ors,*** **2005 (II) SLJ 495**, have been considered and distinguished on facts by this Court in ***Krishan Pal Anand v. Power Grid Corporation Ltd.*** **and ors, 2022 (3) JKJ [HC] 181**.

12. As held above, in the case on hand the writ petition was admitted as a matter of course and in a routine manner without this Court having applied its mind to the objection of maintainability taken by the respondents. The admission was in the absence of the respondents and without giving hearing of the matter to either side. Such admission cannot enure to the benefit of the petitioner to the extent of ignoring the plea of delay and latches taken by the respondents to assail the maintainability of

this petition. Para 14 of the judgment rendered in ***Krishan Pal Anand*** (supra) is relevant and is reproduced herein below:-

> " 14. I have considered the judgments relied upon by the learned counsel for the petitioner and I am of the considered view that law laid down in the aforesaid judgments is not attracted to the facts and circumstances of the present case. In the instant case, the writ petition was admitted on the first date without notice to the respondents. Reference to order dated 29.09.2015 passed in this petition would show that the writ petition was admitted on the very first date and, therefore, the respondents had no opportunity or occasion to raise the plea of delay and latches. It is only in a case where the writ petition is admitted after hearing the respondents that respondents may be precluded from raising the plea of delay and latches if the same had not been raised at the time of admission. The legal position on this point needs to be appreciated in this manner."

13. Similarly the judgment relied upon by the learned counsel for the petitioner in the case of ***Dr. Jagannath Mishra v. State of Bihar*, (Full Bench) AIR 1990 Patna 11**, which in turn is rendered by placing reliance on the judgment of Hon'ble the Supreme Court in ***P. B. Roy v. Union of India*, AIR 1972 SC 908**, is distinguishable on facts. In ***P. B. Roy*** (supra) Hon'ble the Supreme Court had held that 'the delay in filing the petition under Article 226 may be overlooked on the ground that, after the admission of a writ petition and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is 'positively good'. The position in the instant case is already clarified above. The admission in the instant case has taken place under different set of circumstances. Hon'ble the Supreme Court judgment in ***S. P. Chengalvaraya Naidu v. Jagannath and ors,*** **(1994) 1 SCC 1** is also

not attracted in this case for the reason that this Court has already held that the order of appointment of the petitioner dated 16-05-2002 may be irregular or even illegal but cannot be termed as an outcome of fraud.

14. Equally out of place is the reliance placed by Mr. Qayoom on ***Ramchandra Shankar Deodhar and ors v. The State of Maharashtra and ors,*** **AIR 1974 SC 259**. While there may be no dispute with the proposition that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain a petition. It is true that the question of delay is one of the discretion to be exercised by the Court on the given facts and circumstances of each case. The delay and latches may be fatal to the maintainability, if by reason of delay in filing the petition, valuable right has accrued to others.

15. As is noticed hereinabove, because of delay on the part of the petitioner to approach this Court, not only respondent No.6 has taken the benefit of senior scale of Assistant Professor from the date prior to grant of such benefit to the petitioner but because of acquiescence of the petitioner in the action of the University, the respondent No.6 has further been elevated to the post of Associate Professor, and has thus become senior to the petitioner in the said level. To repeat, it may be pointed out that the order of 19-10-2020, whereby the respondent No.6 was promoted as Associate Professor ahead of the petitioner, is not challenged by the petitioner though she was well aware of the order being herself the

beneficiary of the same order. Having regard to the facts and circumstances of the case and in view of complete acquiescence in the action of the University and waiver of her rights by the petitioner, the petitioner has lost her right to challenge the impugned order dated 19-05-2010. This petition is not only hit by huge delay and latches but the petitioner has also lost her right to challenge the impugned order on the principle of acquiescence and waiver as well.

16. The Principle of 'waiver' and acquiescence is very amply discussed by Hon'ble Supreme Court in some of its judgments. In ***Manak Lal v/s Dr.Prem Chand Singhvi and others,*** **(AIR 1957 SC 425),** Apex Court in para 8 of the judgment held thus:

> "**8**….It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R., has observed in *Vyuyan v/s Vyvyan,* Beav 65 at p.74:54 ER at 813 at p.817 "waiver or acquiescence, like election presupposes that the person to be bound is fully cognizant of his rights, and, that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim."

