

(2000) 11 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 1747 of 2000 and C.M.P. No. 1888 of 2000

Man Mohan Krishan

APPELLANT

Vs

State of J and K

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : (2001) 3 SCT 87

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Sudarshan Sharma, Sanjay Kakkar, Rajesh Bhushan, Advocates
appearing for the Parties

Judgement

Arun Kumar Goel, J.—This writ petition is filed for the grant of following reliefs :

Writ petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of the State of Jammu and Kashmir for

issuance of a writ of certiorari quashing the Government Order No. 187Agri of 2000 dated 20.6.2000 by virtue of which the Respondent No. 4

has been deputed to Rural Engineering Wing, Rural Development Department, Jammu and also quashing the order No. 227DRD of 2000 dated

11.9.2000 by virtue of which the Respondent No. 4 has been posted in the O/o the Executive Engineer, REW Doda, with a further writ of

mandamus commanding the Respondents to allow the Petitioner to work on the said post as he has been working there for the last more than 6

years, and for issuance of any other writ, order of direction which Your Lordship may deem just and proper in the circumstances of the case.

2. According to the petitioner, he was appointed as Draftsman vide an order

dated 15.10.1994 issued by Director, Rural, Development

Department, Talab Tillo, Jammu. He claims to have served at Poonch for one year and then was transferred to Doda where he was working for

the last five years. He claims that vide AnnexureA, he was appointed as Draftsman. For ready reference, this order is extracted herein below :

Government of Jammu and Kashmir

Agriculture Prod. and Rural Development Deptt.

Subject : Adjustment/Posting of Draftsman in Rural Engineering Wing.

Ref. Director Rural Development Deptt. Jammu's No. DRDJ/Estt/PP/5233 dated 16.07.1999.

Government Order No. 187Agri of 2000

Dated : 20.06.2000.

In the interest of administration, Sanction is accorded to the deputation of Shri S. Kulbir Singh Draftsman Command Area Development Deptt.

Jammu to Rural Engineering Wing Rural Development Deptt. Jammu for a period of one year with immediate effect. Posting orders of Sh. Singh

will be issued by the Director Rural Development Deptt. Jammu.

By order of the Govt. of Jammu and Kashmir.

Sd/ (N.K. Verma)

Special Secretary to Govt.

Rural Development Deptt.

No. Agri/RD/B/51/93, Dated 20.06.2000.

Copy to the :

1) Director, Rural Development Deptt. Jammu.

2) Director Command Area Jammu.

3) Asstt. Commissioner CAD Jammu.

4) Govt. Order File/Coord. section.

5) Pursuant to this order, Respondent No. 4Kulbir Singh, Draftsman joined the Directorate of Rural Development Deptt. Jammu and was posted

in the office of Executive Engineer, Rural Engineering Wing, Doda, i.e., Respondent3, as is evident from posting order, AnnexureB to the writ

petition. Petitioner claims that he is entitled to be regularised as he is duly

qualified for the post of Overseer. This he claims on the basis of various pronouncements of this High Court as well as Hon'ble Supreme Court of India. According to him, he filed S.W.P. No. 1677/2000, which was disposed of as premature.

3. As per petitioner, there was no occasion muchless need for posting of Respondent No. 4, when former was working as Draftsman in the Rural Engineering Wing at Doda. Such adjustment is bound to result in petitioner's being disturbed and because man was available, i.e. petitioner, therefore, there was no question of outsider, i.e. Respondent No. 4 having been brought. Petitioner places reliance on some letters addressed by Respondent No. 3 for his regularisation. Thus according to him, action of respondents 1 to 3 cannot be sustained as it is aimed at depriving him and showing favour to Respondent No. 4. Similarly said Respondent No. 4 could not be called on deputation, because petitioner had earned a right of regularisation.

4. On the other hand, stand of respondents 1 to 3 is specific and what emerges from it is that petitioner was substantively holding the post of Orderly in the Rural Development Department and was working in the office of Block Development Officer, DuduBasant Garh. He was adjusted in the office of Executive Engineer for a period of three months on 15.10.1994 and assigned the job of Draftsman, which period was extended further by six months on 04.01.1995. During this period, he filed S.W.P. No. 921/1995 seeking regularisation. This was finally disposed of on 31.08.1999.

5. Pursuant to the direction issued by this Court in this writ petition, respondents 1 to 3 have passed the order on 29.08.2000, which is in the following terms :

Directorate of Rural Development Department, Jammu.

Subject : SWP No. 921/95 Titled Man Mohan Krishan V/S State and Hon'ble High Court, Order dated 31081999.

