

(2005) 07 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1534 Of 2003

Farooq Ahmad Kuchay

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) JKJ 22 Supp

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : N.H.Shah, G.Q.Bhat, Advocates appearing for the Parties

Judgement

1. The petitioner has prayed for the following relief;

Mandamus, commanding the respondents to release the grade of salary attached to the post of Works Supervisor i.e. 7751025 (prerevised) in

favour of the petitioner retrospectively from the date of the petitioner was regularized as helper in the year 1995. i.e. From the date he has been

redesignated as Works Supervisor vide Order 1273 dt. 15.11.95.

2. The petitioner has sought indulgence of this Court on the grounds taken in the writ petition, which can be aptly and precisely summarized as

under;

3. The petitioner was engaged as dailywager by the respondents on 1st June, 1979 and the petitioner worked for more than 16 years as Works

Supervisor in the department. The respondents regularized the services of the petitioner as Helper and not as Works Supervisor vide Government

Order No. 167PWI/95 dated 28.03.1995.

4. The petitioner made representation and projected his grievances and

accordingly, the petitioner was redesignated as Works Supervisor but was directed to work in his own pay and grade. It is profitable to reproduce order contained in annexureB herein;

In the interest of administration Sh. Farooq Ahmad Kuchay Helper (C) working in the pay scale of Rs.750940 is hereby redesignated as Works

Supervisor in his own pay and grade this order shall have an immediate effect.

5. The other departments have issued the said grade in favour of similarly situated employees in terms of annexureF, but the same has not been

granted to the petitioner. The two employees who are similarly and equally situated with the petitioner were redesignated as Works Supervisors,

where as the petitioner was discriminated. The petitioner has been regularized on the post which is lower than the post which the petitioner was

holding as dailywager.

6. The respondents have filed reply. It is profitable to reproduce para 4, 5 and 8 of the reply herein;

4. The contents of para 4 are denied. It is submitted that the petitioner was working as daily wagger and stand s converted into regular temporary

establishment as helper 'c' in the pay scale of 750940 pre revised vide Govt. order No. 167 pw of 1995 dated 28.03.1995 w.e.f 01.04.1994. It is

denied that petitioner was working as works supervisor on daily wage basis and was entitled to be regularized as works supervisor.

5. The contents of para 5 are denied. It is submitted that the petitioner has managed an order redesignating the petitioner as works supervisor in his

own pay and grade from executive engineer irrigation division Tral. It is submitted that the executive engineer, is not competent to make such

redesignation and this the redesignation is void abinitio. It is further submitted that the petitioner has also managed to enter the redesignation order

in his service book. It is submitted that since the order is by an incompetent officer the same can't be given effect or taken into consideration u/r.

8. The contents of para 8 are denied. It is submitted that the petitioner was not working as works supervision on daily wage basis and was not

entitled to be regularized as works supervisor. It is submitted that the order of redesignation dated 15.11.1995 was by an authority incompetent to

issue such order and thus is nonest in the eye of law.

7. Heard. Admit. With the consensus of learned counsel for the parties, the

petition is taken up for final disposal.

8. The question is whether the order contained in AnnexureB can give a cause to the petitioner to claim the relief? The said order categorically

contains the condition that petitioner shall work in his own pay and grade and thus, the petitioner cannot claim the relief in terms of annexureB.

9. SRO 64 of 1994 deals with daily rated workers/work charge employees (Regularization Rules 1994). It is profitable to reproduce Rule3 and

Rule 5 of the said SRO herein;

3. Creation of the posts: 1. The committee may from time to time on receipt of proposal from any administrative department approve the creation

of posts for the purpose of regularization of daily Rated workers or work charged employees.

2. After the approval under subrule (1) above is conveyed to the administrative department, the administrative department concerned shall issue

the orders of creation of the posts. The posts so created shall be:

a. Born on the plan or nonplan establishment as the classification of the scheme or work may be on which such eligible person are deployed, and

b. In conformity with the existing sanctioned designation in the pay scale of Rs.750940.

5. Regularisation of daily rated workers: All the daily rated workers who on 31.3.1994, are eligible under rule 4 for regularization shall with effect

from 1.4.1994, be appointed on the regular pay scale of class iv category of posts in the scale of Rs.750940; Provided that if any of the categories

have higher pay scale of Rs.7751025, such employee(s) shall be placed 2 years of service in the scale of Rs.750940.

10. If a daily rated worker was engaged prior to 31.03.1994 and is working continuously to the satisfaction of the employer for period of seven

years to 31st March, 1994, can be appointed in pay scale of Rs.750940 after posts are created.

11. Accordingly, in terms of these Rules, the services of the petitioner have been regularized and accordingly appointed as Helper (C) w. e. f. 1st

April, 1994 vide Government Order No. 167PWI/95 dated 28th March, 1995. The petitioner has accepted the said Government order and has

not challenged the said order till filing of the writ petition. The petitioner has come to the court that higher grade be given to the petitioner from the

date his services were regularized after lapse of eight years.

12. In terms of Rule 5, referred hereinabove, it is provided that if any daily rated worker was working in higher pay scale of Rs. 7751025 then the

said employee is to be placed in the said scale after lapse of two years. The petitioner, as discussed above, has accepted the order at that time and

has now after lapse of eight years come to the court.

13. The petitioner has prayed that he stand redesignated thus, is entitled to the grade attached to the post of Works Supervisor.

14. The Executive Engineer, Irrigation Division, Tral has no powers to redesignate the petitioner. However, the said redesignation does not confer

any right upon the petitioner because he has been asked to work in his own pay and grade, as discussed above.

15. It is not the case of the petitioner that his services were regularized and he was appointed in the pay scale of Rs. 750940/ and after two years

he was to be placed under the pay scale of Rs. 7751025, but the positive case of the petitioner is that Executive Engineer, Irrigation Division, Tral,

redesignated the petitioner as Works Supervisor, so grade attached to the post of Works Supervisor be released in his favour.

16. In the given circumstances, the relief, as prayed for, cannot be granted. However, the petitioner is at liberty to make representation and the

respondents shall accord consideration as per Rules applicable.

17. Accordingly, the writ petition along with all connected CMP(s) is disposed of. Interim direction, if any, shall stand vacated.