

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINANGAR**

Reserved on: 30.06.2026

Pronounced on: 24.07.2026

Uploaded on: 24.07.2026

*Whether the operative part or full
judgment is pronounced: **Full***

LPA No.264/2022

SYEDA AFSHANA BHAT

...APPELLANT(S)

Through: - Mr. Salih Pirzada, Advocate.

Vs.

UNIVERSITY OF KASHMIR & ORS.

...RESPONDENT(S)

*Through: - Mr. Asif Maqbool, Advocate.
Mr. S. M. Ayoub, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

Sanjay Dhar 'J':

1) The appellant/writ petitioner has called in question judgment dated 28.09.2022 passed by the learned Single Judge, whereby her writ petition, challenging placement of private respondent No.6 in the Senior Scale of Assistant Professors from a date prior to the date on which the writ petitioner has been placed in the said scale, has been dismissed.

2) It appears that the writ petitioner had filed a writ petition bearing WP(C) No.135/2021 against the respondents before

the learned Writ Court seeking quashment of order No.F(Placement Sr. Scale-CAS) RC/KU/10/124 dated 19.05.2010, communication bearing No.F(Seniority-Ap. MERC) Admn.TW/KU/19/6176 dated 27.04.2019 and communication bearing No.F(MERC-Seniority)Adm-TW-2184 dated 08.01.2021. The writ petitioner had also sought a direction commanding the official respondents to consider her case for promotion to the post of Professor ahead of respondent No.6.

3) Vide impugned order dated 19.05.2010 (supra), while placing the writ petitioner in senior scale of Assistant Professor with effect from 17.05.2008, respondent No.6 has been placed in the said scale with effect from 17.05.2007. Vide communication dated 27.04.2019 (supra), the writ petitioner has been informed by the official respondents that respondent No.6 is figuring senior to her whereas, vide impugned communication dated 08.01.2021 (supra), the official respondents, while rejecting representation of the writ petitioner, have informed her that services put in by respondent No.6 as Assistant Professor on temporary basis have been considered under Career Advance Scheme (CAS) in the light of the UGC guidelines.

4) Briefly stated the facts emanating from the pleadings filed by the parties before the learned Writ Court are that the

writ petitioner and respondent No.6 had applied for the post of Lecturer in Media Education and Research Centre (MERC), which was notified for direct recruitment vide Advertisement Notice No.F-10(Appt-Gen)Adm/TW dated 22.01.2002. Pursuant to the selection process undertaken by the respondent University, the writ petitioner came to be selected for the solitary post which was advertised, and she was appointed as Lecturer MERC in terms of order No. F-10(Appt-Gen)Adm/TW/02 dated 16.05.2002. It is pertinent to mention here that vide the same order, respondent No.6 was also appointed as Lecturer MERC on regular temporary basis, though only one post of Lecturer MERC had been advertised by the respondent University in terms of Advertisement Notice dated 22.01.2002. The Syndicate of the respondent University in its meeting held on 06.12.2003 confirmed the appointment of the writ petitioner, pursuant whereeto, vide order dated 03.04.2004, services of writ petitioner as Lecturer MERC were confirmed with effect from 17.06.2003.

5) It seems that respondent No.6 continued to discharge her duties as Lecturer on regular temporary basis and in the year 2007, she responded to Advertisement Notice No.F-10 (Apptt-Gen)RC/KU dated 20.07.2005, whereby applications were invited, inter-alia, for two posts of Lecturers (Migrant) MERC. This time, respondent No.6 made the grade and she

was selected and appointed as Lecturer on temporary basis in terms of order No.F-10(Apptt-Gen)RC/KU dated 08.12.2007. The said appointment of respondent No.6 was ratified by the Syndicate and vide order dated 20.10.2017, appointment of respondent No.6 as Assistant Professor (previously Lecturer MERC) was confirmed with effect from 08.12.2008.

6) On 19.05.2010, the respondent University issued an order, impugned in the writ petition, whereby respondent No.6 was placed in the senior scale of Assistant Professors in MERC with effect from 17.05.2007, whereas the writ petitioner was placed in the said scale with effect from 17.05.2008.

