
(2014) 12 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : SWP No. 1388/2014

Anwar Hussain Wani and Others	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 31-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 85

Hon'ble Judges : Hasnain Massodi, J.

Bench : Single Bench

Advocate : Javid Iqbal, T.H. Khawaja and M.Y. Bhat, for the Appellant; S.A. Naik, Senior AAG, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.â?"State Government vide Order No. 396 of Edu 2000 dated 28-04-2000 launched a Scheme under name and style of

Rehbar-E-Taleem with following objectives:

- (i) Promoting the decentralized management of elementary education, with the community participation and involvement.
- (ii) To ensure accountability and responsiveness through a strong backup and supervision through the community.
- (iii) To operationalize effectively the schooling system at the grass roots level.

The Government Order spells out the concept of the Rehbar-E-Taleem Scheme, (for short ReT Scheme) mode and manner of selection, eligibility,

honorarium of an Rehbar-E-Taleem/Teaching Guide (for short ReT) for and the mode of disbursement of honorarium. It also provides for

regularization of Rehbar-E-Taleem. The relevant part of the order titled ""regularization"" in the context of present controversy assumes significance

and needs to be noticed:

On the satisfactory completion of five years as ""Rehbar-E-Taleem"" on honorarium basis, the candidate shall be eligible for appointment as General

Line Teacher in the Education Department. For this purpose, VLC shall have to furnish a certificate about the satisfactory performance of the

teacher and highlighting the specific achievements and his/her overall conduct. At the time of consideration for formal appointment in the

Government, if a teacher is found not to fulfill age qualification, then his/her employment would be on contractual basis for future.

2. State Cabinet on 19th July 2014, took a policy decision being Cabinet Decision No. 115/09/2014 to give benefit of 5 years service rendered

by an ReT as such for the purpose of seniority and to add a proviso to sub-para captioned ""regularization"". The decision got reflected in

Government Order No. 469-Edu of 2014 dated 25-06-2014. Provision to Government Order No. 396-Edu 2000 dated 28-04-2000 reads:

Provided that the five years service rendered by Rehbar-E-Taleem teachers before regularization shall count for the purpose of fixing their

seniority and counting such service, notionally, for pensioner and other retirement benefits, wherever applicable. The services of Rehbar-e-Taleem

teachers shall be transferable after regularization within the district to which they belong.

The net effect of proviso is that a General Line Teacher i.e. teacher appointed on recommendation of Jammu and Kashmir Service Selection

Recruitment Board (SSRB) after going through normal selection process, after engagement of a ReT but before his/her regularization would rank

junior to ReT, regularized on completion of five years as ReT.

3. Petitioners are General Line Teachers and have been appointed on recommendation of Jammu and Kashmir Service Selection Recruitment

Board (SSRB) on different dates mentioned in their appointment orders appended as Annexure A1 to A10 to the petition. Respondent No. 4 is

General Secretary, Jammu and Kashmir ReT Forum and Respondent No. 5 is Secretary of the Forum.

4. Petitioners through medium of writ petition on hand seek quashment of Cabinet Decision No. 115/09/2014 dated 19-06-2014 and Government

Order No. 469-Edu of 2014 dated 25-06-2014 on the grounds set out in the

petition. They further seek writ of mandamus commanding respondents to refrain from giving effect to the Order impugned in the petition.

5. Briefly stated petitioners' case is that Cabinet Decision and the Government Order impugned in the petition deprive General Line Teachers of

the seniority, push them down the seniority list of General Line Teachers and prejudice their right of consideration for promotion. The Cabinet

Decision and impugned Government Order are said to be in conflict with Jammu and Kashmir Civil Services (Classification, Control and Appeal)

Rules 1956 and Jammu and Kashmir Civil Services (Decentralization and recruitment to Non-Gazetted Cadres) Rules 1969. It is pleaded that a

ReT becomes a member of the service on the date he is regularized as General Line Teacher and that his seniority is to be counted from such date

i.e. the date he is appointed to the service, class or category and not from an anterior date when he was not a member of the service. It is pointed

out that by giving benefit of seniority for the period ReT discharge his duty as such and was not a member of the service, General Line Teachers

are adversely affected and their juniors in service allowed to steal march over them. Petitioners state that Cabinet Decision and the Government

Order dated 28-04-2000 being violative of Rules, deserve to be quashed and respondent No. 1 to 3 directed to refrain from acting on the

Government Order.

