



Government of Jammu and Kashmir
Higher Education Department
Civil Secretariat, J&K

**

Subject:- TA No. 7788/2021 in SWP No. 2796/2001 titled Neeraj Kumar Dubey Vs UT of J&K & Ors.

Government Order No. 465-JK(HE) of 2024
Dated 24-09-2024

Whereas, three positions for Lecturers in Computer Engineering were referred to the Public Service Commission for recruitment of eligible candidates, via letter No. HE/GCET/85-II/93-94 dated 03.11.1997. The Public Service Commission provided a merit list on 20.12.2000, as per letter No. PSC/DR/Lect.Computer/Engg/22/98. The selected candidates were:

Merit List:

1. Ms. Simmi Dutta 2. Ms. Bhawna Sharma 3. Ms. Monika Khajuria,

Wait List:

1. Ms. Sheetal Gandotra 2 . Ms. Jyoti Mahajan 3. Mr. Neeraj Kumar Dubey

Whereas, the merit list was fully exhausted, and the selected candidates were appointed vide Government Order No. 12-HE of 2001 dated 16.01.2001 Ms. Sheetal Gandotra, ranked first on the waiting list, was appointed vide Government Order No. 28-HE of 2001 dated 25.01.2001, and Ms. Jyoti Mahajan, ranked second, was appointed vide Government Order No. 282-HE of 2001 dated 08.09.2001.

Whereas, the applicant ranked third on the waiting list, filed SWP No. 2796/2001 before the Hon'ble High Court, seeking relief to extend the validity of the waiting list until his appointment. The Hon'ble High Court, in its interim order dated 12.11.2001, directed:

"Issue notice. Meanwhile, the selection of respondent No. 4 will be subject to the final outcome of this petition. The fact that the merit list is set to expire in December 2001 should not prejudice the petitioner, as he approached the court prior to its expiration."

Whereas, by the time the order was issued, the merit list had already expired. In a similar case, involving Mr. Sameer Khajuria, the Hon'ble High Court issued an interim order on 19.04.2002:

"Notwithstanding the fact that the validity of the merit list/panel will expire during the pendency of the petition, this shall not affect the petitioner's rights."

Whereas, in view of this order, the matter was referred to the Law Department, which opined:

"Since the matter is sub-judice, the Department should file a counter affidavit and have the matter adjudicated."

Whereas, the applicant subsequently submitted a representation for appointment following the rationalization of posts at GCET, Jammu. Relying on the interim directions in his case, as well as in the case of Sameer Khajuria, the Department issued Government Order No. 183-HE of 2003 dated 25.04.2003, appointing the applicant as Lecturer in Computer Engineering on a temporary basis, subject to the outcome of his writ petition. The applicant later withdrew his petition (SWP No. 1796/2001), which was dismissed as withdrawn on 11.06.2003;

Whereas, the applicant sought confirmation of his probationary period. The Department, however, noted that his appointment was provisional and conditional upon the final outcome of the writ petition. Since the petition had been withdrawn without a decision on merits, the Law Department opined:

"Given that the writ petition was dismissed as withdrawn, the interim order stands vacated. Therefore, Mr. Dubey's appointment, which was contingent upon the outcome of the petition, is deemed to be terminated in accordance with the conditions outlined in his appointment order."

Whereas, the Department issued Government Order No. 112-HE of 2009 dated 27.05.2009, terminating the appointment of applicant as Lecturer. In response, applicant approached the Hon'ble High Court, which stayed the termination order. The case was subsequently transferred to the Central Administrative Tribunal (CAT), Jammu Bench, where the Tribunal, after admitting the petition, passed the following order on 07.06.2024:

".....Accordingly, we allow this T.A. by quashing Government order No. 112-HE of 2009 dated 27.05.2009 issued by the respondents, whereby the services of the applicant to the post of Lecturer in Computer Engineering in Government College of Engineering and Technology, Jammu was terminated. The applicant is continuously working as Lecturer in the discipline of Computer Engineering in GCET, Jammu since the date of his appointment viz; 25.04.2003, therefore, he is entitled to all consequential benefits....."

Whereas, the matter was subsequently referred to the Law Department for an expert legal opinion who returned the file with the following observations:-

"The Department is advised to specify the legal issue on which the opinion of this department is sought."

Whereas, the matter was thoroughly examined by the Department, and the complete record was submitted by the Principal, GCET Jammu. Upon examination, it was found that the applicant has been continuously serving as a Lecturer in Computer Engineering at GCET, Jammu, since 25.04.2003, pursuant to Government Order No. 183-HE of 2003 dated 25.04.2003, which made his appointment subject to the outcome of the writ petition. His appointment was subsequently terminated vide Government Order No. 112-HE of 2009 dated 27.05.2009, following withdrawal of the writ petition. The writ petition was dismissed as withdrawn and was not adjudicated on its merits. Termination of his services, without affording him an opportunity of being heard, appears to be procedurally improper.

Whereas, the applicant challenged his termination order and continued to serve under interim court directions, and Hon'ble CAT has now set aside the termination order, restoring his employment with all consequential benefits. It was observed that similarly placed appointees have been granted all benefits and continue to serve as Assistant Professors. Discriminating against the applicant by denying him the same benefits would violate the constitutional principle of equality.

Now therefore, keeping in view, the facts and circumstance of the case and the directions of the Hon'ble Central Administrative Tribunal, Jammu passed in T.A No. 7788/2021 titled Neeraj Kumar Dubey Vs UT of J&K & Ors, the claim of the applicant has been considered in the department and sanction is hereby accorded for compliance of the judgment dated 07.06.2024 thereby granting him all the consequential benefits as has been given to similarly situated appointees namely Sh. Sameer Khajuria and Smt. Vandana Sharma .

By order of the Government of Jammu and Kashmir.

Sd/-

(Alok Kumar), IRS

Principal Secretary to the Government

Dated:- 24-09-2024

No:- HED-LEG/75/2022-04

Copy to the:

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Director Colleges, J&K.
3. Director Archives, Archaeology & Museums, J&K, Jammu.
4. Nodal Principal, Jammu.
5. Concerned Principal.
6. Private Secretary to the Principal Secretary to the Government, Higher Education.
7. Concerned.
8. I/C Website, Higher Education Department.
9. Government Order Register/ Monday Return file (w.2.s.c).

(Sanjay Kumar Tickoo)

Deputy Secretary to the Government