ORDER

No. 313DRD, of 2000

Dated : 29.08.2000

Whereas Shri Man Mohan Krishan Orderly of the Office of Block Development

Officer DuduBasant Garh who has passed two years Diploma in Civil Draftsman was transferred to the office of Executive Engineer, REW Poonch alongwith post for a period of three months in the first instance vide Director Rural Development Jammu's Order No. 317DRD of 1994 dated 15.10.1994 and the Executive Engineer REW Poonch was directed to assign him the work of Draftsman.

Whereas the period of attachment of Shri Man Mohan Krishan who was working as Draftsman in XEN REW Poonch was extended for six months vide Directorate Rural Dev. Jammu's order No. 3 DRD of 1995 dated 4.1.1995.

Whereas the post of orderly of Block DuduBasant Garh held by Shri Man Mohan Krishan which was transferred to the office of XEN REW Poonch was restored back to Block Office DuduBasant Garh vide this Directorate Order No. 227DRD of 1995 dated 7.10.1995.

Whereas Shri Man Mohan Krishan Orderly who has been assigned the work of Draftsman in pursuance of this office Order No. 317 DRD of 1994 dated 15.10.1994 was transferred to the office of Executive Engineer (REW) Doda with the directions that XEN REW Doda will assign him work of Draftsman and the Assistant Commissioner Dev, Doda was asked to indicate one post of Orderly available in the District to be transferred for purpose of drawal of pay of Shri Man Mohan Krishan.

And the incumbent Shri Yog Raj Sharma Draftsman under orders of posting in the office of Executive Engineer REW Doda was posted as Draftsman in the office of Executive Engineer REW Poonch vide this office Order No. 227DRD of 1995 dated 7.10.1995.

Whereas as per report of XEN REW Doda communicated vide his letter XEN REW/47677 dated 26.6.1996, Shri Man Mohan Krishan Orderly joined in his office on 12.10.1995.

Whereas vide this Directorate Order No. 68DRD of 1998 dated 23.04.1998 sanction was accorded to the drawal of pay dues of Shri Manmohan Krishan by the Executive Engineer REW Doda from 7/95 to 3/98 against overall vacancies of Class IV in the Division and from 4/98 to onwards against the vacant post of Orderly of Block Kishtwar which post was ordered to be deemed to have been transferred to the office of XEN REW Doda from Ist April, 1998 to onwards till further orders.

Whereas Shri Man Mohan Krishan filed a Writ petition No. 921/95 seeking his regularisation on the post of Draftsman and the Hon'ble High

Court issued following interim directions on 14.8.1995 :

In the meantime, it is directed that petitioner shall be allowed to work as Orderly till the post is filled up by regular selection.

Whereas Hon'ble High Court issued directions in respect of CMP (SW) No. 238/95 in S.W.P. No. 921/95 on 8.9.1995 which are reproduced

below:

I direct that the petitioner shall be allowed to continue in terms of the orders referred to above as Draftsman till the next date. Put up on the date already fixed.

Whereas the Hon'ble High Court vide judgment dated 31.08.1999 has issued following directions in the aforesaid writ petition :

Respondent authorities are accordingly directed to examine the case of the petitioner and pass speaking order within a period of three months. The period of three months would begin from the date copy of order is made available by the petitioner to the respondent authorities.

Whereas petitioner has not made available the copy of order to Respondent No. 2 and 3 so far.

Whereas Shri Man Mohan Krishan orderly whose case has been examined in light of Hon'ble High Court order dated 31.08.1999 has not been

found eligible for regularisation against the post of Draftsman as he does not fulfill the requirements of eligibility under the provisions of service

Recruitment Rules and merit.

It is, therefore, ordered that Shri Man Mohan Krishan will work as orderly and not as Draftsman in the office of XEN, REW Doda henceforth and

thus deemed to cease to have any claim whatsoever on the post of Draftsman, w.e.f. 31.8.1999 the date of order of the Hon'ble High Court.

Sd/

Director,

Rural Development,

Jammu.

No. ESTT/PF/553031, Dt. 29.8.2000

Copy to the :

1) Assistant Commissioner Development, Doda.

2) Executive Engineer, REW Doda

OFFICE OF THE EXECUTIVE ENGINEER (REW), DODA.

No. 73334, Dated 19.09.2000

Copy to the :

1) Assistant Commissioner, Development, Doda for inf. with the request that there are 2 post of Orderly sanctioned in this Division. It is requested

that Sh. Man Mohan Krishan Sharma may kindly be adjusted in some other place. As the Draftsman posted in this Division has joined on

13.09.2000 and the post stand filled up.

2) Sh. Man Mohan Krishan Orderly for information.

Sd/

Executive Engineer,

Rural Engineering Wing,

DODA.

This order was never brought to the notice of the Authorities by the petitioner after having come to know of the same, the matter was taken up and

disposed of in the aforesaid terms. Claim of the petitioner for regularisation stands rejected.