7) In the year 2019, a representation came to be filed by the writ petitioner, projecting her grievance against the placement of respondent No.6 ahead of her. Vide impugned communication dated 27.04.2019, the writ petitioner was informed that respondent No.6 was senior to her and vide another communication dated 08.01.2021, she was informed that the services put in by respondent No.6 as Assistant Professor on temporary basis have been counted in the light of CAS of University Grants Commission regulations. It is at this stage that the writ petitioner assailed the action of the

respondent University in placing respondent No.6 ahead of her, by filing the writ petition before the learned Writ Court.

8) Vide the impugned judgment passed by the learned Single Judge, the writ petition has been dismissed on merits as well as on the grounds of delay and laches. It has been observed by the learned Writ Court that because the writ petitioner did not choose to challenge the action of the official respondents, whereby respondent No.6 was placed in the senior scale of Assistant Professors from a date one year prior to the date on which the writ petitioner was placed in the said scale, for a long period of 11 years after passing of impugned order dated 19.05.2010, which was, admittedly, within her knowledge, the writ petition suffers from acquiescence on the part of the writ petitioner and it is also hit by delay and laches. Thus, the writ petitioner has lost the right to challenge the impugned action of the respondent University. Even on merits, the learned Single Judge did not find any substance in the case set up by the writ petitioner.

9) The writ petitioner has challenged the impugned judgment of the learned Writ Court on the grounds that initial appointment of respondent No.6 in the year 2002 was in complete violation of the rules, as the same was made against a non-existent post, as such, her appointment is fraudulent in nature. It has been submitted that because the

appointment of respondent No.6 is in violation of the Articles 14 and 16 of the Constitution of India, as such, the service rendered by respondent No.6 pursuant to the said fraudulent appointment, could not have been taken into consideration while giving benefit to her under CAS. According to the writ petitioner, the learned Single Judge has ignored the fact that initial appointment of the respondent No.6 on regular temporary basis in the year 2003 was not in accordance with the prescribed selection procedure, as such, requirement of sub-clause (e) of Regulation 10.1 of UGC Regulations was not satisfied in her case so as to enable the University authorities to give benefit of her temporary service while considering her case for CAS. It has further contended that respondent No.6 could not have been given the benefit of CAS from a date when she was not even substantively appointed to the post of Assistant Professor. In this regard, it has been submitted that respondent No.6 was appointed as Assistant Professor (Lecturer) on substantive basis only on 8th December 2007, but she has been bestowed the benefit of CAS with effect from 17.05.2007, which cannot be countenanced in law.

10) On the question of delay and laches, it has been contended that because the initial appointment of respondent No.6 was fraudulent in nature, as such, equity cannot be utilized to cure the said defect. It has further contended that

the learned Writ Court had come to the conclusion that appointment of respondent No.6 is illegal in nature, therefore, doctrine of acquiescence and waiver emanating from delay could not have been pressed into service.

11) We have heard learned counsel the parties and perused the impugned judgment passed by the learned Single Judge, the grounds of challenge projected by the appellant and record of the case.

12) Much emphasis has been laid by learned counsel for the writ petitioner on the argument that initial appointment of respondent No.6 as Lecturer MERC in terms of order dated 16.05.2002, was made on a non-existent post which had not been advertised by the respondent University, therefore, her appointment was illegal and fraudulent in nature and once it is so, the service rendered by respondent No.6 pursuant to her said appointment cannot be counted for the purpose of considering her case under CAS. Reference in this regard has been made to sub-clause (e) of Regulation 10.1 of the UGC regulations, which provides that post must have been filled in accordance with the prescribed selection procedure as laid down in the regulations of the University for such appointment. Learned counsel for the writ petitioner has placed reliance upon the ratio laid down by the Supreme Court in the cases of **District Collector & Chairman,**

