



**Jammu and Kashmir State Information Commission**  
(Constituted under The Right to Information Act, 2009)  
**Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937**  
**Old Assembly Complex, Srinagar, 0194-2506660, 2506661**  
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## **FINAL ORDER**

File No. SIC/K/SA/11/2017

Decision No. No. SIC/K/SA/11/2017/**23**

Appellant : Dr. Imtiyaz-ul-Haq  
2<sup>nd</sup> Appeal

Respondent : First Appellate Authority (FAA)/Public  
Information Officer (PIO) University of Kashmir

Date of Registration : 08.03.2017

Date of Decision : 05.07.2017

### I. **Brief facts of the case.**

The brief facts of this 2<sup>nd</sup> appeal are that the appellant Dr. Imtiyaz-UI-Haq has filed 2<sup>nd</sup> appeal before the Commission against the First Appellate Authority (FAA) and Public Information Officer (PIO) University of Kashmir on 08.03.2017. The appellant has alleged that in response to his RTI application dated 05.04.2016, the PIO provided him information to part I only while as with respect to part II the information was denied to him. The appellant has submitted that the PIO has malafidely denied to him the information and the reply of PIO is unwarranted and unjustified. The

appellant has requested the Commission to direct concerned PIO to provide him the requisite information and take appropriate action against him.

As per the records of the 2<sup>nd</sup> appeal the appellant has filed an RTI application dated 05.04.2016 before PIO, University of Kashmir for seeking information on following two points:-

- 1) *Recommendations of the Selection Committee in favor of Dr. Effat Yasmin for her appointment to the post of Professor through CAS in the Department of Economics, University of Kashmir.*
- 2) *Attested Xerox copies of the expert reports of five best publications submitted by Dr. Effat Yasmin for her promotion to the position of Professor through CAS.*

PIO, University of Kashmir through letter dated 30.05.2016 has enclosed the copy of response (Recommendations of the Selection Committee) received from Assistant Registrar (Recruitment) to the information seeker. The information with respect to part II has not been provided to the appellant. Aggrieved by the order of PIO the appellant on 30.06.2016 filed first appeal before the FAA University of Kashmir alleging that PIO has denied him the information with respect to part II of his RTI application on the pretext that it is not permissible under law. FAA vide order dated 03.12.2016 directed the PIO to give reasons for denying the information to the appellant with regard to part II of the RTI application. In response to the directions of FAA, PIO University of Kashmir vide letter dated 15.12.2016 informed the appellant "that the information sought with regard to part II falls within the restriction clauses (d and f) read with Section 9 of the said Act." Hence the same is not disclosable. Not satisfied with the response of PIO, the appellant filed the 2<sup>nd</sup> appeal before the Commission.

## **II Proceedings before the Commission**

The 2<sup>nd</sup> appeal was partly heard by the CIC on 06.04.2017. Ms. Asmat Kawoosa, First Appellate Authority (FAA), University of Kashmir, Shri Abdul Rashid Sofi Public Information Officer (PIO), University of Kashmir and appellant Dr. Imtiyaz-Ul-Haq attended the hearing and the hearing was adjourned with the following directions:-

*“After hearing both the parties the case was adjourned to provide an opportunity to PIO, University of Kashmir to furnish the copy of the Rulings/Decisions of the Hon’ble Supreme Court/Central Information Commission in support of his stand of withholding information pertaining to selection process on the ground of being personal information. His plea regarding violation of Copy Right Act was not found to be acceptable. However, he is being provided another opportunity to present his case on the next date of hearing. Case be listed for hearing again on the available date.”*