6. Respondent No. 1 to 3 in their reply narrate background of ReT Scheme and its aims and objectives. It is pleaded that ReT Scheme is fore-

runner of Sarva Shiksha Abhiyan (for short SSA) operational at present. Respondents justify impugned Cabinet Decision and the Government

Order on the basis of contribution made by ReT Scheme in revival education system and in realizing the object of Universalization of Elementary

Education in the State. It is also justified on ground of Directive Principles of State Policy, aiming at Universalization of Elementary Education. It is

insisted that the decision taken by the Cabinet is a policy decision and as laid down by Hon'ble Apex Court is not to be interfered with, in exercise

of writ jurisdiction. It is denied that the Cabinet Decision and the Government Order in question offend any of the statutory Rules governing service

conditions of the petitioners.

7. Respondent No. 4 and 5 oppose writ petition on the grounds that a ReT, under

the Scheme is appointed following due procedure, against the posts created under the Scheme and therefore is not to be denied benefit due to him for the service rendered as such. It is pleaded that notwithstanding nomenclature, a ReT discharges same duty as General Line Teacher, gains same experience as General Line Teacher and therefore would be entitled to service rendered as ReT being counted for the purpose of seniority and pensionary benefit. The Scheme according to respondents has found approval of the highest Court inasmuch as a Special Leave Appeal being LPA SWP No. 183/2010 titled Renu Manhas v. State of J&K and Others dated 16th April 2013, wherein validity of the Scheme and in particular provision for regularization of ReT was involved, stands dismissed vide Order dated 7-7-2014.

8. It is insisted that services rendered by ReT are equal or analogous to the nature and extent of the duties rendered by the General Line Teachers and benefit given to ReT under impugned Government Order, therefore is beyond question. It is pleaded that the Cabinet Decision and the Government Order called in question in the petition, end discriminatory treatment given ReTs and restore a right to ReTs otherwise due to them, that the decision taken by the State Government according to respondents is in tune with Article 14 and 16, Constitution of India and does not in any manner infringe any of Service Rules quoted in the petition. It is stated that a ReT is in service of the respondent Department from the date of his initial engagement and the decision taken by the State Government only acknowledges the admitted position. It is pleaded that a ReT even in absence of the impugned Cabinet Decision and the Government Order has right to have his five years rendered as ReT on receipt honorarium, counted as service qualifying for pension and therefore Cabinet Decision and the Government Order merely restore what is due to a ReT. Respondents refute petitioners' claim that the Cabinet Decision and the Government Order in question, call for any interference.

9. I have gone through the pleadings as also record available on the file. I have heard learned counsel for the parties.

10 The State Government way back in the year 2000 conceived a Scheme to make good deficiency of staff in Education Department at the primary level. The Scheme known as ReT Scheme provided for engagement of

ReT or Teaching Guide, at the primary level to ensure availability of staff at grassroots level, encourage peoples participation in the management of education at said level A role was carved out under Scheme for village e(sic)ers in selection process of ReTs. The zone of selection was therefore restricted to village where deficiency of staff was intended to be made up so that ReT has not to undertake journey to reach school and is available to students round the clock.

11. The Scheme conceptualized was notified vide Circular No. Edu/Plan-184/2000 dated 17-2-2000. This was followed by Government Order

No. 396-Edu of 2000 dated 28.04.2000, whereby operational part of the Scheme was laid down. The Government Order emphasized concept of

ReT"" role of Village Level Committee, eligibility, mode of selection, honorarium and its payment and regulation of ReTs engaged under he Scheme

The Government as a sequel to the cabinet decision and he Government Order No. 396 of Edu. of 2000 dated 28-04-2000 sanctioned the post

of ReTs to be filled up in accordance with the Government Order.

