
(2000) 08 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : SWP No's. 1505/96 and 598/86

Jagdish Raj and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Constitution of India, 1950 — Article 15, 16
Constitution of Jammu and Kashmir, 1956 — Section 124
Jammu and Kashmir Reservation Rules, 1994 — Rule 38

Citation : (2005) 2 JKJ 176

Hon'ble Judges : O.P. Sharma, J

Bench : Single Bench

Advocate : Ashok Parihar and H.C. Jhelfaria, for the Appellant; D.S. Chouhan, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Sharma, J.—The petitioners are part -- time Instructors engaged under adult/Non-formal education scheme the object of which

according to them was to achieve hundred per cent education by the year 2000. It is admitted by them that they were engaged on a consolidated

monthly wage of Rs 100/-which has been revised to Rs. 200/-. The Government it is further stated has provided 3% reservation for their

absorption in the Education Department as teachers but the benefit has been denied to them. The relief claimed by them is that respondents be

directed to regularize them as teachers and they be paid the wages equivalent to the teachers of the Education Department. The admitted case of

the petitioners is that they have been engaged in the Adult/non-formal education projects by the District Project Officer, Kathua. They were earlier

being paid Rs. 100/- per month which has been raised to Rs. 200/-. Non-formal

education teachers are part-time instructors as admitted by them.

They are not regular employees. Their engagement is only in a scheme. They therefore, cannot claim parity with the teachers who are appointed on

the posts created by the government and whose conditions of service are governed by the service rules. Since part-time Instructors are not

working against any regular post, therefore, question of their regular-ization does not arise.

2. A similar question arose before their lordships of the Supreme Court in K.S. Mahal ingegowda v. Secretary to Government department of

Vocational Education, Karnataka 1995 AIR SCW 1669 rejecting the claim for regularization and parity in the pay scale with teachers regularly

appointed, their lordships held:-

9. We have given our thoughtful consideration to the rival contentions of the learned counsel for the parties. We are of the view that the claim of

the appellants to be regularized as teachers and be paid the same salary as is being paid to the non-vocational teachers-based on the principle of

equal pay for equal work"" is wholly misconceived. It is entirely within the executive domain of the State Government to take a policy decision and

frame any scheme for the benefit of the people of the State. The vocational training scheme is one of such schemes. The avowed object of the

scheme is to provide vocational training for a period of one/two years to the students who do not wish to pursue academic studies beyond 10th

class. It is a useful scheme which helps young men to acquire eligibility for employment in skilled jobs while they are still in the educational

institutions. The scheme was a results of the policy decision of the State Government. It was entirely for the State Government to lay -- down as to

what type of teaching -- staff was required to implement the scheme. Duration of the scheme, the financial involvement, type of the vocational

training and various other aspects must have been taken into consideration by the State Government while providing the mechanism to implement

the scheme. When the scheme has been made to operate with the help of the part -- time teaching staff, it is not for this Court, ordinarily to modify

the scheme and direct the State Government to employ whole time staff to implement the scheme. This court in Delhi Development Horticulture

Employees' Union Vs. Delhi Administration, Delhi and others, speaking through

P.B. Sawant J. Observed as under (Para 14 of AIR):--

Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under

such scheme and to claim on the basis of the said employment, a right to regularization, is to frustrate the scheme itself. No court can be a party to

such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment

and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do

more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the

cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them

from introducing the new ones, for want of resources.

Even otherwise we see no parity on facts between the vocational teachers under the scheme and other teaching staff in an educational institution.

Vocational training is not a part of regular teaching in the institutions where the appellants are working. It is only as a result of the implementation of

the scheme that the educational institutions have been given option to introduce vocational training. The method of teaching the extent of

responsibility and the requirement of academic -- intellect in the two sets of teaching is entirely different. Teaching academic subjects like English.

History, Mathematics, Geography, etc. is not the same as giving practical training in clock and watch repair, photography, printing and book

binding, optician and refractionist, horticulture, sericulture.

3. As the petitioners are not holding any post because Adult/Non-formal education is not a part of regular teaching in the teaching institutions, they

cannot claim regularization. It was next argued that petitioners are entitled to regularisation in terms of Government Order No. 325-Edu of 1985

dated 16.7.1985 which reads as under:--

Sanction is accorded to the reserving of 3% posts of teachers in each District for the Instructors of non-formal Education Centres who have

continuously worked in the centres for at least four years and have also retained minimum enrolment of 25 students on an average for the same

period.

