

(2006) 10 J&K CK 0002
In the Jammu And Kashmir High Court

Manzoor Ahmed Beigh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 9(a)

Citation : (2007) 2 JKJ 588

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bashir A. Kirmani, J.—The petitioner was holding the post of Master in Education Department on substantive basis and after years of

service as such was vide Government Order No. 186-SW of 1994 dated 22.09.1994 transferred and posted as ""District Manager, J&K

SC/ST/OBC Development Corporation"" against an available vacancy on deputation basis for a period of two years. While working as such he

was adjusted in Social Welfare Department as ""Child Development Project Officer"" vide Order No. 195-SW of 1996 dated 01.07.1996 and

continued to work as such till Sept. 2003. Grievance projected is that vide order No. 169-SW of 2003 dated 02.09.2003 petitioner was asked to

report back to General Administration Department (GAD) for his reversion to parent Department i.e. Education Department which as per the

petitioner could not have been done because under Order No. 195-SW of 1996 above said he was permanently adjusted as ""Child Development

Project Officer"" in Social Welfare Department and requisite formalities for termination of his lien in Education Department were to be completed

by GAD which they failed to do.

2. Aggrieved, he seeks quashment of said order on the ground that he was permanently absorbed in Social Welfare Department as ""Child

Development Project Officer"" and has continuously worked as such since 1996, so his adjustment there would be deemed to be an appointment

by transfer as his lien in parent department was required to be terminated by GAD which they failed to do, which in no case would effect his status

as ""Child Development Project Officer,"" particularly because he holds a Master's Degree in Sociology and has years of experience in social work

that he performed under a voluntarily organization called ""Kahkashan"" and thus his placement as ""Child Development Project Officer"" in Social

Welfare Department would deemed to be an appointment in terms of Rule (9) of Jammu & Kashmir Civil Services (Classification, Control and

Appeal) Rule, 1956 (hereinafter referred as J&K CSR) whereunder appointment by transfer is a re-cognized mode of appointment.

3. In their reply the respondents while taking an objection to the maintainability of the petition on the ground that under impugned order of

02.09.2003 one ""Khalid Jahangir"", CDPO has already assumed charge of District Social Welfare Officer, Doda on 3rd Sept. 2003 in place of

petitioner who has not been impleaded as party in the writ petition, have also pleaded that petitioner was never appointed permanently in Social

Welfare Department but was only on deputation in his own pay and grade and the deputation was covered by the term Schedule 18 of J&K CSR

with his lien and promotion prospects in his parent Department in tact, and as such the order of his reversion back to parent Department did not

suffer from any illegality or irregularity. It is further pleaded that under order dated 01.07.1996 whereby petitioner was posted as CDPO

Kishtwar, it was amply clarified that he shall retain his lien and promotional prospects in the parent Department till his case was decided by GAD

and as such the respondents were not debarred from repatriating the petitioner back to his parent Department. During course of submissions the

counsel appearing for rival sides have reiterated the contents of their pleadings with reference to annexures on record.

4. I have heard learned Counsel and considered the matter. The sole question that emerges in the controversy in the crystallized form is whether

petitioner's transfer and posting to Social Welfare Department as initially issued Order No. 186-SW dated 22.09.94 and followed by temporary

adjustment order of 01.07.1996 under No. 195-SW of 1996 was his mere deputation to the Social Welfare Department or his appointment

therein by transfer. While petitioner claims that under aforesaid orders he was appointed in Social Welfare Department by transfer in terms of Rule

(9) of J&K CSR, the stand of respondents is that he was purely on deputation in his own pay and grade and was never appointed, or intended to

be appointed in that department, particularly in view of the fact that his lien in the parent department of Education continues till date with his

promotional prospects there expressly reserved.