This second appeal was again listed for hearing before the Commission on 18.05.2017. Ms. Asmat Kawoosa First Appellate Authority (FAA), Shri Abdul Rashid Sofi Public Information Officer (PIO), University of Kashmir and appellant Dr. Imtiyaz-Ul-Haq attended the hearing. The Commission heard both the parties at length. It was resolved that the basic issue for consideration/ adjudication before the Commission is whether the copies of the expert reports of five best publications submitted by Dr. Effat Yasmin, for her promotion to the position of professor through Career Advancement Scheme (CAS) can be provided to the appellant as requisitioned by him under the J&K RTI Act, 2009. Also, whether the stand taken by the PIO and the FAA (exemption under Section 8) in not providing the information for part II of the original RTI application is tenable or not. That the information sought by the appellant pertains to Dr. Effat Yasmin, who is clearly the third party in terms of Section 11 of the Act. As such

before passing any final order in the matter the Commission deems it proper to provide an opportunity of being heard to Dr. Effat Yasmin in terms of provisions of Section 16(5) of J&K RTI Act, 2009 which reads as:

*“If the decision of the State Public Information Officer against which an appeal is preferred relates to information of a third party, the Information Commission shall give a reasonable opportunity of being heard to that third party.”*

The hearing on 18.05.2017 was adjourned with the following directions:

*“Registry of the Commission is directed to issue notice to Dr. Effat Yasmin under Section 16(5) of J&K RTI Act, 2009 and inform her to appear before the Commission on the next date of hearing with her written objections if any. A copy of each original RTI application, First Appeal and Second Appeal of Dr. Imtiyaz-Ul-Haq and orders of the PIO and FAA in the matter of RTI application and First Appeal respectively be also provided to her.”*

In compliance to the directions of the Commission, the 2<sup>nd</sup> appeal was again listed for hearing on 20.06.2017. Ms Asmat Kawoosa, FAA university of Kashmir, Shri Abdul Rashid Sofi, PIO University of Kashmir, Dr. Imtiyaz-ul-Haq, appellant and Advocate Sajad Sarwar, Counsel of the third party Ms Effat Yasmin attended the hearing. During proceedings before the Commission the counsel for the 3<sup>rd</sup> party Ms Effat Yasmin sought more time to go through the records and file objections. Accordingly, the Commission was pleased to accept the plea of the counsel of the 3<sup>rd</sup> party with directions to him to file written objections by or before 3<sup>rd</sup> of July, 2017.

In pursuance to the above directions of the Commission, the 3<sup>rd</sup> party Dr. Effat Yasmin through her counsel Advocate Sajad Sarwar filed written objections dated 01.07.2017 received in the Commission on 04.07.2017. The counsel for the 3<sup>rd</sup> party (Dr. Effat Yasmin) after giving factual position about the conduct of the appellant in the University interalia has at para 5 and 6 submitted as under:-

Para-5 "..... it is further submitted that Section 8(1) (e) used the words information available to a person in his fiduciary relationship as such the information sought by the appellant pertains to fiduciary relationship and therefore exemption from disclosure under the relevant section as such it was rightly denied to the appellant because there was no large public interest in this regard. The appellant has a personal problem that he is seeking selection against higher post as such the appeal filed by the petitioner is only a pressure tactics upon University Authorities so as to pave-a-way for his selection. In this behalf the appellant has a personal interest and there is not public interest involved in this matter as such appeal deserves to be dismissed."

Para-6 "That even otherwise regarding the names of particulars of Examiners/Coordinators/Scrutinizers/Head of exams are also exempted for disclosure under Section 8 (1) (G) on the ground that if such information is disclosed it may endanger their physical safety."

The 2<sup>nd</sup> appeal was again heard by the Commission on 05.07.2017. Mr. Abdul Rashid Sofi, PIO University of Kashmir, Dr. Imtiyaz-ul-Haq, appellant and Mr. Sajad Sarwar (Advocate) counsel on behalf of the 3<sup>rd</sup> Party Dr. Effat Yasmin attended the hearing. The appellant submitted that

the information sought by him falls in the Public interest because the same will reveal as to how the affairs of the University/promotions are carried out/conducted by the University Officials and management. The PIO submitted that he has no objection if the Commission directs him to provide the information to the appellant. The counsel for the 3<sup>rd</sup> Party during proceedings submitted that the information sought by the appellant falls within the provisions of Section 8(1)(e) and (f) of the J&K RTI Act, 2009 and is accordingly exempted from disclosure.

