

(2001) 09 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 735/2001

Khurshid Ahmad Mir

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) KashLJ 660

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : A.M.Dar, Advocates appearing for the Parties

Judgement

Nisar Ahmad Kakru, J.—By medium of this writ petition, a writ of mandamus is sought to require the respondents to allow the petitioner to

continue on the post of an orderly till appointment is made substantively. The order of appointment may be noticed :

Shri Khurshid Ahmad Mir s/o Gh. Nabi Mir R/o Avind gund Tehsil and District Pulwama who is already working as Care Taker in Revenue

Guest House Pulwama is hereby appointment as orderly in Revenue Guest House Pulwama in the pay scale of Rs. 25503200 for 89 days against

the post of Junior Assistant lying vacant in the SDM officer Shopian under head 2506Agr. with immediate effect. The said post is hereby attached

to this office for drawal of his pay till further orders.

2. A plain reading of the order reveals that the respondent No. 2 was fully alive to the fact of nonavailability of the post of orderly. It is also very

clear from the order itself that the services of the petitioners were otherwise also available to the Guest House yet the respondent No. 2 has made

the appointment. The course opted for by the respondent No. 2 does not appear to have originated from any exigency of service much less public

interest. Conversely, it is an endeavour on the part of the Deputy Commissioner to bestow a favour of a regular pay scale upon the petitioner

notwithstanding nonavailability of the post.

3. The petitioner's claim to continue on the post till it is substantively filled up needs to be appreciated in the light of the fact that substantive

appointment on the post could only be possible if the post would be available. Text of the aforementioned order relied upon by the petitioner

makes it abundantly clear that appointment of the petitioner is on no post, obviously his prayer to allow him to continue on the post of orderly till it

is filled up is bereft of any reason, justification or legal substance. Moreso, it is a matter of common knowledge that an appointment can't be made

without existence of a post. To be specific existence of a post for substantive or adhoc appointment is a condition precedent. Admittedly, the post

of orderly is not vacant. It being so, continuation of the petitioner on a nonexistent post is out of question, therefore, not entitled to the relief prayed

for.

4. It was next contended that the respondent No. 2 has initiated process to replace the petitioner by a similar arrangement. Suffice it to say that the

appointment against a nonexistent post is an abuse of authority and if it is repeated, it shall be obligatory upon the govt. to take action in

accordance with the law against the officer responsible for such action. Be it placed on record that by making this observation, I do not mean to

say that the state cannot deal with the past event of administrative and financial irregularity represented by the facts of this case and hopefully they

will take its cognizance.

5. It was further contended that the court has granted interim reliefs in many petitions involving similar facts. No specific instance has been brought

to the notice of the court. However, it may be observed that there are instances of persons who have been adjusted against migrant vacancies and

the court has undoubtedly protected such employees from time to time during the turmoil but the circumstances and the facts of those cases

prompting the coordinate benches of this court and ultimately full bench to display indulgence are not similar to the facts of this case, therefore, ad

interim directions pressed into service have absolutely no application to the case on hand, otherwise also such precedents are of no help to the petitioner because same do not bend the court.

6. In the aforementioned backdrop, this writ petition fails. Dismissed in limine alongwith CMPs. Interim direction, if any, shall stand vacated.

Registry shall forward a copy of this order to the Chief Secretary for further necessary action at his end. If any, called for.