By order of the Government of Jammu and Kashmir.

However, vide SRO 126 dated 28.6.1994 the Governor in exercise of powers u/s 124 of the Constitution has made Jammu and Kashmir

Reservation Rules, 1994 providing under Articles 15 and 16 of the Constitution of India. Rule -- 38 of these Rules reads as under: --

38. Repeal and Savings: -- From the date these rules come into force, all rules, notifications and orders corresponding to the provisions of these rules shall stand repealed;

Provided that any action taken or orders issued under the rules, notification or orders so repealed shall be deemed to have been taken under these rules.

Admittedly, no provision has been made for this category in these rules. So the order stands repealed and cannot be invoked.

4. This takes us to the claim for equal pay for equal work. The contention of the petitioners is that they are discharging the same functions as are

being discharged by the regularly appointed teachers, but they are denied the pay scales of the post. This claim is also not tenable because they

have not been appointed on any post. However, this question was considered by the Supreme Court in State of West Bengal and Others Vs.

Monirujjaman Mullick and Others, . While rejecting a similar argument based on the doctrine of equal pay for equal work their lordships held: --

we are of the view that the non -- formal educational centres cannot be equated with the primary schools which are regularly run by the Education

Department of the State Government. Apart from the basis qualitative differences between the two institutions even the nature of work of the non -

- formal instructors and the primary school teachers is not identical. The method of appointment, the source of recruitment method of teaching,

hours of teaching and the mode of payment are entirely different. In the facts and circumstances of this case, the High Court fell into patent error in

applying the principle of "equal pay for equal work."

So the petitioners are neither entitled to regularisation nor salary of a regularly appointed teacher. In view of the above, no relief can be granted to them.

WP No. 598/86

5. The petitioner was working as part -- time instructor under Adult/Non-formal Education Scheme since 1982. His engagement was terminated

vide order dated 8.4.1986 issued by Black Education Officer, Chattroo. He has called in question the legality of this order on the ground that as

per Government Order No. 325-Edu of 1985 dated 16.7.1985 3% reservation has been provided to those instructors who have continuously

worked in Adult/Non-formal education centres for at least 4 years and have also retained minimum enrolment of 25 students on an average for that

period. Since he has satisfied these conditions, therefore, he was entitled to appointment as teacher in terms of the reservation rules. However, it is

admitted case of the petitioner that he was engaged as Instructor on a consolidated wages of Rs. 50/-. He was engaged on 19.11.1982, but

terminated before he had completed four years service. So he was not entitled to regularisation even under the aforesaid order because he did not

satisfy the condition. So far as status of a person engaged on consolidated wages is concerned, a learned Division Bench of this court in Gulam

Rasool Bhat v. Union of India (LPA No. 276/97 decided on 22.4.1998) held as under:-

After considering the facts of the case and submissions made at the bar, we are unable to find any ground for admission of this appeal for the

following reasons: -- Firstly, appellant's appointment is on consolidated wages basis at the rate of Rs. 400/- per month. It means either there is no

post of Asstt. Craftsman in the cadre carrying any pay scale or it is like an management on daily wages basis. While dismissing SWP No. 924/86,

the learned Single Judge has held that:-""It cannot be any body's case that the petitioner was a member of the service or was holding any post under

the State and was entitled to any protection, whether under the relevant provisions of the Constitution or that of any Recruitment Rules. The order

of his engagement shows that his status was that of a daily wager who was paid consolidation sum of Rs. 400/- per month.

This view is fortified by a Division Bench Judgment reported in AIR 1959 J&K 26 G.M. Qadiri v. Secretary to Government Industries and

Commerce Department and Anr., where it was laid down that a daily rated worker does not hold any civil post and as such is not entitled to the

protection of the Constitution.

5. So the petitioner had no right to continue in service. Even otherwise reservation does not mean automatic absorption. It is only when the applications are invited and the competing claims of similarly situated persons are evaluated by the competent authority that the selection can be made. That being not the case the petitioner had no right to challenge his disengagement. So this petition is also liable to be dismissed. It is dismissed accordingly.