

(2000) 11 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 281/96

Jatinder Keser and Ors.

APPELLANT

Vs

State and Ors.

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Citation : (2002) 1 SCT 48 : (2000) 2 SriLJ 512 : (2000) SriLJ 512

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

Bench : Single Bench

Advocate : Neeru Goswami, K.K.Bhardwaj, Advocates appearing for the Parties

Judgement

1. The petitioners are engineering graduates. They have been appointed junior Engineers in Technical Education department. Their grievance is that

as per schedule I to the J&K Industrial Training (Subordinate Service Recruitment Rules 1979) the post of Junior Engineer in category of

Executive carriers the pay scale of Rs. 20003400. They were thus wrongly appointed to a non existing grade although the Junior Engineers

Executive in the Technical Education department have ailalong been appointed to the pay scale of 46502800 which was revised to 52003400 vide

SRO 75 of 1992.

The relief prayed by the petitioners is that they be deemed to have been appointed in the pay scale of Rs. 20003400 and grant the arrears also

from the date they were appointed.

2. The stand of the respondents is that vide SRO 75 of 1992 dated 23031992 all Junior Engineers working in the pay scale of Rs. 13002550

were placed in the higher pay scale of 17603200. It further provided that fresh recruitment of Junior Engineers would be in the the pay scale of Rs.

14002300. The maintainability of the

petition is also challenged on the ground that the petitioners having applied for the post advertised in the pay scale of Rs. 14002300, and after

being selected accepted the appointment cannot claim higher pay scale.

3. The contention of Mr. Bhardwaj is that SRO 75 of 1992 does not repeal or modify the recruitment rules of the Service to which the petitioners

belong. His further contention is that Rule 9 (0 and Pay Rules issued vide SRO 75 of 1992 does not apply to the petitioners as they are not

members of Engineering service.

4. Mrs. Neeru Goshwami on the other hand argued that SRO 75 of 1992 applies to every Civil Service under the State because each grade has

been revised. Her further plea is that the petitioners having applied to the post advertised in the pay scale of Rs. 14002300 cannot ask for higher

pay after accepted the appointment.

5. The case of the petitioners is that the post of Jr. Engineer Executive under the Jammu and Kashmir Industrial Training (Subordinate Service

Recruitment Rules 1979) was created in 1979 in the pay scale of Rs. 450850. This grade was revised to 8751400 vide SRO 91 dated 22031980

with effect from 01011982. Again vide SRO 370 of 1987 this grade was revised to 16502800 and subsequently to 20004400 vide SRO 75 of

1992 dated 23031992.

6. The question involved is whether the grade of the post of Jr. Engineer in category of Executive appointed under the Industrial Training Service

Recruitment Rules 1979 has also been revised vide SRO 75 of 1992. This has to be examined with reference to the J&K Civil Service Revised

pay Rules 1992 (for short 'Pay Rules 1992' hereinafter) Rule 9 (f) of the Pay Rules reads as under

Junior Engineers.

All Junior Engineers, presently in the scale of Rs. 13002500. will be placed in the revised pay scale of Rs. 17603200. The fresh recruitment to the

posts of Junior Engineers (both Diploma and Degree holders) will be made in the pay scale of Rs. 140040502300 and they will be placed in the

higher revised pay scale of Rs. 17603200 after putting in eight years of service in the former pay scale). The Degree holders will be entitled to eight

advance increment on their initial appointment in the pay scale of Rs. 14002300.