17. Again in ***State of Punjab v/s Davinder Paul Singh Bhullar and Others*** **(2011) 14 SCC 770** Hon'ble Supreme Court has explained the concept of principles of waiver and acquiescence in para 37, 38, 39, 40, 41, 42 and 43:

> **DOCTRINE OF WAIVER:**
>
> **37**. In Manak Lal, this Court held that alleged bias of a Judge/official/Tribunal does not render the proceedings invalid if it is shown that the objection in that regard and particularly against the presence of the said official in question, had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of its right to challenge the presence of such official. The Court further observed that: (SCC p.431, para 8)

> **"8**…..waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question."

38. Thus, in a given case if a party knows the material facts and is conscious of his legal rights in that matter, but fails to take the plea of bias at the earlier stage of the proceedings, it creates an effective bar of waiver against him. In such facts and circumstances, it would be clear that the party wanted to take a chance to secure a favourable order from the official/court and when he found that he was confronted with an unfavourable order, he adopted the device of raising the issue of bias. The issue of bias must be raised by the party at the earliest. (See: M/s. Pannalal Binjraj & Ors. v. Union of India and P.D. Dinakaran(1) v. Judges Enquiry Committee)

39. *In Power Control Appliances. v. Sumeet Machines Pvt. Ltd.* this Court held as under: SCC p.457, para 26)

"26.Acquiescence is sitting by, when another is invading the rights.... It is a course of conduct inconsistent with the claim... It implies positive acts; not merely silence or inaction such as involved in laches. .... The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant......"

40. Inaction in every case does not lead to an inference of implied consent or acquiescence as has been held by this Court in *P. John Chandy & Co. (P) Ltd. v. John P. Thomas*. Thus, the Court has to examine the facts and circumstances in an individual case.

41. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide: Dawsons Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha, Basheshar Nath v. CIT, Mademsetty Satyanarayana v. G. Yelloji Rao, Associated Hotels of India Ltd. v. S. B. Sardar Ranjit Singh, Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corporation, Sikkim Subba Associates v. State of Sikkim and Krishna Bahadur v. Purna Theatre.

42. This Court in Municipal Corporation of *Greater Bombay v. Dr. Hakimwadi Tenants' Association* considered the issue of waiver/acquiescence by the non-parties to the proceedings and held: (SCC p.65, paras 14-15)

> "14.In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver.

> Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.......
>
> 15.There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants were not parties to the earlier proceedings. There is, therefore, no question of waiver of rights, by Respondents 4-7 nor would this disentitle the tenants from maintaining the writ petition."

43. Thus, from the above, it is apparent that the issue of bias should be raised by the party at the earliest, if it is aware of it and knows its right to raise the issue at the earliest, otherwise it would be deemed to have been waived. However, it is to be kept in mind that acquiescence, being a principle of equity must be made applicable where a party knowing all the facts of bias etc., surrenders to the authority of the Court/Tribunal without raising any objection. Acquiescence, in fact, is sitting by, when another is invading the rights. The acquiescence must be such as to lead to the inference of a licence sufficient to create rights in other party. Needless to say that question of waiver/acquiescence would arise in a case provided the person apprehending the bias/prejudice is a party to the case. The question of waiver would not arise against a person who is not a party to the case as such person has no opportunity to raise the issue of bias.

18. Following the aforesaid legal position enunciated in earlier judgments, the Apex Court in its three judge bench decision in ***Kalpraj Dharamshi v/s Kotak investment Advisors Ltd*** **(2021) 10 SCC 401** summed up the principles in the following manner:-

> "127. Thus for constituting acquiescence or waiver it must be established, that though a party knows the material facts and is conscious of his legal rights in a given matter, but fails to assert its rights at the earliest possible opportunity. It creates an effective bar of waiver against him. Whereas, acquiescence would be a conduct where a party is sitting by, whom another is invading his rights. The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege. It is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons it."

The view I have taken hereinabove in the instant case is fully supported by the above legal principles expounded by the Supreme Court.

19. In terms of Clause 10.1 of the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2010 ['the UGC Regulations'], the period of *ad hoc* or temporary services of more than one year duration is provided to be counted for direct recruitment or promotion under Career Advancement Scheme of a teacher as Assistant professor, Associate Professor, Professor etc. etc. subject to the condition laid down in Clause 10.1 itself. For facility of reference clause 10.1 of the UGC Regulations is set out below:-

> "**10.1**. Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc., should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III – Table No. II provided that:
>
> **(a)** The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be.
>
> **(b)** The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.
>
> **(c)** The candidate for direct recruitment has applied through proper channel only.
>
> **(d)** The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

> **(e)** The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/ Concerned Institutions, for such appointments.
>
> **(f)** The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration. **Ad hoc or temporary service of more than one year duration can be counted provided that:**
>
> **(i) the period of service was of more than one year duration;**
>
> **(ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and**
>
> **(iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.**
>
> **(g)** No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause."

