
(2002) 12 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 2592 of 1999

Anita Raina

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 4 SCT 8

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S. Kakkar, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—In pursuance of the advertisement issued by the Jammu and Kashmir Service Selection Board, petitioner came to be

appointed as Junior Assistant in the pay scale of 30504590. She was posted at Baramulla. This is apparent from Annexure A. Petitioner submits

that she reported for duty on 31.7.1999. She continued to perform her duty. Her service book was also prepared. Requisite entries were made in

the service book. Thereafter petitioner is said to have received threat calling upon her to leave the valley. She was threatend that if she continues to

stay then she would be physically eliminated. She further sates that earlier her father was also being given threats. It is on account of threat

perception she was forced to leave the valley. It is submitted that she should be treated as migrant. She should be given all those facilities which

have been given to migrants.

2. Writ petition stands admitted. Counter has not been filed.

3. Assertion of the petitioner that she was under threat and she had to come to

Jammu is taken as correct. Another factor which is required to be taken note of is that on 1.1.2001 an order was passed by the respondents. By this order Vinod Kumar and Om Prakash who came to be appointed alongwith petitioner at Baramulla have been allowed the migrant salary. For facility of reference this order is being reproduced below :

Government of Jammu and Kashmir

Civil Sectt. Agricultural Production Department.

Director,

Agricultural Department

Jammu :

No Agri/NG/237/2000 dated 1.1.2001

Subject : Drawal of pay at Jammu in favour of officials who have migrated from Srinagar to Jammu.

Reference : Your letter No. Estt14/2000/434042 dated 5.9.2000.

Sir,

In continuation of this department letter No. Agri/PC/163/992000 dated 21.12.2000, I am directed to convey the approval of the Administrative

Department to the authorization of Rs. 0.90 lakhs (Rupees ninety lakhs only) out of plan allocation of Director Agriculture, Kashmir during 200001

on account of salary component in respect of Shri Vinod Kumar and Om Prakash Junior Assistants of Agriculture Deptt. Kashmir with effect from

March, 2000(3/2000) and onwards respectively under the Head ""T&V"" as per details of pay given below in respect of each.

Name Designation Basic Pay DA @37% MA HRA Total

1. Vinod Kuma rJr. Asstt Agri Kmr 3050/ 1129/ 100/ 153/ 4432/

2. Om Prakash Jr. Asstt Agri Kmr 3050/ 1129/ 100/ 153/ 4432/

The details of pay/salary last paid to above mentioned Junior Assistants has been communicated by Director Agriculture Jammu vide his letter No.

referred to above and also vide Director Agriculture Department Kashmir vide his letter No. Agri/Estt/NG/1978 dated 29.7.2000.

The total outlay authorised so far comes to Rs. 375.78 lakhs including present allocation of Rs. 0.90 lakhs on account of salary for Migrant

employees of Agriculture Kashmir under the Head ""Crop Husbandry"" and

""T&V"" during the current year 200001 out of the allocation of Agriculture Kashmir.

Yours faithfully,

Sd/

Under Secretary to Government

Agriculture Prod. Department.

4. Copy of this order is retained on the file as annexure C/1. Case of the petitioner is not different. It is settled law that if an administrative decision

has been taken in favour of those some person then a direction can be given for allowing the same benefit to the petitioners also. Giving of such

direction would not amount to asking the State Government to give any concession. This aspect of the matter was considered by the Letters Patent

Bench in Letters Patent Appeal (S) No. 449/99 Surinder Singh v. State of J&K and others, decided on 1.5.2000. In this benefit was given to one

category. It was denied to other. Argument raised by the State was that if a concession has been given then no writ can be issued with a view to

get that concession enforced for other persons. This argument was repealed by the following observations :

If above be the factual position then the case of the appellant is similar to these whose names are mentioned in the Government Order dated

19.3.1991 and later order dated 22th of February, 1994. As such the appellant cannot be denied the benefits which have been given to others.

The benefit to others have been given not by way of concession but by taking a policy/administrative decision. This decision has to be applied

universally to all. Appellant cannot be denied benefit.

5. Again the aforementioned decision a Special Leave petition was preferred. This bears No. 5266/2001. This was dismissed by the Supreme

Court of India on 23.3.2001. Therefore, the petitioner is right in her submission that she be granted same treatment as has been given in the case of

Vinod Kumar and Om Prakash.

6. Independently of the above also petitioner would fall within definition of migrant. This petition is accordingly disposed of with the following

directions :

(i) that the petitioner be given migrant salary as has been ordered to be done in

the case of Vinod Kumar and Om Prakash.

(ii) that the respondents should appoint her at any place in Jammu province where militant thereat is not there.

(iii) that a decision in this regard would be taken within a period of three months from the date copy of order passed by this Court is made

available by the petitioner to the respondents.

7. As a matter of fact it is advisable that all those migrant employees who are getting their migrant salary should be asked to work at some place so

that concept of no work no payment is given due recognition. On this larger issue respondents have to take a decision. So far as petitioner is

concerned, respondent would comply with a direction given at serial No. 1 and 2. This would be done within a period of two months from the date

copy of order passed by this Court is made available by the petitioner to the respondents.

8. Disposed of as such.