12. ReT in terms of Government Order was to perform role of a catalyst for quality education and to ensure an overall development of Personality

of the children drawn from the local community. The accountability of the Teaching Guide or ReT is immediate, providing for constant interface

with community to secure universal enrollment and to check incidence of school dropouts. ReT in terms of Government Order No. 396-Edu of

2000 dated 28.04.2000, was to act as a local community worker on payment of monthly honorarium. The Government Order also provided for

regularization of ReT after five years satisfactory service as Genera Line Teacher in Education Department. The ReT Scheme played a significant

role in Universalization of Education at Elementary Level and was replaced, a few years after it was launched, by Sarva Shiksha Abiyan (SSA), in

operation at on date. The State Government while adopting new Scheme decided to adhere to the mode and method of selection and engagement

of ReT under ReT Scheme. This was done presumably, for the reasons that the methodology had worked well to satisfaction of all concerned.

13. ReT under Scheme of 2000 and now Sarva Shiksha Abiyan (SSA Performs similar duties as that of a General Line Teacher. ReT like General

Line Teacher teaches students at Primary and Middle, Through 10+2 qualification

under Government Order No. 396-Edu of 2000 dated 28

04,2000, is required eligibility for engagement as ReT, in practice candidates with higher qualification i.e. graduate, post-graduate and even with

M-Phil or Ph.D. compete for ReT position and are performing duties as ReT. The only difference between ReT and a General Line Teacher is as

regards the mode and manner of selection, emoluments paid and place of residence. A General Line Teacher is selected by Jammu and Kashmir

Service Selection Recruitment Board (JKSSRB) and on recommendations of the Board appointed in a particular grade and need not be a resident

of the locality where he or she on appointment is posted. ReT on the other hand is selected and recommended by local elders i.e. Village Level

Committee must necessarily be from that locality and is to be paid honorarium, not salary in a pay scale. A regular appointment is to come his or

her way on completion of five years satisfactory service ReT.

14. ReTs over the years have been conferred one after another benefits as available to government employees including General Line Teachers.

Efforts to bring them at par with General Line Teachers have not found any objection from anyone including present petitioners. To illustrate an

ReT is permitted to avail leave of different kinds, including maternity leave like a General Line Teacher.

15. The State Government vide Government Order No. 230-EDU of 2007 dated 27-06-2007 prescribed rules governing grant of leave of

absence to ReTs. Earlier State Government Order 534-Edu of 2004 dated 16th June 2004 made provision for leave of absence in favour of

ReTs. Government order of 2007 was an improvement over Government Order of 2004, inasmuch as under latter Government Order provision

has been made for 60 days maternity leave. In all cases, absence on leave is not to constitute break in the service. Government Order No. 115-

Edu of 2008 dated 27-2-2008 is yet another important step taken by the State Government to end the discrimination meted out to ReTs and to

redress their grievances. In terms of Government Order the period of five years as ReT before regularization is to count as qualifying service for

pension in case such service is followed by regularization. To sum up there have been series of steps have been taken by the State Government

since ReT Scheme was initially conceived by State Government to bridge the gap

between ReTs and General Line Teachers and other government employees.

16. The benefit extended to ReT's from time to time at par with General Line Teachers, has not been questioned by General Line Teachers or for that matter any other person having a cause to maintain a petition in this behalf. The benefit of seniority made available vide Government Order impugned in the petition is nothing except one in the series of steps taken by the State Government to bring ReTs at par with General Line Teachers on their regularization from the date of their initial engagement. It stands emphasized that ReTs and General Line Teachers have similar academic background, go through proper selection process before their engagement/appointment and perform identical duties in the Education Department. The only difference is that a candidate because of lack of employment opportunities at particular time may instead of continuing with his/her unemployment opt for a teaching position though as an ReT (Teaching Guide) on a meagre amount of honorarium. The steps taken by the State Government to ameliorate their lot are in tune with the mandate of equality clause of the Constitution. The order impugned in the petition as a matter of fact is a step to redress a grievance and end discriminatory and exploitative treatment which an ReT is compelled to face because of reasons not attributable to him or her.