20. From reading of sub clause (f) of Clause 10.1 of the Regulations reproduced above it is abundantly clear that *ad hoc* and temporary services of more than one year duration can be counted subject to following conditions:

> "**(i) the period of service was of more than one year duration;**
>
> **(ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and**
>
> **(iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.**"

21. Indisputably, respondent No.6 who was appointed as Lecturer temporarily initially on 16-05-2002 has rendered her temporary services for a period of more than one year. Her appointment was made by the University, which was subject to approval of the Syndicate. The temporary service of respondent No.6 was followed by her regular appointment on a permanent post. The respondent University has thus committed no illegality in giving the benefit of *ad hoc* services to the respondent No.6 while placing her in the senior scale under CAS, or for her further placement/ promotion as Associate Professor. From reading of Clause 10.1 above, one may get a sense of an anomalous situation whereby a person with temporary or ad hoc services may, in the given facts steal a march over a person who is appointed against permanent post on substantive basis prior to such candidate stealing march because of his/her *ad hoc* or temporary services rendered with a private local body or Government.

22. I am also in agreement with the learned counsel for the University that despite the fact that petitioner and respondent No.6 entered their services as Lecturers in the University on the same day i.e. 16-05-2002, yet the respondent No.6 stole a march ahead of the petitioner when the two were placed in the senior scale of the Assistant Professors because of respondent No.6 possessing M. Phil degree in addition to her postgraduate qualification required for the post. The attention of this Court was drawn to the CAS for teachers promulgated by Government of India. The relevant extract of para 1 of the Appexdix-I attached to the Government Order G.O. (Ms) No. 350 dated 09-09-2009 of the scheme is reproduced hereunder:-

> **"APPENDIX – I**
>
> Revised Pay Scales, Service conditions and Career Advancement Scheme for teachers and equivalent positions:
>
> (1) Assistant Professor/Associate Professors/ Professors in Colleges & Universities
>
> (i) Persons entering the teaching profession in Universities and Colleges shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs.15600-39100 with AGP of Rs,6000. Lecturers already in service in the pre-revised scale of pay of Rs.8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs.6000.
>
> (ii) An Assistant Professor with completed service of 4 years, possessing Ph.D Degree in the relevant discipline shall be eligible, for moving up to AGP of Rs.7000 subject to the condition that Ph.D is in a discipline which is relevant to the Department in which they are Assistant Professors.
>
> (iii) Assistant Professors possessing M.Phil degree or post-graduate degree in professional courses approved by the relevant Statutory Body, such as LL.M/M.Tech etc. shall be eligible for the AGP of Rs.7,000 after completion of 5 years service as Assistant Professor subject to the condition that the M.Phil degree or post-graduate degree in professional courses is in a subject relevant to the teaching discipline.
>
> (iv) Assistant Professors who do not have Ph.D or M.Phil or a Master's degree in the relevant Professional course shall be eligible for the AGP of Rs.7,000 only after completion of 6 years' service as Assistant Professor."

23. From reading of extract of the scheme reproduced above, it is evident that Assistant Professors possessing M.Phil degree or postgraduate degree in professional courses like LL.M/M. Tech etc. are eligible for grant of senior scale after completion of five years service as Assistant Professor. It further comes out clearly that Assistant Professors who do not have

M.Phil or a Masters degree in the relevant professional course shall be eligible for the senior scale only after completion of six years service as Assistant Professor.

24. There is no dispute with regard to the fact that the petitioner only possesses a Masters degree in the relevant subject and not any professional course like LL.M/M.Tech approved by the Statutory body, whereas the respondent No.6 besides being Postgraduate in the relevant subject also possesses M.Phil degree in the subject relevant to the teaching discipline. As per the CAS, the petitioner was entitled to be placed in the senior scale after completing six years as Assistant Professor whereas respondent No.6 became eligible for the senior scale on completion of five years service. This is how the University placed the petitioner in the senior scale with effect from 17-08-2008 and the respondent No.6 with effect from 17-05-2007.

25. In view of the above discussion I do not find the University having committed any illegality while issuing the impugned order/communications.

26. In view of the aforesaid analysis, I find this petition not maintainable both on account of delay and latches, acquiescence and waiver as also on merits. The writ petition is, accordingly, dismissed.

(Sanjeev Kumar)
Judge

SRINAGAR
28.09.2022
Anil Raina, Addl.Reg/Secy

Whether the order is reportable : **Yes**