

(2019) 05 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1485 Of 2015

Gulzar Ahmad Tantray @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 13-05-2019

Acts Referred:

Citation : (2019) 05 J&K CK 0034

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Z.A. Qureshi, Rehana, H. Amaan

Final Decision : Dismissed

Judgement

1. In this petition, the petitioner has prayed for the following reliefs;

- a) That by issuance of a writ of certiorari, the order dated 24.03.2015 bearing No. CE/M&RE 304 of 2015 be quashed.
- b) That by issuance of a writ of Mandamus, respondents be directed to release the grade of the Installation Inspector in favour of the petitioner from the date the job was assigned to him alongwith all consequential benefits including pensionary benefits as well.
- c) Any other writ, order or direction which this Hon'ble court may deem fit in the circumstances of the case may also be passed in favour of the petitioner and against the respondents in the interest of justice and equity.

Brief facts of the case:

2. Petitioner claims to have been appointed as daily wager in the respondent department way back in 1969. Thereafter, the government of J&K regularized the services of many daily wagers including that of the petitioner with effect from 4-08-1980. Since then, the petitioner has worked as permanent employee of the respondent department and prior to the regularization, the designation of the petitioner was shown as meter reader and immediately after his conversion into regular establishment, he was designated as Installation Inspector. It is further

submitted that in August, 1980 vide order 04-08-1980, the petitioner came to be properly adjusted as Installation Inspector and since, August 1980, the petitioner has been working as Installation Inspector surveyor and performing the said duties upto his retirement on 31-12-2009 and the petitioner had been claiming the grade attached to the post but the respondents did not released the same in favour of the petitioner, compelling him to file writ petition bearing SWP No. 01/2015, wherein, the petitioner had prayed for the following reliefs;

a) A writ of Mandamus be issued whereby the respondents be directed to release the grade attached to the post of Installation Inspector/ Installation Surveyor in favour of the petitioner.

b) Writ of Mandamus be issued whereby the respondents be directed to regularize the service of the petitioner as Installation Inspector/ Installation Surveyor and be also directed to release the grade i.e. 1400-2600 in favour of the petitioner from the date, he was holding post of Installation Inspector/ Installation Surveyor;

c) Writ of Mandamus be issued whereby the respondents be directed to release all consequential benefits attached to the post/grade in favour of the petitioner retrospectively;

d) The respondents be further directed to settle the claim of the petitioner light of the judgment passed in SWP No. 3353/94 dated 30-01-2006;

e) With further directions to the respondents that they shall release all the arrears in favour of the petitioner by fixing the pension of the petitioner in such higher grade with all consequential benefits to this effect appropriate writ be issued in favour of the petitioner and against the respondents as the same shall be in the interest of justice; and

f) Any other order or direction which this Hon'ble Court deems just and proper may also be passed in favour of the petitioner and against the respondents.

3. This Court on consideration of the matter and in terms of order/judgment dated 02.01.2015, disposed of the above said writ petition. The order is reproduced as under;

"Learned counsel for the petitioner referred to a judgment of this Court passed in SWP No. 3353/2014 and SWP No. 1072/2014 and submitted that this case is covered by the aforesaid orders of the Court and prayed for disposal of the writ petition in terms of the aforesaid Court orders.

Learned counsel produced Xerox copy of the Court order dated 25th of November, 2011, passed in SWP No. 1072/2014, whereas the order passed in SWP No. 3353/1994 is already annexed with the writ petition as Annexure-D. Copy of order dated 25th of November, 2014 is taken on record.

The writ petition along with connected I.A's is disposed of and respondents are directed to consider the claim of the petitioner in light of the observations made

in the aforesaid Court orders and take decision on the claim of the petitioners on the merits of the case and in accordance with rules. The respondents to consider and take decision within six weeks from the date copy of this order is served. Disposed of in the above terms."

4. Pursuant to the order supra, the respondents considered the matter and passed the consideration order vide No. CE/M&RE 304 of 2015 dated 24/03/2015, operative portion of which reads as under;

"Now, therefore, in view of the position stated above, the petitioner have no right to claim for release of grade viz (220-430) against which he has been never substantively appointed nor promoted as such the same cannot be entertained under rules that too at the cost of the others who are much senior to the him and waiting for promotion of their since decades."

5. Feeling aggrieved of the consideration order so passed by the respondents, the petitioner has filed the instant writ petition with the reliefs detailed out hereinbefore.

6. Upon notice, the respondents have filed objections, wherein, it is stated that the post of Installation Inspector is a promotional post and not the promotional post as alleged and the petitioner has never claimed for the post during his active service tenure, instead he is claiming it after retirement when he took and availed all the benefits which were not otherwise due to him. It is further stated that the petitioner is claiming the post of Installation Inspector benefits like SRO-59, which he did not get during his service tenure and cannot now claim the same after his retirement albeit same was not and is not even at this stage available to him under law or rules governing the subject. It is also stated in the objections that at the time of fixation of pay under 6th pay commission, the designation of the petitioner is clearly reflected as Lineman-1st. It is stated that the case of the petitioner on consideration pursuant to the Hon'ble Court orders was rejected on the touchstone of rules governing the field.

7. Heard learned counsel for the parties, considered the submissions and perused the record.

8. It is an admitted case of the parties that the petitioner was an employee of the respondent department initially as a daily rated worker and subsequently regularized in the year 1980. The claim that petitioner is making, and seeks a command to that effect, in the name of respondents, from this Court, is that he had been working as an Installation Inspector, pursuant to his regularization, till his superannuation, therefore, is entitled to be treated as such and resultantly the grade attached to the post of Installation Inspector be released in his favour from the date he stand regularized and other consequential benefits be also released in his favour.

9. At the cost of repetition, it is recorded that the petitioner with a view to have his grievances settled had approached this Court with a writ petition, SWP no.

01/2015 which was disposed of with a direction to the respondents to take a decision on the claim of the petitioners on the merits of the case and in accordance with rules.

10. The consideration order, which is now under challenge, in unambiguous terms says that the case of the petitioner stands considered and the Rules applicable do not favour the adjustment of the petitioner against the post of Installation Inspector being a direct recruitment post. In that view of the matter, the respondents have followed the command in letter and spirit as the only direction, as stated above, was to consider the case of the petitioner on its own merits and in accordance with Rules and if the applicable Rules do not provide for adjustment of such nature under the departmental quota, how come the Court would direct for such adjustment.

11. The submission of the learned appearing counsel for the petitioner that in similar cases such adjustments have been made in the past on the basis of court orders is noted to be rejected only, for, the court cannot ask the respondents to repeat the wrong, if at all it has been done in the past, as that would amount to perpetuating the wrong and would open a flood gate for all cases of such nature. The petitioner has received what was due to him in accordance with rules, therefore, there is no possibility for enlarging the scope of his entitlement and extend him the benefit prayed for.

12. In my considered view, therefore, I do not see any illegality having been committed by the respondents in issuing the impugned consideration order which is maintained.

13. The writ petition, therefore, fails and is dismissed as such along with connected application(s). Interim direction, if any, shall stand vacated.