6. Regarding Respondent No. 4, it is stated that he was deputed in terms of AnnexureA to the writ petition and has joined thereafter and has been

posted also as is evident from AnnexureB to the writ petition. It is specific case of the official respondents that petitioner has no locus to challenge

the posting of Respondent No. 4 as he does not possess the requisite qualification for the post of Draftsman and in any case his claim for

regularisation stands rejected by the respondent No. 2. Claim made on the basis of the extension dated 02.01.1995 is irrelevant, according to the

official respondents, because of rejection of the claim vide order extracted hereinabove. Petitioner, who was holding the substantive post of

Orderly and has been asked to work against the same.

7. To similar effect is the stand of Respondent No. 4. According to him, petitioner already stood reverted as Orderly with the passing of the order

dated 29.08.2000 (supra) and it is he (Respondent No. 4) who is working as

Draftsman. Writ petition is not maintainable and is liable to be dismissed.

8. A reference to the averments made in the writ petition nowhere speaks of petitioner having either filed S.W.P. No. 921/1995 and/or an interim order having been passed therein muchless the same having been finally disposed of on 31.08.1999. This position is clear from AnnexureRI reproduced above. This submission is not either inadvertent or unintentional. In my considered view, it is purposeful. Reason being that from the pleadings in the present writ petition, an impression is created that the petitioner had continued to work as a Draftsman having been allowed to work by the official respondents. It has been argued by the learned Government Advocate that it was only because of interim order in this writ petition that the writ petitioner continued to work as Draftsman. He did not bring to the notice of the Authorities the final order passed on 31.08.1999. When they became aware of it, aforementioned order has been passed. It is difficult to digest muchless believe that petitioner was not aware of the aforementioned order dated 29.05.2000. He has not cared to file any rejoinder to the objections/reply of either official respondents or the private respondent. He has only spoken to S.W.P. No. 1677/2000 having been disposed of as premature. When S.W.P. 1677/2000 was disposed of, order dated 29.08.2000 (supra) was already operative. Petitioner in his wisdom chose to get the said writ petition disposed of as premature by gaining advantage of two weeks. On 9th day exactly of the disposal of the S.W.P. No. 1677/2000 filed the present writ petition on 16.09.2000, wherein persuaded the Court for the grant of interim relief in his favour without bringing the true position to the notice of the Court either regarding the order dated 29.08.2000 or the disposal of the earlier S.W.P. No. 921/1995 on 31.08.1999.

9. Faced with this situation, learned counsel appearing for the petitioner was unable to explain this omission except arguing that it does not make any difference. This plea has been raised simply to be rejected.

10. In this behalf, it may be appropriate to observe that grant of relief under Article 226 of the Constitution of India as well as under Section 103 of the Constitution of Jammu and Kashmir is equitable and discretionary. With a view to enable this Court to exercise this power, a litigant like

petitioner is required to come to the Court with clean hands as also not to either withhold or suppress material facts, which go to the root of the

case as is the situation in the present case detailed hereinabove. Learned counsel for the petitioner persisted that his client had been appointed as

Draftsman, but at the same time did not controvert the stand of the official respondents that he was holding the post of Orderly and was allowed to

work as Draftsman for sometime. Thereafter he continued to work under the orders of the Court in S.W.P. No. 921/1995, which was finally

disposed of on 31.08.1999. He further could not and did not in fact controvert the passing of and/or existence of the order dated 29.08.2000

extracted hereinabove. Once this situation comes into existence, the present writ petition needs to be rejected. Otherwise it will tantamount to

putting premium on the withholding of material facts within the express knowledge of a litigant like petitioner and thus obtaining relief from the

Court. Even during the course of hearing, learned counsel was asked to produce the order of appointment as Draftsman as claimed by him in the

writ petition as also to produce the order of initial appointment in the Department whether as an Orderly or otherwise. Except for insisting that the

petitioner was appointed as Draftsman, no order has been produced. Incidentally, it may be noted here that so long rule of law prevails,

appointments to a public office like that of either an Orderly or Draftsman is governed by the statutory rules, which position was not disputed by

the learned counsel for the petitioner. Still he was not in a position to show as to under what authority of law, petitioner was appointed as

Draftsman as Claimed by him.

11. No other point is urged.

12. As a result of the aforesaid discussion, there is no merit in this writ petition, which is hereby dismissed with costs, quantified as Rs. 1,000/, to

be paid by the petitioner to respondents 1 to 3 and Respondent4 in equal shares, i.e., Rs. 500/ each. As a result of the dismissal of the writ

petition, ex parte interim order passed by this Court on 18.09.2000 shall stand vacated forthwith.

Writ petition dismissed.