
(2011) 10 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1321 of 2008

Fayaz Ahmad Peer and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 24-10-2011

Acts Referred:

Citation : (2011) 4 JKJ 395

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Hasnain Massodi, Judge

1. The petitioners were appointed as Procurement Assistants/Cattle Feed Assistants/Accounts Assistants/Marketing Assistants, in the grade of

825-1240 on 06-06-1985 in Kashmir Valley Milk Producers Cooperative Federation (hereinafter referred to as 'Milk Federation'). The Milk

Federation established in the year 1982-83 landed in financial crisis and the State Cabinet on 23rd July, 2002 vide Cabinet Decision No. 133/9

decided to scrap the ""Kashmir Valley Milk Producers Cooperative Federation"" and ""Jammu Cooperative Milk Federation"" and transfer its land,

building and other equipment to the newly set up ""J&K Cooperative Milk Producers Federation Limited."" The Cabinet also decided to find out

solution to adjustment, voluntary retirement and reappointment of the existing employees of the Milk Federation as per details given in annexure-1

to the Cabinet Order. Out of the existing employees of the Milk Federation 44 employees were proposed to be absorbed in Agriculture and allied

sectors and 8 other employees in J&K Cooperative Milk Producers Federation Limited to be set up vide Government Order No. 60 ASH of

2002 dated 05.04.2002.13 employees of erstwhile Milk Supply Undertaking, part of the Animal Husbandry Department, on deputation to the

Milk Federation were reverted back to the Animal Husbandry Department. The Director Animal Husbandry, respondent No. 2 herein, vide No.

DAHK/Estt/14998-15001 dated 15th Dec. 2001 giving details of the staff of Milk Federation submitted a proposal for utilizing the services of left

out staff of Milk Federation in the Department of Animal Husbandry subject to the conditions that the adjusted staff shall form a separate entity in

the Department and shall not be entitled to any promotion or absorption in the departmental cadres and shall have to work wherever they are

adjusted as per their status, cadre, experience and requirement. The respondent No. 2 insisted that the employees shall have to give an affidavit

stating that they will not claim any seniority/absorption and other benefits of regular employees in the Department of Animal Husbandry.

2. This was followed by a proposal forwarded by the respondent No. 2 vide No. DAHK/Comp-II/14198-99 dated 28.09.2002 suggesting

utilization of the left out staff of Milk Federation for operation of centrally sponsored scheme styled as 'Integrated Dairy Development Programme

(IDDP)'.

3. The petitioners and other left out employees of Kashmir Valley Milk Federation were vide circular dated 09.08.2002 asked to give their

consent/exercise option for their adjustment in Animal Husbandry Department. In terms of joint proposal submitted by Directorate of Animal

Husbandry, Kashmir, and Managing Director, Kashmir Valley Milk Producers' Cooperative Federation, the petitioners gave their consent in the

requisite format. However, the matter appears to have made no headway as the Director Animal Husbandry vide his communication dated

28.09.2002 proposed as under:

As regards the availability of posts for adjustment of the staff of Kashmir Milk Federation in Animal Husbandry Department, this department has

no objection in case such a staff is adjusted along with their posts as a separate cadre with no claim for their inclusion in the main seniority of the

department. The other option could be that such a staff is adjusted appropriately on the vacancies of the erstwhile MSU as are available after the

adjustment of the staff of the Federation recently repatriated vide Government

order No. 60 ASH of 2002 dated 05.04.2002. The remaining unadjusted staff may be immediately considered for frozen salaries and adjusted in the future course of time as and when the appropriate vacancies are caused in the department. The third possibility could be that the Milk Federation is transferred back to the Department of Animal Husbandry along with its assets and liabilities and the plant can be renovated by the department and run on the pattern of erstwhile Milk Supply Scheme or Poultry with minimum staff.

4. The respondent No. 2 vide communication dated 17.03.2004 asked the Managing Director, Kashmir Valley Milk Federation to consult the employees of Milk Federation as regards their willingness to accept adjustment in Animal Husbandry Department on the lower posts in absence of posts in the same grade as also to know whether the employees or any one of them was willing to opt for voluntary retirement/Golden Handshake Scheme. The Managing Director, Kashmir Milk Federation, in response to aforementioned communication vide No. MD/KVMPCF/WP/429-30 dated 25.03.2004 forwarded the consent of 13 employees of Kashmir Milk Federation working in the grade of Rs. 6700-200-10700 including the present petitioners except S/Sh. Davinder Singh and Bipin Chander Koul (petitioners 5 and 7) for their adjustment in Animal Husbandry Department Shri Bipin Chander Koul however, conveyed his consent separately.