Vizianagaram v. M. Tripura Sundari Devi, (1990) 3 SCC 655, **Krishna Rai (Dead) through Legal Representatives & Ors. v. Banaras Hindu University & Ors.** (2022) 8 SCC713, **Renu v. District and Sessions Judge, Tis Hazari**, AIR 2014 SC 2175, **Amrit Yadav v. State of Jharkhand and others**, 2025 SCC OnLine SC 280, and Division Bench judgment of this Court in the case of **Tabassum Qadir Parray & Ors. v. High Court of J&K and anr.** (SWP No.1577/2018 decided on 06.05.2026), to contend that once the appointment of respondent No.6 as Lecturer on regular temporary basis to a post which was not advertised in terms of the Advertisement Notice dated 22.01.2002, the same was fraudulent in nature, as such, the learned Writ Court could not have dismissed the writ petition of the writ petitioner, either on merits or on the ground of delay and laches.

13) There can be no quarrel with the legal position that an appointment made to a post which has not been advertised and which did not form the subject matter of the selection in terms of the Advertisement Notice, is an illegal appointment, and the same cannot be termed to be an appointment made in accordance with the Recruitment Rules of the University. However, the facts and circumstances of the present case are somewhat different. It is true that only one post of Lecturer MERC was advertised by the respondent University vide

Advertisement Notice dated 22.01.2002. It is an admitted case of the parties that not only the writ petitioner but respondent No.6 also participated in the selection process. While the writ petitioner was appointed to the vacant post on substantive basis in terms of order dated 16.05.2002, the appointment of respondent No.6 was made on a regular temporary basis from the same date. She came to be appointed on substantive basis as Lecturer against migrant vacancy only on 08.12.2007 but she continued to function as Lecturer with effect from 16.05.2002 to 08.12.2007 on regular temporary basis.

14) In the present case, services of respondent No.6 have not been confirmed on the post on which she had been appointed on temporary basis on 16.05.2002 but her services were confirmed with effect from 08.12.2008 after her appointment on substantive basis on a migrant vacancy on 08.12.2007. However, respondent No.6 continued to function as Lecturer from 16.05.2002 to 08.12.2007 on stopgap/temporary basis. Thus, it is not a case where initial appointment of respondent No.6 as Lecturer can be termed as illegal against a non-existent post but it is a case where her initial appointment was temporary or fortuitous in nature and she was allowed to function on stopgap basis after she, along with others, had participated in the selection process, though the said process

was initiated only for filling up of one clear vacancy to which the writ petitioner was appointed. Had it been a case where services of respondent No.6 would have been confirmed with effect from the date, she was appointed on temporary/stopgap basis, then certainly her initial appointment would have qualified to be fraudulent in nature because only one post was put advertisement to which the writ petitioner was appointed. However, it is a case where services of respondent No.6 have been confirmed after her substantive appointment and only the benefit of services put in by her on temporary basis has been given to her in terms of CAS. Thus, the very basis of the argument of learned counsel for the writ petitioner that initial appointment of respondent No.6 was against a non-existent post in derogation of the rules and, therefore illegal, is misconceived. Once it is held so, the consequent argument of learned counsel for the writ petitioner that respondent No.6 could not have been granted the benefit of the service which she had rendered on temporary basis for the purpose of counting her service in connection with grant of benefit under CAS, is without any substance.

15) It is to be noted that requirements in terms of sub-clauses (e) and (f) of Regulation 10.1 of the UGC Regulations, which have been quoted by the learned Writ Court in the

impugned judgment, clearly stand satisfied in the case of respondent No.6, and therefore, she was entitled to be given the benefit of the service which she had rendered as Lecturer on temporary basis with effect from 2002 to 2007. Upon according benefit of the said service to her and after taking into account the fact that she was holding M.Phil degree, the official respondents have rightly conferred the benefit of senior scale in favour of respondent No.6 after completion of five years of service as Assistant Professor with effect from 17.05.2007. In the case of the writ petitioner, she was rightly granted senior scale after completion of six years of service on 17.05.2008 because she was holding only a postgraduate degree.

