

(1999) 06 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2915-19/1996

J & K Accounts Employees Association

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 04-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1999) 2 SriLJ 585

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : A.Andrabi, Advocates appearing for the Parties

Judgement

1. This writ petition has been filed by seven persons on their behalf and on behalf of the association called Jammu and Kashmir Accounts

Employees Association. Ordinarily those who are alleged to be affected by an official act have to bring legal proceedings in their individual capacity

unless they form a legal personality as a collective body. There is no averment even worth the name which would indicate that the association on

whose behalf writ is filed is a juristic personality, so much so the association has not sought recognition even from the Government. It is also not a

case where Public interests are affected by any state action and fact remains that there is no action which is impugned. It being so the relief cannot

be sougru in the name of so called association but the court cannot afford to lose sight of the fact that the petitioners are claiming enforcement of

personal and individual rights as well, therefore, the writ petition is treated as joint petition on behalf of the petitioners herein.

2. The petitioners are holding the posts of Assistant Accounts Officers on the establishment of respondent No. 1. It appears that their aspiration to

enjoy the perks and status of a gazetted post has tempted them to seek the indulgence of the court for such declaration with a further prayer to

place a restraint on the respondents from making the direct recruitment in gazetted service of the department.

3. They are governed by the service Rules and the mode and method of promotion is prescribed under the Rules which do provide chances of

promotion. The plea taken in the writ petition indicates an endeavour on their part to prompt the court to pass direction requiring the

Respondent State to amend the service rules which are applicable to the petitioners.

4. In essence petitioners seek a writ of mandamus to require the respondent State for making amendment to Jammu and Kashmir Accounts Service

Rules, Gazetted as also non gazetted, which suits the petitioner. Surprisingly in support of the relief prayed for no violation of any legal or

constitutional right has been reflected in the writ petition, so much so stagnation is also not the ground. Apart from such shortcomings a moot

question which calls for consideration is as to whether the State can be directed to make a particular amendment to the Rules Law and the answer

to this question is available from judicial pronouncement handed down by the apex court in case State of J and K vrs. A.R. Zaki and others

reported in AIR 1992 SC page 1546, para 10 which reads:

10. In our opinion there is considerable merit in this submission. A writ of mandamus cannot be issued to the legislature to enact a particular

legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation.

Section 110 of the J and K constitution, which is on the same line as article 234 of the constitution of India, vests in the Governor, the power to

make rules for appointments of persons other than the District Judges to the Judicial Services of the State of J and K and for framing of such rules,

the Governor is required to consult the commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus

cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court".

5. The mandate of the judgment depicts that the power to make Rules is a legislative function and direction to enact a particular law or introduce,

incorporate a particular amendment to the rules is not permissible, therefore, this writ petition is liable to dismissal.

6. For the aforementioned reasons, the writ petition is dismissed, however, such dismissal shall not debar the respondents from representing to the respondentState.

7. No order as to costs.