5. The respondent No. 1 vide Government order No. 94/Estt of 2004 dated 20.07.2004 ordered adjustment of the staff of Milk Federation Jammu/Kashmir (wound up) against the posts indicated in Annexure A and B. The petitioners except Abdul Rashid Rather, Abdul Abdul Bhat and Mehraj-uddin Mir working as Accounts Assistant/MA, Cattle Feed Assistant and Dairy Supervisor were also as per the Government order adjusted as Stock Assistant in Animal Husbandry/Sheep Husbandry Department.

6. The petitioners aggrieved that the post against which the petitioners were adjusted in the Animal Husbandry Department carried a pay scale far less than the pay scale in which the petitioners were placed in the Milk Federation (Rs 3050-4190 revised as Rs 6700-10700) filed CMP No. 290/07 in already pending writ petition No. 1295/2002. The petitioners' grievance was that while the petitioner No. 1 in SWP No. 1295/2002 namely Shri Ashiq Hussain Buch was adjusted against the post of Dairy

Supervisor carrying a higher pay scale, the petitioners were adjusted in a pay scale much below their pay scale in the Milk Federation. The writ court on 07.08.2006 disposed of the writ petition on 07.08.2006 along with CMP No. 290/2007 with the following direction:

... Petition is disposed of with an observation that the respondents shall consider cases of other petitioners also at par with that of first petitioner as under order No. ASH/Milk/Lit/99/02 dated 17.02.2005 provided they attract similar considerations, and circumstances attending all cases are similar. The exercise of consideration be completed within four months from now after hearing them. Whereafter, they shall be at liberty to re-agitate the matter afresh, if cause survives or accrues to them.

7. The respondents as directed accorded consideration to the petitioners' case and vide Government order No. 78-ASH of 2008 dated 23.5.2008 held the petitioners to be not similarly circumstanced as Shri Ashiq Hussain Buch and accordingly rejected the petitioners' case.

8. The petitioners in the present petition throw challenge to the Government order No. 78-ASH of 2008 dated 23.5.2008 whereby their case for similar treatment as given to Shri Ashiq Hussain Buch stands rejected on the grounds taken up in the petition.

9. The writ petition is opposed on the grounds that all the petitioners having consented to their adjustment in the respondent Department on lower posts, cannot turn around after accepting the posts offered under Government order No. 94/Estt of 2004 dated 20.07.2004, to lay claim to higher posts or the posts commensurate to their status in Milk Federation. It is pleaded, that the petitioners and all other employees of Milk Federation agreed not to claim any superior position in the respondent Department, consented to their placement at the bottom of the seniority list relating to the cadre in which they are placed and also to qualify the examination wherever they were posted as Stock Assistants in the respondent Department. It is further pleaded that Shri Ashiq Hussain Buch -- petitioner No. 1, in SWP 1295/2002, filed by the petitioners and other employees of the Milk Federation to get the recommendations of the High Level Committee constituted under Government order No, 50-ASH of 2000 dated 07.07.2000 implemented, did not accept his adjustment against lower post. The respondents insist that Shri Ashiq Hussain Buch

because of his having not consented to his placement on a lower post or at the bottom of the cadre in which he was placed, was not similarly

situated as the petitioners. It is pleaded, that the petitioners in the said background cannot claim same treatment as given to Shri Ashiq Hussain

Buch adjusted as Diary Supervisor in the higher pay scale.