16) So far as contention of the writ petitioner that respondent No.6 could not have been granted senior scale under CAS from a date when she was not even appointed on substantive basis, is concerned, the same is also misconceived because Regulation 10.1 of UGC Regulations provides that previous service in certain circumstances has to be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor and Professor. The expression used is “counted for promotion”, and not “for eligibility to promotion”. There is a fine distinction between the two expressions. When past

service is to be counted for grant of higher scale and the Regulations provide that for according said higher scale under CAS, a particular number of years has to be put in by an incumbent, once it is shown that the said person has put in that particular number of years in service in a lower scale of pay, he becomes automatically entitled to higher scale of pay whereas in the case of eligibility conditions for promotion, the past service can only be considered as a condition for ascertaining the eligibility for promotion to the higher post. Promotion to a post, under normal circumstances, is available only if a post is vacant but, in the case of grant of higher scale under CAS, an incumbent is entitled to be granted higher scale of pay after putting in a particular number of years of service, irrespective of the fact whether or not the post in higher scale of pay is available. Therefore, the fact that respondent No.6, has been granted upgradation under CAS from a date when she was not even substantively appointed to the post, is legally permissible.

17) That takes us to the issue of delay and laches. As already stated, the initial appointment of respondent No.6 to the post of Lecturer was not illegal in nature, but it was a stop-gap arrangement made by the respondent University by appointing the said respondent, who had also participated in the selection process for the post to which the writ petitioner

was appointed, by considering her performance in the said selection process. It is an admitted case of the writ petitioner that respondent No.6 was granted higher scale of pay in terms of order dated 19.05.2010 and vide the same order, the writ petitioner was also granted senior scale, though from a date one year after the date on which respondent No.6 was granted the senior scale. Thus, the writ petitioner cannot plead her ignorance about the issuance of the aforesaid order. She approached the Court only in the year 2021 to challenge the order issued in May 2010, which is after more than ten years. For the first time in the year 2019, she made a representation against the impugned action of the official respondents.

18) Thus, there has been inordinate delay and laches on the part of the writ petitioner in challenging the impugned action of the official respondents. The writ petitioner has not tendered any explanation whatsoever, in her writ petition for the delay in approaching the Court. Thus, she has acquiesced in the impugned action of the official respondents and allowed the seniority of the Lecturers to settle, as a result which, another order came to be issued on 19.10.2020 by the respondent University, whereby respondent No.6 has been upgraded to the next level of Associate Professor with effect from 17.05.2015 ahead of the writ petitioner, who has been upgraded to the said level with effect from 17.08.2016. The

writ petitioner has, thus, allowed the respondent University to act upon the impugned order dated 19.05.2010.

19) The Supreme Court has consistently reiterated the legal position, that if the claim involves issues relating to seniority or promotion etc., affecting others, the delay would render the claim stale and the doctrine of laches/limitation has to be applied. (Refer **Union of India vs. Tarseem Singh**, (2008) 8 SCC 648).

20) Recently, the Supreme Court has, in the case of **T. Gnanavel v. R. Sasipriya and others**, 2026 LiveLaw (SC) 457, after analyzing its previous decisions on the issue, held that fence-sitters cannot be permitted to raise a dispute relating to seniority and consequential promotion or challenge the validity of an order after the matter has concluded. The Supreme Court has further held that no party can claim relief as a matter of right and one of the well-recognized grounds for refusing relief is that the person approaching the Court is guilty of delay and laches. The Court went on to hold that while exercising public law jurisdiction, the Court does not encourage the agitation of stale claims, particularly in the matters of seniority and promotion, where the rights of third parties have crystallized in the interregnum.

21) In view of the aforesaid legal position, the petition filed by the writ petitioner was otherwise not maintainable on the ground of delay and laches.

22) For what has been discussed hereinabove, we do not find any illegality, much less perversity, in the impugned judgment passed by the learned Writ Court that would warrant interference by this Court. The appeal lacks merit and is dismissed accordingly.

(Mohd. Yousuf Wani)
Judge

(Sanjay Dhar)
Judge

SRINAGAR

24.07.2026

“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES/NO**

