

(2023) 09 J&K CK 0051
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1539 Of 2020

Fayaz Ahmad Malik & Others

APPELLANT

Vs

Ut Of J&K & Others

RESPONDENT

Date of Decision : 26-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2023) 09 J&K CK 0051

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Sheikh Mushtaq, Satinder Singh Kala, Raheela Khan, Shakir Haqani

Final Decision : Allowed

Judgement

Rajnesh Oswal, J

- 1) The petitioners have filed the present writ petition for directing the respondents to release the arrears of COLA in favour of the petitioners from January 1999 to September 2012 in terms of communication bearing No. JKSR TC/PEN-II/MD/044 dated 15.07.2014, as cleared by the Finance Department vide Government Order No.110-TR/AF of 2014 dated 10.12.2014, as directed in terms of the judgment passed by this Court in SWP No.1147/2016 dated 20.02.2020.
- 2) The petitioners have sought the above mentioned relief on the ground that they are similarly situated persons vis-a-vis the petitioners and the applicants who were arrayed as petitioners in SWP No.1147/2016 decided by this Court vide judgment dated 20.02.2020, as such, they are entitled to the benefits flowing from the aforesaid judgment passed by this Court.
- 3) The respondents No.1-3 and 4 have filed their response to the writ petition separately but they are unanimous in their stand by stating that the petitioners are not similarly situated vis-a-vis the petitioners of SWP No.1147/2016 and that the petition suffers from delay and laches.

4) Mr. Sheikh Mushtaq, learned counsel for the petitioners has vehemently argued that the judgment dated 20.02.2020 is a judgment in rem and, as such, there is no justification on the part of the respondents to deny the legitimate claim of the petitioners. He further submitted that the respondents have miserably failed to demonstrate as to how the petitioners are not similarly situated vis-a-vis the petitioners in SWP No.1147/2016.

5) Per contra, Mr. Satinder Singh Kala, learned AAG, appearing for respondents No.1 to 3, and Mr. Shakir Haqani, Advocate, appearing for respondent No.4, submit that the petitioners were fence sitters and, as such, at this stage no benefit can be granted to them and the petition suffers from delay and laches.

6) Hear and perused the record.

7) The respondents have not been able to demonstrate before this Court that the petitioners are not similarly situated as the petitioners in SWP No.1147/2016. The petitioners in para (4) of the petition have specifically stated that they came to be engaged in the erstwhile Government Transport Undertaking (GTU) which was subsequently converted into SRTC and further that the petitioners have been given benefit of the judgment dated 01.7.2013 as they were parties in the writ petition and, as such, they were required to be treated like other co-employees in the matters including release of COLA. Once the petitioners have been the beneficiary of judgment dated 01.07.2013, the respondents cannot deny status of the petitioners being similarly situated employees vis-a-vis petitioners in SWP No.1147/2016. This Court is of the considered view that the respondents have miserably failed to demonstrate that the petitioners are not similarly situated like the petitioners in SWP No.1147/2016, therefore this contention of the respondents is rejected.

8) The other contention raised by the respondents is that the petitioners were fence sitters, as such, they cannot claim benefit of the judgment dated 20.02.2020. The judgment dated 20.02.2020 was a judgment in rem as the same was filed by the Union of Employees of SRTC and subsequently some applicants also laid a motion for arraying them as petitioners to the said writ petition which was allowed by this Court as is evident from judgment dated 20.02.2020. Law is well settled that similarly situated employees are required to be treated in a like manner. Simply because the petitioners did not come to the Court, they cannot be deprived of their legitimate rights, particularly when the judgment passed by this Court was a judgment in rem and in such a situation, the employer is expected to grant the benefit to all the similarly situated employees, notwithstanding the fact as to whether they approached the Court or not. Reliance is placed on the judgment of Apex Court in State of U.P. v. Arvind Kumar Srivastava, (2015) 1 SCC 347, wherein it has been held as under:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would

be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

9) Accordingly, the writ petition is allowed in the same terms of the judgment dated 20.02.2020 passed in SWP No.1147/2016.