10. I have gone through the pleadings and record available on the file. I have heard learned Counsel for the parties.

11. Perusal of the record reveals that the respondent No. 1, confronted with the financial turbulence in which the two Milk Federations were

caught, vide Government order No. 50-ASH of 2000 dated 07.07.2000 constituted a Committee to review the functioning and existing staff

structure of the Milk Federations. The Committee recommended repatriation of 13 employees of the erstwhile Government Milk Supply Scheme,

brought on deputation from the Animal Husbandry Department to the Milk Federations, and asked the Director Animal Husbandry Department to

examine whether a separate cadre could be created under which Milk Federation employees could be put to work and paid what-ever was due to

them on the basis of work done. The Committee advised the Director to submit a comprehensive proposal to the Government in this behalf. The

Committee also recommended ""Golden Handshake Scheme"" for such of the employees of the Milk Federations who wanted to opt out and were

not keen in their adjustment in Animal Husbandry or any other Department. The Director Animal Husbandry-respondent No. 2 as a follow up to

the recommendations of the Committee vide DAHK/Estt/14998-15001 dated 15th Dec. 2001 submitted as proposal for utilizing the services of

remaining staff of the Milk Federation in the Department of Animal Husbandry subject to the condition that they formally undertake not to lay any

claim to seniority and ask for other benefits available to the regular employees of the Department. Resultantly the petitioners and other employees

of the Milk Federation vide Circular dated 09.08.2002 issued by Managing Director Milk Federation, were asked to give their consent/exercise

option for their adjustment in Animal Husbandry Department subject to the conditions proposed by Director Animal Husbandry. However, the

Affidavits sworn by the petitioners consenting to their absorption in Animal Husbandry Department in accordance with the joint proposal of

Director Animal Husbandry and Managing Director of the Milk Federation did not result in their adjustment and that of other left out employees of the Milk Federation in the Animal Husbandry Department.

12. The Managing Director Milk Federation in pursuance of communication dated 17.03.2004 received from respondent No. 2, asked the

petitioners and other employees to signify their willingness to accept their adjustment in Animal Husbandry Department on the lower posts in

absence of posts in the same grade available in the Animal Husbandry Department. The petitioners with the exception of S/Shri Davinder Singh

and Bipin Chander Koul (petitioners 5 and 7) as already stated submitted their consent that was duly forwarded by Managing Director Milk

Federation vide No MD/KVMPCF/WP/429-30 dated 25.03.2004 to the respondent No. 2. The letter dated 17th March 2004, of respondent

No. 2 and the consent given by the petitioners assume importance in the facts and circumstances of the case and need to be noticed:-

(I) The Managing Director

(KVMPCF)

Chashmashahi, Srinagar.

Sub:- Adjustment of Milk Federation employees in Government Departments.

Ref:- Minutes of meeting held on 10th March 2004 in Administrative Department.

Sir,

Before a concrete proposal on the aforesaid subject is submitted to the Administrative Department as per the decision take in the meeting, you are

requested to please consult all Milk Federation employees and find-out:-

1. No. of employees who opt for their adjustment in the Department on the lower posts in absence of the posts in the same grade.

2. The No. of employees who could opt for voluntarily retirement scheme/Golden Shake-Hand.

The information may kindly be sent to this office at the earliest.

Yours faithfully

Dr. M.M. Ahmad

Animal Husbandry

Srinagar-Kashmir

Copy to the:

I/The Secretary to Government animal/Sheep Husbandry Department J&K Srinagar for favour of his kind information.

(II) Subject:- Absorption of Milk Federation employees in Government Departments.

Ref:- Letter of Director, Animal Husbandry Department bearing No. DAHK/Estt/20155-56 dt. 17.03.2004, circulated by Managing Director

Milk Federation vide No. MD/KVMPCF-04/428 dated 17.03.2004.

With above cited reference, we the employees of Milk Federation do hereby elect to opt for our absorption in Animal Husbandry Department,

Further, owing to absence of the post of carrying out grade in animal Husbandry Department. We also agree to our adjustment with pay protection

on the posts carrying lower pay scale.

S.No. Name & Designation of Signature

employee

01 Gulzar Ahmad Shah Sig.

MPO/MPA

02 Bashir Ahmad Dar MPO/MPA Sig.

03 Mohamad Yousf Bhat MPA Sig.

04 Mohamad Akbar Bhat MPA Sig.

05 Altaf Hussain Shah MPA Sig.

06 Abdul Rouf Khan MPA/APO Sig.

07 Farooq Ahmad Wani MPA Sig.

08 Rafi Ahmad Masoodi Sig.

QCO/MPA

09 Javid Ahmad Jan PMO/MPA Sig.

10 Ashiq Hussain Buch Nil

11 Fayaz Ahmad Peer S.O./MA Sig.

(Est)

12 Abdul Rashid Rather M.A. Sig.

13 Peer Mehrajdin Diary Sig

Supervisor

14 Abdul Ahad Bhat Sig.

MPO Milk QCO Quality S.O. Section

Procurement Control officer Officer

MPO Milk CFA Cattle FeedAMM Asstt.

