
(2006) 06 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 369/1993

Khurshid Ahmad Bhat

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Administrative Service Rules, 1979 — Rule 3(6)
Constitution of India, 1950 — Article 16, 226

Citation : (2006) 3 JKJ 229 : (2006) 2 SriLJ 643

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : R.A.Jan, A.M.Magray, Advocates appearing for the Parties

Judgement

1. Cause urged owes its origin to the denial of benefit of proviso to sub rule 6 of rule 3 of the Jammu and Kashmir Administrative Service Rules

1979 read with explanation thereto which may be extracted:

Notwithstanding anything containing in these rules an officer, who on the commencement of these rules is either a member of the Jammu and

Kashmir Administrative Service constituted under the Jammu and Kashmir Administrative Service Rules, 1965 in the senior scale or selection

grade of that service, or is holding any post in its sanctioned scale of pay included in the schedule appended to these rules and has passed the

Departmental Examination, if any, prescribed, shall be deemed to have been appointed to the corresponding scale of the service under these rules

and their seniority shall be determined under the rules which were 'applicable to then} immediately before commencement of these rules. An order

listing the names of these Officers shall be issued by the Government.

Provided that till officers of different services, who are holding or but for their

postings on foreign service's would have held the posts now borne

on the Cadre of the Service, shall be deemed to be the members of the Service and shall be placed interse in order of their appointment/promotion

to the grade of Rs. 13002030 (Rs. 7501350 Old Stole). An order listing the names of these Officers shall be notified by the Government.

Explanation: For the purposes of this Proviso the expression ""all Officers of different Departments/Services"" means the Officers belonging to any of

the services specified influte 5 of the Jammu and Kashmir Administrative Service Rules 1979, who were holding of but for their foreign posting

would have held the posts on or after 07.12.1983 but not later than 18.10.1988.

1. Aiming at the effective application of the proviso aforementioned, the State constituted a Committee of the Officers vide order No. 544GR of

1986 dated 11.06.1986 for having the issues examined relating to the induction of the Officers into the Kashmir Administrative Service (for short

KAS). The Committee soconstituted, after examining the matter, made recommendations which received approval of the Government and were

accordingly notified vide Notification No. GD(Ser)KAS/90 dated 16.01.1990. The recommendations relevant to the case on hand may be

extracted:

GOVERNMENTOF JAMMUAND KASHMIR GENERAL ADMINISTRATION DEPARTMENT
NOTIFICATION

.....Whereas the Government considered the recommendations of the Committee referred to above and have approved that:

1) The date of reference for determining the eligibility of officers for inclusion in KAS be shifted to 18.10.1988.

2) The officers holding the cadre posts in their own pay and grade be given the benefit of the pay scale from the date they were appointed to these

posts or from the dates from which the same has been released or is to be released in favour of the officers senior to them in their respective

departmental services whichever be later.

3. In opposition to the claim laid in the writ petition it is averred by the respondents that the petitioner's posting on a cadre post was for a brief

spell, therefore, disentitled to the pay scale and induction into KAS. Dealing with the objection, reference is made by learned counsel for the

petitioner to the internal page 2 of the Government Order No. GD (Ser) KAS/90 dated 16.01.1990 (annexure P6 to the writ petition) relating to

three officers of the Employment Department, namely Shri A. S. Gupta, Shri A. R. Sheikh and Shri P. L. Sharma, besides Government Order No.

678GAD of 1993 dated 13.08.1993 favouring Shri M. I. Sadiq and Shri Khalid Hussain (see annexure S2 to the supplementary affidavit) to

canvass that even one day's appointment by transfer on the post has begotten benefit of proviso to sub rule 6 of rule 3 to the aforementioned

officers both in respect of pay scale and induction, conversely, the petitioner has been denied the benefit mainly on the ground of his removal from

the cadre post. Attention of the Court is drawn to earlier phase of litigation, the petitioner had resorted to by medium of writ petition (S WP

260/1990) questioning his dislodgement from the post of Assistant Commissioner Development Srinagar which came to be disposed of by the writ

Court, operative part thereof stands extracted in their reply affidavit at page 6 and observation relevant to the case on hand may be reproduced:

...The grievance projected by the petitioner regarding his induction into KAS cadre and also for consideration of the service rendered by him on a

higher post and status, however, cannot be ignored...

(Underlining supplied)

The dictum extracted above on the one hand casts an obligation upon the respondents to take note of the grievances of the petitioner relating to his

claim of induction into KAS and on the other it restrains the respondents from refusal to consider the services rendered by the petitioner on a

higher post and status. The decision having gone unchallenged, the petitioner's services as Assistant Commissioner Development have to be

reckoned to his credit and fact of the matter is that his services have received recognition as is evidenced by Government Order No. 1110GAD of

1992 dated 25.11.1992 (See S.No.58) which has the effect of appointing him by transfer against the post of an Area Development Officer,

Mahore, a cadre post.

