

(2019) 05 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 576 Of 2016, 289 Of 2017, IA No. 1758, 3246 Of 2010

Misra And Ors @APPELLANT@Hash ?State Of Jammu & Kashmir And Anr

Date of Decision : 15-05-2019

Acts Referred:

Citation : (2019) 05 J&K CK 0029

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Altaf Haqani, Saqib Amin Parray, S. Naqashbandi

Final Decision : Disposed Off

Judgement

1. The petitioners were temporary appointed as Copyist in the pay scale of Rs. 220-430 on probationary basis for a period of three months under third phase of Carpet Massive Scheme in terms of order No. JKHC/ADM/80 dated 21.04.1980 and order No. 1216 JKHC of 1985 dated 24.08.1985.

2. While petitioners were serving as members of Jammu and Kashmir Handicrafts (Scale & Export) Corporation, (for short "corporation"), the Government took policy decision to transfer 35 Carpet Training Centers under Massive Carpet Training Scheme along with staff from the Corporation to Handicrafts Development Department (for short "Department"), vide Government order No. 222-Ind of 1988 dated 29.07.1988. The Government order being relevant is taken note of:-

"Government of Jammu and Kashmir Industries and Commerce Department.

Sub: Transfer of 35 Carpet training centres under Massive Carpet Training Scheme from JKH(S&E) Corporation to Handicrafts Dev. Department.

Government order No. 222-Ind of 1988 Dated 29.07.1998 Sanction is hereby accorded to the:-

1. Transfers of 35 Carpet training centres (15 in Jammu and 20 in Kashmir) as mentioned in Annexure "A" to this order along with staff as listed in Annexure to

this order, run under Massive training program from JKHEC to Handicrafts Dev. Department w.e.f. 1st Sept., 1998.

2. Transfer of budgetary provision available under the scheme to this Handicrafts Dev. Department led by the amount acquired by the Corporation to cover establishment costs of 25 centres on account of any like... or other expenditure(to be worked out separately) for a period of the three years only;

3. Conversion of 20 carpet training centres to be retained by the JKHEC into production centres.

It is further ordered that:-

a) The staff transferred from JKHEC to Handicrafts Dev. Deptt. shall continue to be governed by the terms and conditions as in JKHEC till further orders;

b) The vacant posts will not be filled up by the Director of Handicrafts/ Corporation;

c) The expenditure on account of purchase of raw material, stipend to trainees, salaries to staff upto and of July 1998 shall be reimbursable to JKHEC in full.

d) The semi-finished carpets on the looms of centres, transfer to Handicrafts Department on completion will be handed over the Corpn. Provided all the material till completion of these carpets is provided by the Corporation.

e) One of the vehicles of Massive Carpet scheme presently with JKHEC will be transferred to the Director of Handicrafts.

By order of the Govt. of Jammu and Kashmir.

Sd/-

Commr/Secretary to Government

I&C Department."

3. The petitioners who were working as Copyist in Massive Carpet Training Scheme of Corporation were beneficiaries of the aforesaid Government order. The Government again vide order No. 414-Ind of 1997 dated 1st October, 1997, ordered for transfer of remaining 20 carpet Training Centres under Massive Carpet Training Scheme along with staff from the Corporation to Department w.e.f. 1st September, 1997. It was also provided in all these Government orders that the staff transferred from Corporation to Department shall continue to be governed by the terms and conditions, which were applicable to them in the Corporation. The petitioners being members of service of the Corporation were transferred to the Department in the year 2005, took policy decision to absorb 468 employees of erstwhile Massive Carpet Scheme of Corporation, who were transferred to the Department in terms of the aforesaid Government orders, as a separate scheme, in the Department. The pay scales were also fixed. The Government order of 2005 is taken note of:-

"Government of Jammu and Kashmir

Industries and Commerce Department

Civil Secretariat-Srinagar.

Absorption of 468 employees of Massive Carpet Scheme in the J&K Government Handicrafts Department.

Ref: Cabinet Decision No. 30/3 dated 18.04.2005

Sanction is hereby accorded to:-

a. The absorption of 468 employees of erstwhile Massive Carpet Scheme transferred to the Department of Handicrafts vide Government order No. 414-Ind of 1997 dated 01.10.1997 and Government order No. 222-Ind of 1998 dated 29.07.1988, as a separate scheme in the Handicrafts Department with pay scales as per annexure to this order.

b. Their entitlement to pensionary benefits as provided under the J&K CSR. However, the vacancies that occur in any cadre due to retirement/promotion or otherwise shall be deemed to have been abolished.

c. The continuance of Craftsman/Master Craftsman of Massive Carpet Scheme on consolidated wages as enjoyed by them as present.

The department will explore the possibility for converting the Training Centres into the Production Centres for which additional allocation may be arranged from the Planning and Dev. Department.

By order of the Government of Jammu and Kashmir.

Sd/-

(A. Sahasranaman)

Principal Secretary to Government

Industries and Commerce Department"

4. In terms of Annexure to the said Government order, the post of Accountant-Cum-Store keeper was having the pay scale of 4000-6090 and the post of Copyist was also having the pay scale of 4000-6090. The Annexure to the aforesaid Government order is also taken note of:-

S. No

Designation

Pay scale

No. of Posts

1.

General Manager (Gazetted)

12375-16500

01

2.

Sr. Manager (Gazetted)

10000-15250

01

3.

Manager (Gazetted)

7600-13450

41

4.

Accountant cum Storekeeper

4000-6090

79

5.