17. The argument that as a General line Teacher successfully goes through a selection process not gone through by a Rehbar-E-Taleem, the General Line Teacher has an edge over RET, serving the Department for few years before appointment of General Line Teacher does not sound convincing. A General Line Teacher appointed five years after engagement of ReT is not to feel aggrieved with the impugned government order for the simple reason that he/she was not part of the Department and might well have been in a College or University when ReT was engaged and teaching in a Government Primary or Middle school. It needs to be pointed out that an ReT even in terms of Government Order in question is not to steal march over a General Line Teacher appointed on the date on which ReT was engaged. The benefits, extended if at all affects a General Line Teacher who becomes part of the Department after an ReT is engaged. The argument that even an ReT who has competed with a candidate

for General Line Teacher but failed to make the grade, in terms of impugned Government Order, would be senior to the General Line Teacher,

selected in the same selection process, and get an undue benefit, speculative and imaginary. Rehbar-E-Taleem teachers may not invariably

participate in the selection process and fail to make it to the select list. The underlying fact, is that in terms of Government Order, ReTs are given

benefit for the service actually rendered as teachers, though under different nomenclature.

18. The State Government has a valid reason to bring ReTs at par with General Line Teachers as there is no difference between ReT and a

General Line Teacher as regards eligibility, nature of selection and duty to be performed.

19. The question whether State was competent to frame a Scheme in contravention of Article 14 and 16 Constitution of India by giving preference

to a candidate based on his/her place of residence, while appointing him/her to the post of ReT (Teaching Guides) and to confer right of

regularization after five years came up before the Hon'ble Apex Court to Renu Manhas v. State of J&K and Others, Special Leave to Appeal (C)

No(s) 20531/201d. Petitioners' case before High Court and Hon'ble Supreme Court was that the Scheme violated equality clause of the

Constitution. The Division Bench held the Scheme not to be violative of the Article 14 and 16 Constitution of India. Special Leave Petition against

the LPA Court Judgment dated 16th April 2013 in LPA (SWP No. 183-2010 was dismissed on 7th July 2014. It follows that the Scheme laid

down vide Government Order No. 396 of Edu 2000 dated 28-04-2000 including the provisions for regularization of an ReT on completion of five

years satisfactory service is beyond question.

20. The plea that Scheme notified vide Government Order No. 396 of Edu 2000 dated 28-04-2000 as amended by Government Order No. 469-

Edu of 2014 dated 25-06-2014 may prejudicially affect promotional avenues of General Line Teacher and therefore Government Order No. 469-

Edu of 2014 dated 25-06-2014 deserves to be quashed is devoid of substance. It is to be appreciated that a beneficiary of Government Order in

question, is part of the respondent Department, discharging duties as a teacher much before a General Line Teacher appointed after his

engagement and therefore a General Line Teacher appointed after an ReT has no reason to be bitter about the credit given to an ReT for the

service he has rendered before a General Line Teacher was appointed and became part of the Department. The Government is well within its

powers to lay down a Scheme to provide for redressal of grievances of sections of its employees engaged under the Scheme and not initially

appointed on regular or substantive basis. Reliance in this regard is rightly placed on laws laid down in

(i) T.N. Education Department Ministerial and General Subordinate Services Association Etc. v. State of T. N. & Ors. 1979 STPL(LE) 9889

SC.

(ii) State of Sikkim & Ors. v. Adup Tshering Bhutia & Ors. 2014 STPL (LE) 48736 SC.

(iii) Amarendra Kumar Mohapatra & Ors. v. State of Orissa & Ors. 2014 STPL (LE) 48659 SC.

21. Steps taken by the State Government to ameliorate lot of a disadvantaged section of its employees is to be faulted only on the ground that it

has negative spill over on another section of employees. In Mohapatra (Supra) case, the State Government in order to address the problems of

unemployment of Engineering Graduates, decided to appoint Stipendiary Engineers on consolidated stipends of Rs. 2000/- per month. The

empanelment of stipendiary Engineers was followed by a Scheme for regularization of such Stipendiary Engineers. The Scheme took shape of

Orissa Service of Engineers (Validation of Appointment) Act, 2002. Validity of the Act was questioned before the High Court on number of

grounds including one of under inclusion of in-service Junior Engineers working as Ad hoc Assistant Engineers. Hon'ble Supreme Court while

rejecting challenge to the validity of the Act observed:

44 ""We need to advert to one other aspect which bear relevance to the issue whether regularization under the impugned Enactment is legally valid.