Procurement Assistant Manager Milk

Officer

M.A Milk A. PMO Plant RPO Reception

Asstt. Maintenance P. Officer

Officer

13. The joint consent given by the petitioners duly forwarded by the Managing Director Milk Federation, vide communication letter dated 24th

March 2004, paved way for Government order No. 94/Estt of 2004 dated 20th July 2004 directing adjustment of the petitioners and other

employees against the posts indicated therein. The petitioners obviously pursuant to the consent given have been adjusted at posts lower than the

posts they held in Milk Federation. There is substance in the ground urged in opposition to the writ petition that the petitioners having opted for the

posts lower than the posts held by them in the Milk Federation, cannot complain of any prejudice or discriminatory treatment and seek parity with

the employee/(s) of the Federation who did not consent to his/their placement at lower posts and was/were resultantly given a higher post in the

Department. Since Shri Ashiq Hussain Buch did not consent to his placement against lower post in the Department, the respondents were free to

give him a posting commensurate to his academic/technical qualification.

14. It is pertinent to point out that one of the petitioners namely Shri Javid Ahmad Jan-petitioner No. 2 in the present writ petition filed writ petition

registered as SWP No. 1555/2004 pleading same grounds as set out in the present petition to seek quashment of order No. 137-ASH of 2004

dated 19th November 2004, whereby Shri Ashiq Hussain Buch was adjusted as Dairy Supervisor in the grade of Rs. 6700-10700 as against the

post of Stock Assistant in the pay scale of 3050-4590 give to the petitioner. The petitioner's case in SWP No. 1555/2004 was that though he was

holding the post of Milk Procurement Officer in the Milk Federation carrying pay scale of 7450-11500 was placed against the post of Stock

Assistant in the pay scale of 3050-4590 in Animal Husbandry Department, Shri Ashiq Hussain Buch holding the post of Marking Assistant in the

lower pay scale in Milk Federation was vide order No. 137-ASH of 2004 dated 19.11.2004 given an equivalent post of Diary Supervisor in the

pay scale of 6600-10700. The writ petition was dismissed on 16th September 2005 inter alia on the ground that as the petitioner had voluntarily

accepted the lower post and also the terms and conditions fixed by the Government order No. 94-ASH of 2004 dated 20.07.2004. The petitioner

was not to have any grievance with Government order No. 137-ASH of 2004 dated 19.11.2004

15. In the circumstances the order No. 78-ASH of 2008 dated 23.05.2008, whereby the petitioners have been held to be not similarly

circumstanced as Shri Ashiq Hussain Buch and not entitled to same treatment as given to Shri Buch does not warrant any interference, or infringe

any of the rights of the petitioners'. The writ petition to the extent it impugns/throws challenge to the Government order No. 78-ASH of 2008

dated 23.05.2008 and seeks a direction to the respondents to give equivalent status to the petitioners is to be rejected.

16. However, as fate of SWP No. 1555/2004 and as also of the claim for status equal to Shri Ashiq Hussain Buch set up in the present case, has

been decided on the basis of the consent give by the petitioners to their placement against lower post, such consent given assumes importance. The

consent cannot be used selectively by the respondents. The respondents cannot pick up a part of the consent to plead that petitioners cannot claim

a status higher to the status given, to them, and ignore other part of the consent. It needs to be pointed out that the petitioners while consenting to

their placement on a lower post, than one held by them in Milk Federation made such consent subject to the condition that the pay drawn by them

in Milk Federation was protected. In other words the consent given was conditional and qualified. So viewed the respondents while acting upon

the consent given by the petitioners were also to have due regard to the condition subject to which consent was given. Viewed thus while the

petitioners claim to status equal to that of Shri Ashiq Hussain Buch and quashment of the Government order No. 78-ASH of 2008 dated 23rd

May 2008 is rejected, the respondents are directed to accord consideration to the pay protection to the petitioners in accordance with rules governing the matter.

The petition is accordingly disposed of, along-with all connected CMP's.