4. Reverting to the objection of brief spell, the stance of the State unveils a stand that service for a specific period on a cadre post is a condition

precedent to maintain the claim for grade/induction but the period is not named, obviously, the respondents owe an explanation to the Court as to

what is the period for which an officer is required to have held the post continuously so as to attain the eligibility for benefit of the proviso

aforementioned but the counter fails them because it does not advance any. During the course of arguments also no statute/rule/administrative

instruction was cited which would lend support to the objection and (sic) same being bereft of substance, objection fails. Nonetheless the petitioner

has to establish his eligibility on the touchstone of the proviso and the recommendation of the Committee, therefore, a need to narrate the admitted

facts having direct bearing on the controversy. The petitioner was initially borne on the cadre of the Jammu and Kashmir Labour (Gazetted)

Service, a service specified in rule 5 of the Jammu and Kashmir Administrative Service Rules at S.No.8. He has held the post of Assistant

Commissioner Development, Srinagar within the cut off date vide Government order No. 1074GD of 1986 dated 24.12.1986. The said post of

Assistant Commissioner Development falls within the cadre strength of KAS at S. No.84. He was reappointed on a cadre post viz Area

Development Officer, Mahore, again by transfer subsequent to the judgement of the writ Court. More so, despite his unceremonious removal from

the cadre post he has worked for weeks together at a stretch within the period spelt out by proviso so relied upon. Yet another facet of the case

traceable to the Government order No. 1532GAD of 1997 dated 23.09.1997 which has narrowed down the controversy, for, the petitioner

stands inducted into Kashmir Administrative Service and the issue that remains is in respect of the date from which the petitioner's induction should

take effect. To have the answer reference to the proviso once again becomes imperative which envisages that the officers of different

departments/services holding the cadre posts within the cut off date are deemed to be the members of KAS. The requisite condition is to have held

the post on or before 07.12.1983 but not later than 18.10.1988. The requirement so stipulated by the rule is answered by the petitioner very

satisfactorily on the strength of order No. 1074GD of 1986 dated 24.12.1986 which shows that the post was held by him within the stipulated

period and admittedly before the last date i.e. 18.10.1988. More so, the respondents have acted upon the proviso and explanation thereto besides

recommendations in respect of the officers named hereinabove and have granted them the benefit, conversely, the petitioner has been treated

differently amounting to introduction of an invidious classification among similarly circumstanced persons. It is true that the petitioner has held the cadre post intermittently but continuity is not the requirement. In addition to that the instances aforementioned make it very clear that length of service on cadre post does not fall within the standards set out by the Government, therefore, it chose not to impose such a condition in case of any other officer excepting that of the petitioner leading to an inference that the petitioner has been subjected to hostile discrimination and benefit has been denied to him without any cause much less justifiable one and apparently arbitrarily.

5. It was also contended that the petitioner has held the post in his own pay and grade but this makes no difference because recommendation approved by the Government reproduced hereinabove entitles an Officer to the benefit of pay scale from the date he was appointed to the post notwithstanding the fact that he has functioned in his own pay and grade. Thus considering the claim of the petitioner on the strength of proviso, explanation thereto and recommendations he fulfils the eligibility test.

6. Claim of the petitioner was also contested on the ground that in the event of according benefit of deemed appointment to him from the date he was positioned on the cadre post, a gross injustice is likely to result to the officers who rank senior to him in the Labour Department but significantly no instance even worth the name of the officers who would suffer by such induction has been cited suggesting that a bald assertion is urged to frustrate the petitioner's entitlement. '

7. In the aforementioned backdrop, the writ petition succeeds and is allowed. As a corollary, the petitioner has to be deemed to have been placed in the time scale of KAS cadre of Rs. 13002030 (revised to Rs.23504050) with effect from 24.12.1986, consequently, induction from the same date but being alive to the fact that such induction is going to alter the position of the beneficiaries of Government Order No.906G AD of 1991 dated 23.09.1991 besides induction of some other officers who have already come into position particularly those whose placement originates from the judicial decisions passed in the writ petitions from time to time, coupled with the fact that they are not party to the lis, obviously fall out of retrospective effect from 1986 in favour of the petitioner is bound to alter their

position that too without being heard, therefore, I am averse to grant the benefit retrospectively from 1986 and considering the matter in totality of the circumstances the ends of justice would be met by granting benefit to the petitioner with effect from 17th of March, 1993. The date he has approached the Court. To rule out any further controversy, I would like to make it very clear that the direction hereinafter shall be read to the benefit of the petitioner and not to the detriment of anyone which would mean that the retrospective effect accorded in favour of the petitioner shall not disturb the inductions made as on date. In the result, the following

directions:

'The petitioner shall be deemed to have been placed in the time scale of KAS cadre post with effect from 17th of March, 1993 with all consequential

benefits including induction into KAS, of course, by strict adherence to the observations (sic) stipulated in the preceding para'.

8. Disposed of along with all connected

9. CMPs. No order as to costs.