
(2018) 08 J&K CK 0072

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No.1702 Of 2018

Bahar Ahmad Wani and ors @APPELLANT@Hash State and ors

Date of Decision : 28-08-2018

Acts Referred:

Jammu and Kashmir Civil Service Regulations, 1956 — Article 85

Citation : (2018) 08 J&K CK 0072

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1 The case set up by the petitioner in this writ petition is that they were appointed as Village Level Workers in Rural Development Department on

17.12.1979, 08.10.1980, 04.10.1980 and 23.03.1989 respectively. The petitioners though attained the eligibility for promotion to the next post of

Panchayat Inspector Grade-II after rendering five years of service as Village Level Workers, yet they were made to stagnate for years together and

their cases were not placed before the Departmental Promotion Committee for their promotion. It is submitted that it is only vide order dated

18.09.2013, petitioner Nos.1 and 3 were placed as In-charge Panchayat Inspector Grade II. Similarly, petitioner No.2 was placed as In-charge

Panchayat Inspector Grade-II vide order dated 04.10.2014 and respondent No.4 vide order dated 06.11.2017. It is further submitted that without

placing the cases of the petitioners before the Departmental Promotion Committee for confirmation of their promotion, the official respondents placed

the petitioners as Block Development Officers in In-charge capacity to run the day-to-day administration of the newly created Blocks. It is also stated

that the placement of the petitioners as In-charge Block Development Officers was made till the said posts were filled up by the competent authority.

2 The short grievance projected by the petitioners in this petition is that due to inaction on the part of the official respondents to convene the meetings

of Departmental Promotion Committee periodically, the petitioners continue to hold the post of Panchayat Inspector Grade II and their promotions as

Panchayat Inspector Grade-II have not been regularized. It is further stated by the petitioners in this petition that though the official respondents have

even placed them against the gazetted posts of Block Development Officer, but the same are also in Incharge capacity and liable to be terminated at

any time, if the posts of Block Development Officers are filled up substantively by the competent authority.

3 In the backdrop of the aforesaid fact situation, the petitioners have claimed that the In-charge arrangements under which they are functioning as

Block Development Officers may not be disturbed till the said posts are substantively filled up and the cases of the petitioners for their promotion as

Panchayat Inspector Grade-II are considered upon the recommendations of the departmental promotion committee. The other grievance projected by

the petitioners is that since they are officiating as Block Development Officers and are performing the duties of the office, as such, they are also

entitled to the charge allowance which the respondents are not paying.

4 Having heard learned counsel for the petitioners and perused the record, it is found that the grievance of the petitioners, insofar as it pertains to the

inaction on the part of the respondents to convene the meeting of the Departmental Promotion Committee and to consider the cases of the petitioners

for substantive promotion to the posts of Panchayat Inspector Grade-II, is genuine and needs to be redressed without any further waste of time. Since

the petitioners are yet to be substantively promoted as Panchayat Inspector Grade-II, as such, their further placement as In-charge BDO, ex-facie, is

contrary to the law and, therefore, they cannot claim a right to hold the same. Â

5 In terms of Article 85 of the J&K Civil Service Regulations, a person, who is otherwise eligible to be promoted to the higher post, alone can be made

In-charge of the post temporarily pending confirmation by the Departmental Promotion Committee. The Government instruction (a) inserted in the

Regulations vide Notification SRO-499 makes the position abundantly clear. The Government Instruction aforesaid is reproduced hereunder:

Â â??Government Instruction(a)

It is wrong in principle to appoint a Government servant to a higher post in his own cadre/line of promotion without observing the required formalities

of clearance from Departmental Promotion Committee etc. where, however, for reasons to be recorded, the Administrative authority cannot without

detriment to public interests wait for formal appointments temporary stop gap arrangements may be made by them against such posts. In making such

arrangements, the competent authorities will ensure that only such officers are appointed who satisfy all the requirements for higher appointments and

can stand the scrutiny of the Departmental Promotion Committee etc. Persons so appointed shall be appointed in their own pay and grade as incharge

of the higher posts, and will be required to discharge the full duties and responsibilities of these posts. As soon as such officers are declared by the

Departmental Promotion Committee etc. fit for appointment to higher posts without any break in the stop gap arrangements, they will be allowed full

pay of those posts allowance etc. if any, drawn to be adjusted in full against the retrospective increases in pay)â??

