

(2001) 10 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : LPA (SWP) No. 358/2001

Jagdish Raj

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) KashLJ 331 : (2002) 3 SCT 935 : (2001) SriLJ 567

Hon'ble Judges : S.K.Gupta, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : Surinder Kour, B.S.Manhas, Advocates appearing for the Parties

Judgement

1. We have heard Mrs Surinder Kour, learned counsel for the appellants as well as Mr. B.S. Manhas, learned AAG, for the respondents.

Considering the facts and circumstances of the case, we propose to dispose of this appeal (LPA (SW) No. 3587 2001 at the preliminary stage.

2. This appeal has been directed against the judgement and order dated 24th August, 2000, by which the writ petition has been dismissed by the learned single judge.

3. Case of the appellantswrit petitioners is that their engagement in the Adult/ NonFormal Education Scheme was initially on consolidated monthly wages of Rs 100/ per month and subsequently, raised to Rs 200/ by the District Project Officer, Kathua. That the appellantswrit petitioners were engaged as parttime instructors in a scheme. The appellantswrit petitioners claimed to be regularised as teachers and paid wages at par with the teachers of the Education Department. Appellantswrit petitioners further pleaded that they be provided 3% reservation for their absorption in the

Education Department as teachers.

4. It is not disputed that the writ petitioners are not working against any regular post and are only engaged as part time instructors. It is no longer

resintegra that employees under the scheme could not ask for more than what is intended by the scheme to be given; otherwise it would frustrate

the scheme it self. When the government has floated a scheme to operate with the help of parttime teaching staff, it is not, ordinarily, for the court

to modify and direct the government to employ the wholetime staff and implement the scheme in a manner different to the mechanism provided by

the government for the implementation of such scheme.

5. We do not parity on facts between parttime instructors engaged under this scheme and other regular teaching staff in the Education Department.

Status of an employee is to be determined from the terms and conditions of his order of appointment. So the writ petitioners are not entitled to

regularisation. Writ petitioners, therefore, cannot claim parity in pay as is being given to the nonvocational teachers based on the principle of 'equal

pay for equal work. It is entirely the function of the State government to take a policy decision as the scheme was the result of such a decision so

as to provide benefit to the people. As their engagement is only on consolidated wages, which clearly implies that is like an arrangement on daily

wage basis.

6. The writ petitioners cannot ask for regularisation as neither they are members of the civil service nor holding any post under the state. The writ

petitioners are, thus, not entitled to any protection either under the provisions of the constitution or the relevant recruitment rules. The position of an

employee engaged on consolidated wages is like an arrangement on daily wage basis. As regards the plea of the writ petitionersappellants that the

government provided 3% reservation for their absorption in the Education Department in terms of Government Order No. 325Edu of 1985 dated

16071985, it may be pointed out that it stood repealed by the SRO126 dated 28061994. No such provision now exists in the Rules and,

therefore, cannot be invoked. Apart from that, the writ petitioners having not been appointed to any post can neither claim regularisation nor parity

of the salary with the regularly appointed teachers.

7. After consideration, of the aforesaid grounds urged by the writ petitioners, the

petition was dismissed by the learned single judge. We respectfully in agreement with the view taken by the learned single judge.

8. In that view of the matter, we do not find any infirmity in the order impugned passed by the learned single judge, which warranted our interference. The appeal is devoid of merit and is accordingly dismissed.