5. The nature of controversy as such necessitates reference to the orders relied upon by petitioner for projecting the claim of appointment against

the post of CDPO. The story starts with Order No. 186-SW of 1994 dated 22.09.1994 referred to above, captioned as ""deputation of Shri

Manzoor Ahmed Beigh, Master Higher Secondary Boys, Doda (Education Department) to J&K SC/ST/OBC Development Corporation

whereunder the petitioner was transferred and posted as ""District Manager J&K SC/ST/OBC Development Corporation"" against available

vacancy and the posting was to be governed by the standard terms of deputation as contained in Schedule 18 of the J&K CSR, with the term of

deputation mentioned as two years. This order was followed by Order No. 195-SW of 1996, which is captioned as ""Adjustment of Shri Manzoor

Ahmed Beigh, District Manager, SC/ST/OBC Development Corporation in Social Welfare Department"", whereunder petitioner has been

temporarily ""adjusted"" in Social Welfare Department as CDPO Kishtwar in his ""own pay and grade"", till ""decision on his lien by GAD"" with an

express stipulation that ""he shall retain his lien and promotional prospects in his parent Department"". Precisely it is the second order that is relied

upon by petitioner to project the claim of appointment by transfer on the ground that temporary adjustment thereunder would mean appointment

even though not expressly mentioned. The claim however does not rest on solid ground for the reason that said order of 01.07.1996 can't be read

in isolation. It has to be taken in continuation to earlier order of 22.09.1994 whereunder petitioner was expressly deputed to SC/ST/OBC

Development Corporation for fixed period of two years. Since his initial entry in Social Welfare Department was on deputation the term

temporarily adjusted"" in the following order of 01.07.1996 aforesaid will have to be interpreted as meaning continuation on deputation and not

otherwise particularly in view of the stipulation that he shall retain his lien and promotional prospects in the parent department. As a matter of fact,

a reference to the lien in the parent cadre/department exclusively implies his placement in the Social Welfare Department on deputation, as that

department has not been referred to as parent department in petitioner's case. Further more he continued to be posted there in his own pay and

grade.

6. It may be appropriate to notice at this stage that under rule (9) of CSR relied upon by petitioner appointment to a particular service or class can

be made by promotion or by transfer from another service or class or by direct recruitment or partly by promotion etc. and partly by direct

recruitment. Since the transfer from another service or class is bracketed with the appointments by promotion under clause ""a"" of Rule (9) it could

perhaps be argued that appointment by transfer would fall within the promotion quota as the acknowledged mode of appointment. Even if one

agrees with that still then such appointment has to be mentioned clearly and categorically in the relevant order to sufficiently convey that the

incumbent was intended to be appointed in different service/cadre by transfer from another service. No such thing is forth-coming from orders

relied upon by petitioner which does not travel beyond his ""adjustment"" in Social Welfare Department ""in his own pay and grade"" with ""his lien in

the parent department intact along with promotional prospects"". In that view of the matter, therefore, the petitioner's claim of appointment by

transfer does not appear to be well founded.

7. Another feature attending the matter would be that the post of CDPO in Social Welfare Department falls in the gazetted cadre, mode of

appointment whereto is expressly provided for in the relevant rules i.e. J&K Social Welfare Gazetted Recruitment Rules of 1970 as amended from

time to time, whereunder In terms of Rule (6), appointments to the cadre are required to be made 50% by direct recruitment and 50% by

promotion from graduates among Superintendent Home/Centre/Institutions

having at least 5 years service in that cadre. Plainly the mode of appointment to the cadre of CDPO is cut and dry to the extent of almost excluding any appointments by transfer from other service/cadre, for the reason that 50% to be appointed directly have to be so recruited through regular selection process and the remaining 50% is required to be filled up by promotion from Superintendent of Home etc who are graduates and have put in five years of service in that cadre. Obviously a person from different cadre/service cannot qualify to be appointed by promotion. That being so, the case of petitioner's appointment by transfer would have to negotiate the barrier of this rule even if his claim of having been appointed by transfer would be well founded to some degree. The conclusion therefore, is that petitioner's placement in Social Welfare Department does not appear to travel beyond a deputation whatever his tenure therein.

8. Now the question as to what claim, if any, the petitioner could lay on the post of CDPO in the Social Welfare Department as a deputationist.

This question does not require fresh consideration as it has already been answered by continuous judicial pronouncements wherein it has been held

that essence of deputation is that the person deputed can be repatriated to his parent department at any time to serve in his substantive posting and

that the deputation by itself does not vest right of continuation on the post against which he has been so deputed in to the deputationist nor can he

claim absorption in that department on the post of deputation. This position of law is too beaten to require any repetition.

9. The result therefore, is that the petition does not appear to have any force and is accordingly dismissed alongwith all connected CMP(s).