

GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT, J&K
(E-mail:-eduschlegal2021@gmail.com)

Subject:- C.P No. 215/2021 in OA No.62/00396/2021 titled Mohammad Anis Khan Vs UT of J&K and others.

GOVERNMENT ORDER NO:-346-JK (Edu) of 2023
DATED:- 06.11.2023

Whereas, the applicant has filed above titled OA before the Hon'ble Central Administrative Tribunal at Srinagar wherein the applicant has prayed for following relief:-

- 1) By issuance of order or direction, the respondents be directed to refix the seniority of the applicant on the basis of correct service particulars of the applicant on the basis of promotion date of applicant as Master w.e.f. 19.10.1981 instead of 25.02.1988 and retrospectively promote the applicant as Headmaster w.e.f. 01.09.1999 instead of 01.01.2005 and grant all the consequential service benefits in favour of the applicant as admissible under rules.
- 2) By issuance of order or direction, the respondent No. 1 be directed to consider the case of the applicant and take final decision on the basis of the recommendations contained in communication dated 12.07.2019 issued by respondent No. 2 and refix the seniority of the applicant on the basis of correct service particulars of the applicant with reference to date of promotion of applicant as Master and grant all the consequential service benefits in favour of the applicant as admissible under rules.

Whereas, the Hon'ble Central Administrative Tribunal at Srinagar disposed of the above OA vide order dated 05.03.2021 at its threshold with the following order/directions:-

"Looking to the arguments of learned counsel for the applicant, the O.A. is disposed of with a direction to the respondent No. 1 to decide the representations (From pages No. 41 to 44 of the O.A.) of the applicant by passing a reasoned and speaking order in accordance with rules and with intimation to the applicant within a period of 02 months from the date of receipt of certified copy of this order. While deciding the representations of the applicant, the respondents are directed to make special emphasis on Annexure-12 of the O.A."

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Whereas, in compliance with the above directions of the Hon'ble Central Administrative Tribunal, Srinagar the case of the applicant was examined and found that vide Departmental Promotion Committee (DPC) minutes of meeting held on 26-6-2012, promotion/regularization of the Masters as Headmasters was conducted and the seniority list of Masters issued vide Government Order No. 618-Edu of 2012 dated 02.08.2012 was utilized in the said DPC;

Whereas, the Committee deliberated on the matter with regard to regularization/ promotion of Masters as Headmasters in terms of Government Order No.743-GAD of 2007 dated 28.06.2007 issued by General Administration Department and decided to regularize/promote 2533 incharge Headmasters as Headmasters which provides as under:-

"Promotion of a Government employee shall take effect from the date, he has been formally put incharge of the higher post, subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/regularization shall take effect from the date of his placement against the higher post or availability of vacancy or the date of his eligibility, whichever is later. In all other cases, the promotion of a Government employee to the next higher post shall take effect from the date of issuance of the order."

Whereas, accordingly vide Government Order No. 684-Edu of 2012 dated 04.09.2012, among others, the applicant Mr. Mohd Anis Khan, figuring at S.No.1092, Seniority No.1164 was also regularized from the date of accrual of substantive vacancy by giving regularization w.e.f. 01.01.2005 as per his seniority in which his date of promotion as Master is 25.02.1988 and on the basis of criteria of regularization as laid down under norms in vogue i.e. date of placement, availability of vacancy, date of eligibility whichever is later as per Government Order No. 743 of 2007 dated 28.06.2007. Further the Department has already utilized all the vacancies till 31.12.2022 and DPCs were conducted;

Whereas, the General Administration Department vide their Circular No. 41-JK(GAD) of 2021 dated 06.10.2021 has observed that in service matters, applications/claims are being presented by a Government Servant to competent authorities for consideration after delay of a considerable period of time, Such stale claims are not legally tenable, are not required to be entertained by the concerned Department and has clarified as under:-

"It is clarified that whenever, in any matter connected with his/her service rights or conditions, a Government servant wishes to press a claim or to seek redressal of an alleged grievance, the same should be

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addressed to the competent authority concerned with in a stipulated period of Six months from the date the alleged grievance has arisen, or any other period provided in any rule, regulation or law, whichever is later after which the claim shall be treated as time barred”.

Whereas, the Hon'ble Supreme Court, while dealing with such cases has held in the case titled Bal Krishan Vs State of Punjab and others reported in 2015 (15) SCC 602 as under:-

“A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasis, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.

In view of our aforesaid analysis the appeals are allowed and the judgment and orders passed by the High Court are set aside. There shall be no order as to costs”.

Whereas, the Hon'ble Supreme Court, has also held in the case titled State of Orissa Vs. Pyarimohan Samantaray, (1977) 3 SCC 396 as under:-

*“It would thus appear that there is justification for the argument of the Solicitor-General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in **Rabindra Nath Bose V. Union of India 1970 1 SCC 84** the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within a period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was “strenuously” urged for its consideration on behalf of the Government of India.*

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In the view we have taken, we do not think it necessary to examine the controversy on the merits. The appeal is allowed, the impugned judgment dated April 11, 1975 is set aside and the writ petition is dismissed”.

Whereas, the delay of considerable period of time are not legally tenable, and in this regard, the law has also been laid down by the Hon'ble Supreme Court of India in State of Uttranchal and another Vs. Shiv Charan Singh Bandari and others, 2013 (6) SLR 629, C.Jacob Vs. Director Geology and Mining and another, (2008) 10 SCC 115, Union of India and others Vs. M.K. Sarkar, (2010) 2 SCC 59, Karnataka Power Corp. Ltd through its Chairman & Managing Director V.K. Thangappan and another, (2006) 4 SCC 322, State of T.N. Vs Seshachalam, (2007) 10 SCC 137, Bal Krishan Vs. State of Punjab and others, 2013 (2) RSJ 18, (P&H), Vijay Kumar Koul and others Vs. R.K. Zalpuri and others, 2015 (15) SCC 602;

Now, therefore, after having considered the case of applicant in compliance with the judgment/order dated 05.03.2021, having regard to the rules and regulations governing the field, it has been found that the claim of the applicant does not merit consideration based upon the observations and findings made in the preceding paras and as such the claim of the applicant is being devoid of merit is hereby rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

Alok Kumar (IRS),

Principal Secretary to the Government,
School Education Department.

No:- Edu/LGLOKmr/117/2021-01 (769734)

Dated:- 06.11.2023

Copy to the:-

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Director School Education Kashmir for information and necessary action.
3. OSD with Advisor (B) to the Lieutenant Governor, UT of J&K for information.
4. Private Secretary to Principal Secretary to Government, School Education Department for information.
5. Petitioner for information.
6. I/C Website for uploading the same on official website.
7. Government Order File/ Concerned File (w.2.s.c).

(Masood Ahmad),

**Deputy Secretary to the Government,
School Education Department.**

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