So the rule applies to the post of Junior Engineer appointed in the pay scale of Rs. 13002550 only. This grade admittedly is not available for the

Junior Engineer in the category of Executive under the J&K Industrial Training (service) Recruitment Rules 1979, because the qualification

prescribed for the post is different than the post of Junior Engineer in the Engineering service or such service in any other department. This

distinction is evident from item 1 to Schedule I to these Rules which is extracted below:

Clause Category Designation of Grade Minimum Method the post qualification of for direct recruitmentrecruitment 1 2 3 4 5 6

1. Executive Jr. Engineer 45850 Degree in lect/tech By Metallurgy Direct Engg. from Recruitment a recognised Instt. withyears tech/work

7. So from the plain language of Rule 9 (f) it applies to the Junior Engineers appointed in the pay scale of Rs. 13002550 only whose grade has

been revised to Rs. 14002300. But since as Junior Engineers) under the J&K Industrial Training services Recruitment Rules 1979 were not

appointed in the pay scale of Rs. 13002550, the petitioners could not be appointed to a next existing grade.

It is not disputed that out of eight posts of Junior Engineers (Executive) sanctioned in the Directorate of Technical Education, three persons stand

appointed in the pay scale of Rs. 20003400. Even vide advertisement notice No. 5 of 1992 dated 29121992 this post was advertised in the pay

scale of Rs. 20003400. But as there is no post of Junior Engineer in the Directorate of Technical Education carrying the pay scale of Rs.

13002550 no appointment could be made in that grade. Further as there was no post in the pay scale of Rs. 13002550 in the Technical Education

Rule 9 (f) of the pay Rules had no application to the post of Junior Engineers) in the said department. The position becomes further clear when we

refer SRO 370 of 1987 in terms of which the pay scale of 8751400 was revised to 16502800 and scheduled to SRO 75 of 1992 in terms of

which the existing pay scale are 16502800 was revised to 200060230032001003400. Since this grade remained intact and the pay scale of

13502550 did not exist in the Technical Education for the Junior Engineers, the petitioners were wrongly appointed to non existing pay scale.

8. There is another aspect of the case. As per the Rule 9 (f) of the pay Rules 1992 both Degree Holders and Diploma Holders are to be appointed

Junior Engineers in the pay scale of Rs. 14002300. The Degree Holders have however, been given the benefit of advance increments. But the

qualification prescribed for the post of Junior Engineer in the category of Executive in the technical education is degree in Elect/Mech/Metallurgy

Engineering with one year's teaching/workshop experience. This makes the service of Junior Engineer in the Technical Education distinctly different

because the minimum qualification for the post in degree in Engineering with one year's teaching or workshop experience. It is not so for the post of

Junior Engineer in Engineering Service or elsewhere. So the post of Junior Engineer in the category of Executive in the Industrial Training Service

Rules 1979 is distinctly different from other Junior Engineers as the minimum qualification is different. It is thus not a common service but a separate

one for which different pay scale can be prescribed and the nature of job is also different.

9. There is yet another reason for holding that the grade of the Executive Junior Engineer is not changed and this is because even the grade of the

Demonstrator in the Directorate of Technical Education is Rs. 20003400 even then his qualification is only Diploma in Engineering. It is an

admitted fact that two of the petitioners are posted in the Jammu Polytechnic which means the service is transferable.

10. Lastly there is a specific averment made by the petitioners that the earlier the appointments to the post of Junior Engineer Executive have been

made in the pay scale of Rs. 20003400. This fact has not been controverted by the respondents. If that be so, the petitioners cannot be treated

differently. The petitioners have thus, right question the wrong application of SRO 75 of 1992 to the Junior Engineers Executive category

appointed to the service constituted under Industrial Training (subordinate Service Recruitment Rules 1979). Even otherwise reading of Rule 9 (g)

of the Pay Rules 1992 makes it abundantly clear that the Rule 9 (f) of the pay Rules applies only to Engineering service.

11. Accordingly this petition is allowed and the respondents are directed to treat the petitioners having been appointed in the pay scale of Rs.

20003400. However, as the petitioners have accepted appointments in the pay scale of Rs. 13002300 only they are not entitled to the arrears.

The respondents are further directed to refix their pay in the pay scale of Rs. 20003400 with effect from the date of this Judgment.

12. I make the order accordingly.