

(1998) 11 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 4130 of 1996

Abdul Gani Rather

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Citation : (2000) 1 LLJ 1392

Hon'ble Judges : M.Y. Kawoosa, J

Bench : Single Bench

Advocate : S. Manzoor, for the Appellant; S.M.S. Geelani, G.A., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Kawoosa, J.—Denial to implement its own order No. 355-GAD of 1996 dated April 30, 1996, which is enclosed as Annexure II

with the petition, by virtue of which the Government has given assurance to Daily- wagers and ad hoc appointees to regularise their services in

relaxation of rules in case they perform the duties in Parliamentary and Assembly Elections, has given rise to this petition. It is averred in the petition

that the petitioner was appointed as Driver in stop-gap arrangement for a period of 60 days or till selection is made by the J & K. SSRB. This was

done vide order No. 455 of 1995 dated August 31, 1995. The period of 60 days was extended from time to time and till now the petitioner is

continuing as such. It has been averred that the Government offered an incentive to the Daily-wagers to regularise their services in relaxation of

rules in case they were ready to perform election duties in Parliamentary elections and the same assurance was repeated for their performance of

duties during Assembly elections. Contention of the petitioner is that he performed the election duty both in Parliamentary as well as in Assembly

Elections, but his service as Driver was not regularised. Instead the post was referred to the SSRB for selection. Petitioner seeks directions by way

of mandamus against the respondents commanding them to regularise the service of the petitioner as Driver with effect from August 31, 1995, i.e.

the date of his appointment on ad hoc basis.

2. Respondents appeared after notice and filed objections which, at their request, were treated as counter. In the objections, respondents have

admitted the appointment of the petitioner as Driver on stop-gap arrangement for a period of 60 days or till the time selection for permanent

appointment was made by the SSRB. It is alleged that the posts have been referred to SSRB. Petitioner also appeared before the Board and was

found ineligible as per the criteria laid down for the appointment. Main objection raised by the respondents is that the incentive of regularisation

was given to those employees only who were working as daily-wagers and no mention has been made regarding ad hoc or appointees on stop-

gap arrangements. In paras 6 and 7 of the counter, the respondents have shown ignorance regarding the participation of the petitioner in elections.

According to them, no representation was made to them. Petitioner might have approached the Deputy Commissioner only, and apart from this, it

is contended that the petitioner has performed the election duty of his own without information to the parent department. Petitioner has filed the

Rejoinder in which he has categorically and in unequivocal terms refuted the contention of respondents that the petitioner ever applied to the SSRB

or has been found ineligible. Petitioner's contention is that he never applied to the SSRB, nor he has been found ineligible. He has again countered

the allegation of respondents that petitioner has of his own participated in election duties. Petitioner has referred the documents and has contended

that he was ordered to perform the election duty by the competent authorities both in Parliamentary and Assembly Elections. So he is entitled to

the benefit of regularisation.

3. Heard learned counsel for the parties. The petition is mainly resisted on the ground that the respondents have no knowledge about the

performance of the election duty by the petitioner and no representation as such

was made by him to the respondents. Petitioner might have performed the election duty of his own. Para No. 6 of the counter reads as under:

6. In reply to para 6, it is submitted that no representation has been received from the petitioner, however, he may have approached the Deputy Commissioner, Budgam.

4. I have gone through the documents enclosed with the petition. I fully agree with learned counsel for the petitioner that the petitioner was ordained by the authorities to perform election duty both in Parliamentary elections and in Assembly elections. Annexures P3 and P4 are evident to show conclusively that the petitioner was ordered by District Election Officer, Budgam to perform the election duty vide order dated July 22, 1996. Petition figures at S. No. 63 of the list. Similarly in Assembly elections also the petitioner was enjoined upon to perform the election duty as Polling Assistant. So the claim of the petitioner is half heartedly admitted by the respondents. Matter does not end here, counsel for the respondents has in para No. 2 of the counter alleged that the post of Driver has already been referred to SSRB for selection of candidate to be permanently employed against the post and the petitioner also applied there and was found ineligible. This allegation has been categorically denied by the petitioner in his rejoinder filed on June 6, 1997. It has been contended that at no point of time he has applied for the post of SSRB, nor, therefore, there was any question of his having been found ineligible for the post. Learned Counsel for the petitioner, during the arguments, has thrown a challenge to the counsel for respondents that in case he proves this allegation that the petitioner was found ineligible by the SSRB, he would not press for this petition. Learned Counsel for the respondent could not spell out anything and it could easily be gathered from his argument that he is not sure about what he has alleged in para No. 2 of his counter.

5. Lastly, it was argued by the counsel for the respondents that the incentive given to employees is only for Daily-wagers, not for ad hoc appointees. He has laid stress on his point that appointees in stop-gap arrangements are not covered by the notification. I have considered this contention of the learned counsel for the respondents and have found that this argument also is not tenable. Firstly, on the ground that the notification which is annexure PII to the petition opens with the orders that

sanction is hereby accorded to the adoption and grant of package of incentive for State Government employees, including daily wage earners Thus it is manifest to show that the incentive is not only for daily wagers, but to other employees of the State Government of such nature which can easily include the ad hoc appointees. This apart, we have to go to the spirit of the Notification. Spirit of the notification is clear enough to show that the incentive was given to such employees who were not regular, if they would participate in the election duties at the peril of their lives, the Government in relaxation of Rules undertook to regularise their services. I wonder how this incentive could be cabbed and confined only to the daily-wagers when the notification itself says that it applies to all employees, including daily-wagers. So the argument of learned counsel for the respondents has no force.

6. For the foregoing reasons it is held that the petitioner is entitled to claim regularisation of his services in terms of the notification dated April 30, 1996 and consequently, the respondents are directed to consider his case for regularisation on the post of Driver within a period of three months in terms of the assurance contained in the notification aforesaid.

The writ petition is accordingly allowed.