6 That being so, the placement of ineligible persons, who were not holding the posts in the feeding category for promotion to the post of Block

Development Officers are per se illegal and cannot sustain. However, as stated above, I find substance in the submission made by the learned counsel

for the petitioners that the petitioners being eligible for promotion to the post of Panchayat Inspector Grade-II cannot be allowed to stagnate

indefinitely and that the respondents are under legal obligation to convene the meetings of Departmental Promotion Committee periodically and

consider the cases of all the eligible candidates for promotion.

7 Admittedly, the petitioners have rendered requisite service of five years as Village Level Workers and are, therefore, eligible to be promoted as

Panchayat Inspector Grade II and thereafter on the basis of their merit and seniority, they would become entitled to further promotion as Panchayat

Inspector Grade-I and Block Development Officers. It is true that due to failure on the part of the respondents to convene the meetings of

Departmental Promotion Committee and consider the cases of the petitioners for regular promotion as Panchayat Inspector Grade II, the petitioners

have been deprived the benefit of further promotion on substantive basis, though they have been placed on higher posts in in-charge capacity. The

obligation to convene the meetings of DPC on regular intervals is statutory in nature. Earlier SRO 166 of 2005 provided for convening of

Departmental Promotion Committee's meeting for promotion at least once in a year and now the provisions of the Jammu and Kashmir Civil

Services Decentralization and Recruitment Act, 2010 Act also provides for convening of Departmental Promotion Committee's meetings

periodically to ensure that promotions of the stagnated employees are made in time. Such being the mandate of law, the respondents cannot avoid their

obligation to convene the meeting of Departmental Promotion Committee and to make the regular promotions periodically.

8 In the backdrop of aforementioned facts and keeping in view the nature of the controversy involved, this petition can be disposed of at this stage.

The same is, accordingly, disposed of by issuing the following directions:

1 That the respondents shall immediately and forthwith convene the meeting of Departmental Promotion Committee and consider the cases of all the

eligible Village Level Workers including the petitioners for their promotion to the posts of Panchayat Inspector Grade II. The promotion to the eligible

VLWs including the petitioners shall be effected from the dates and in the manner envisaged in the celebrated Judgment rendered in the case of Suraj

Parkash Gupta And Others vs State Of J & K and Other, 2000 (7) SCC 561;

2 That such Village Level Workers, who are found eligible for promotion to the post of Inspector Grade II and given such promotion, their cases shall

be considered by the Departmental Promotion Committee further for making promotion to the posts of Inspector Grade I and so on and so forth. The

exercise aforesaid shall be taken by the respondents immediately and completed within a period of eight weeks from the date, a certified copy of this

order is made available to them.

3 That the posts of Block Development Officers if required to be urgently filled up temporarily till the same are regularly filled up shall only be manned

by the non-gazetted officials holding the posts in the feeding cadre on substantive basis i.e post of Panchayat Supervisors/Panchayat Inspectors Gr-

I/ceo/Lady Project Officer/Headquarter Assistant in the ratio provided in the JK Rural Development (Gazetted) Recruitments Rules, 2003;

4 That the arrangements, if any, made for posting of non-gazetted employees including the Village Level Workers as In-charge Block Development

Officers as on date shall not be disturbed for a period of two months. On the expiry of two months period stated hereinabove, all Incharge

arrangements to the post of Block Development Officers made from amongst the candidates not holding the post in the feeding cadre on substantive

basis shall cease to operate.

9 With the aforesaid directions, the writ petition is disposed of along with connected IA.Â Â Â