The appointment process of unemployed degree holders, as noticed earlier, started with the resolution passed by the State Government which

envisaged appointments of such unemployed Graduate Engineers as Stipendiaries on consolidated stipend of Rs. 2000/- p.m. The resolution

further envisaged their absorption in service after a period of two years. Not only

that, appointments as Stipendiary engineers were made on the basis of a selection process and on the basis of merit no matter determined do hors the relevant rules which provided for appointments to the cadre to be made only through the Public Service Commission, preference to the Public Service Commission was no doubt considered unnecessarily but the fact remains that appointment of unemployed degree holders as Stipendiary Engineers were made pursuant to a notification by which everyone who as unemployed and held an Engineering degree in any discipline was free to make an application, A large number of unemployed engineers responded to the notification inviting applications out of whom nearly 932 were selected by a Selection Committee constituted for the purpose.

What is significant is that the empanelment of the unemployed degree holders for appointment as Stipendiaries did not invite any criticism from any quarter either as to the method of appointment or the fairness of the selection process. The process of appointment was at no stage questioned before the Court, a feature which is notable keeping in view the number of people appointed/empanelled and a larger number who were left out and who could have possibly made a grievance if there was any. It is not, therefore, wholly correct to suggest that the entry of the degree holder Junior Engineers as Stipendiary Engineers and later as Assistant Engineers was through ""the backdoor"" an expression very often used in service matters where appointments are made de hors the rules. The process of selection and appointment may not have been as per the relevant rules as the same ought to have been, but it is far from saying that there was complete arbitrariness in the manner of such appointments so as to violate Article 14 and 16 of the Constitutions of India"".

22. In the present case, as already pointed out an ReT goes through a proper selection process though different from one followed in the case of General Line Teacher, discharges same duties as performed by a General Line Teacher and over the years has been brought at par with General Line Teacher as regards service benefits without any challenge. The law laid down in the above referred case is therefore applicable to ReT engaged in terms of Government Order No. 396 of Edu 2000 dated 28-04-2000.

23. The plea that as an ReT is not member of the Service in terms of Jammu and Kashmir Civil Services (Classification, Control and Appeal)

Rules 1956, Jammu and Kashmir Educational (Subordinate Service Recruitment) Rules, 1979 and Rule 5 of Jammu and Kashmir Civil Services

(Decentralization and recruitment to Non-Gazetted Cadres) Rules 1969, on the date benefit is conferred under impugned Government Order,

cannot have his seniority counted from the day of initial engagement is equally devoid of substance. The benefit of previous service in terms of

Government Order No. 469-Edu of 2014 dated 25-06-2014 is only available on regularization. It needs no emphasis that an ReT on

regularization becomes member of the service and benefit available under the impugned order becomes available to him only when he becomes

member of the service. Let us now assume a situation where an ReT for one or other reason is not regularized. The benefit under the impugned

order would not be available to such an ReT. It follows that the impugned Government Order gives benefit to a member of the service, though for

service rendered before regularization and not to a person who is not a member of the service. The Cabinet Decision and the Order impugned in

the petition does not give retrospective promotion to the ReTs over the head of those appointed alongside them as General Line Teachers and thus

allow them to steal march over the General Line Teachers. As pointed out more than once it only gives benefit of service rendered by ReTs on

their regularization. Reliance on Sheikh Abdul Rashid and Others Vs. State of Jammu & Kashmir and Others, and other case law relied upon in

this regard is misplaced. The facts of the present case are markedly distinguishable from the case law relied upon by the counsel for the petitioners.

24. For the reasons discussed, Cabinet Decision No. 115/09/2014 and Government Order No. 469-Edu of 2014 dated 25-06-2014 do not call

for interference. The writ petition is therefore without any merit and is liable to be dismissed along with connected CMPs. Dismissed.