### ***III. Decisions:***

The Commission has perused the records, heard the parties including the counsel for the 3<sup>rd</sup> party at length. The bone of contention and the issue for adjudication before the Commission in the 2<sup>nd</sup> appeal is whether attested Xerox copies of the expert reports of the five best publications submitted by Dr. Effat Yasmin for her promotion to the position of Professor through CAS can be provided to the appellant under the provisions of the J&K RTI Act, 2009. The PIO has denied this information to the appellant on the ground that the same is exempted from disclosure under Section 8(1) (e) and (f) of the J&K RTI Act, 2009. The counsel for the 3<sup>rd</sup> party has also taken the same stand as that of the PIO and submitted that disclosure of names and particulars of the examinees/coordinators/scrutinizers may endanger their physical safety and as such information sought falls within Section 8(1)(e) of the Act. The Commission is in agreement with the contention of the PIO and the counsel for the 3<sup>rd</sup> party to the extent that the disclosure of names and other particulars of examiners/scrutinizers etc. will attract provisions of the Section 8(1) (f) of the J&K RTI Act. Similar stand has been taken by the

**Hon'ble Supreme Court in the case titled CBSE v/s Aditya Bindopadya (SC 2011) and Kerela PSC and others V/s the State Information Commission and another (SC 2016).**

However, the Commission does not find any merit in the arguments of the PIO and the Counsel for the 3<sup>rd</sup> party that the information sought is protected under Section 8(1)(e) on the ground that the same is held by the respondent University in fiduciary relationship. The information sought by the appellant has been submitted to the University for appointment as Professor and disclosure of the same subject to withholding the names of the experts who have prepared/signed those reports need not attract the provisions of Section 8(1) (e) of the J&K RTI Act. 2009. Selection processes for recruitment or appointment by selection agencies/Public Authorities is always an important function of these Public Authorities. Such processes for recruitment and appointment have to be most transparent to protect the larger public interest and the future of the students and the society. Public interest cannot be divorced from the selection process because the selected/appointed persons have a role to perform and will have a lasting impact on the future of the students. In case of the universities, they are charged with the responsibility of grooming our youth and giving them the best of education. That can be achieved only through the recruitment of outstanding teachers, lecturers and professors who have to be carefully selected, appointed and promoted. A casual approach, partisan ways or favoritism etc. in the selection process can prove self-defeating in the long run and will not be in the public interest. Confidentiality grounds cannot be and should not be extended to the point of blocking vital information about the selection process from the Public scrutiny. Relevant Information should

be shared at appropriate points of time and disclosure should be near complete at the end of the Selection process except the names of examiners/experts etc. brought in to assist in the selection process.

The PIO, University of Kashmir is accordingly directed to provide the copies of the reports of the experts on the five best publications submitted by Dr. Effat Yasmin for her promotion to Professor through CAS to the appellant without disclosing the names of the experts who have examined the publications within a period of two weeks from the date of receipt of this order.

With the above directions, this 2<sup>nd</sup> appeal is disposed of.

**Sd/-**  
**(Khurshid A. Ganai)** *IAS Retd*  
Chief Information Commissioner

**Copy to:**

1. Dy. Registrar/First Appellate Authority, University of Kashmir
2. Public Information Officer, University of Kashmir
3. Dr. Effat Yasmin, HoD/professor, Department of Economics  
University of Kashmir
4. Appellant- Dr. Imtiyaz-ul-Haq Professor, Central Asian Studies,  
University of Kashmir Srinagar
5. Office file

**(Sheikh Fayaz Ahmad)**  
Registrar  
J&K State Information Commission