Establishment Clerk

4200-6040

01

6.

Junior Assistant

3050-4820

09

7.

Designer

6500-10250

01

8.

Talim Writer

4200-6040

03

9.

Copyists

4000-6090

10

10.

Carpet Mistry

4000-6090

02

11.

Carpenter

2550-3200

01

12.

Driver

4000-6090

01

13.

Orderly cum chowkidar

2550-3200

66

14.

Helpers

2550-3200

115

15.

Master Craftsman (consolidated paid workers)

.....

59

16.

Assistant Craftsman (consolidated paid workers)

.....

78

Total

468

Sd/-

Special Secretary to Government

Industries & Commerce Department."

5. In terms of Government order No. 130-Ind of 2005 dated 02.06.2005, `69 posts of Assistant Carpet Training Officer (ACTO) in the pay scale of Rs. 9300-34800+GP 4200/- were created in the Handicrafts Department, 07 posts of Carpet Training officers in the same pay scale, 04 posts of Senior Assistants in the pay scale of Rs. 5200-20200+ GP 2400/- , 02 posts of Junior Assistants in the pay scale of Rs. 5200-20200+ GP 1900/- and 01 post of Driver in the pay scale of Rs. 5200-20200 + GP 2400/- by corresponding reduction of 07 posts of Assistant Carpet Training Officer after completion of 3 years' service as Assistant Carpet Training Officer, 69 posts of Accountant Cum Storekeepers GP 2400 and 07 posts of Helpers.

6. The Government vide Government order No. 198-Ind of 2008 dated 25.07.2008, accorded sanction to the revision of pay scales of the employees of erstwhile Massive Carpet Scheme, who were permanently absorbed in the Directorate of Handicrafts. It was also provided that Government order No. 149-IND of 2005 dated 02.06.2005 shall be deemed to have been amended w.e.f. 02.06.2005, as per the annexure of the order. Sanction was also accorded for the regularization of services rendered by the employees of Massive Carpet Scheme in Corporation from the date, they joined in the Massive Carpet Scheme on notional basis.

7. The grievance of the petitioners is that there is no promotion avenue available to them and they have been stagnated in the post of Copyist since 1980 and 1985 and they have not been extended the benefit of higher standard pay scale rules notified vide SRO 14 of 1996.

8. On notice, respondents have filed reply affidavit and have given details of all these Government orders, however, the reply is silent with reference to framing of rule/policy in the shape of Government order regulating the filling up of the posts of Assistant Carpet Training Officer, Designer etc. Para 10 and 11 of the reply being relevant is taken note of:-

" 10. In reply to para 15, it is to submit that the Govt. vide order No. 136-IND of 2015 of 2015 dated 28.08.2015, modified the Govt. order No. 149-IND of 2005 by deleting the part (b) of condition (b) which kept a bar on the promotional

avenue of the employees of Massive Carpet Scheme. It is further submitted that vide said Govt. order sanction was also accorded to the creation of 69 posts of Assistant Carpet Training Officers (ACTO), 07 posts of Carpet Training officers in the same pay scale, 04 posts of Senior Assistants, 02 posts of Junior Assistants and 01 post of Driver by corresponding reduction of 07 posts of Assistant Carpet Training Officers, 69 posts of Accountant Cum Storekeepers (ACSK) and 07 posts of Helpers. The petitioner has misrepresented before the Hon'ble Court that the posts created vide above said order has been created by reduction of posts of Senior Assistants, Junior Assistants and Drivers.

11. In reply to para 16, it is to submit that the promotion to the employees of Massive carpet Scheme are given as per the hierarchy in accordance to the rules governing the field. The petitioners being copyists are eligible for promotion to the post of Taleem Writer. It is pertinent to mention here that the grade pay attached to the post of Copyist and Talim Writer is same.

It is further submitted that there is/was only one post of Designer vacant in the Massive Carpet Scheme and in order to fill the vacancy and to provide the petitioners along with others an opportunity for promotion to the post of designer the Chief Designer, School of designs, Srinagar was asked vide order No. 56 HD of 2017 dated 19.01.2017 to put all the copyists including the petitioners to a practical test to ascertain their technical expertise in Designing of Carpets and to determine their eligibility for the post. The petitioners refused to participate in the said test due to which they cannot be promoted to the post of Designer."

9. Mr. S. Naqashbandi, learned AAG, was pointedly asked as to whether Government has framed the rules, regulating the conditions of services of the employees, as also providing the method of recruitment qua qualification and promotion, has only referred to the annexure to the Government order No. 130-Ind of 2005 dated 02.06.2005, which gives details of creation of the posts and grades.

10. Admittedly, there are no rules, regulating the method of recruitment for filling up the posts, which are now existing on the cadre strength of the department, including the Assistant Carpet Training Officer, Designer etc.

11. Mr. Altaf Haqani, learned appearing counsel for the petitioners has invited the attention of this Court to the Judgment passed by this Court in the case of Accountant-Cum-Storekeepers, who were in the grade of 4000-6090 and stagnated for considerable time, in a writ petition SWP No. 1672/2009 on 09.02.2012. Operative portion of the Judgment being relevant is taken note of:

" For the above stated reasons this petition is disposed of in the following manner:-

i. By issuance of writ of certiorari, the following part of the clause-(b) of the Government order No. 149-Ind of 2005 dated 02nd June, 2005 is quashed.

".... However, the vacancies that occur in any cadre due to retirement/promotion

or otherwise shall be deemed to have been abolished..."

ii. By issuance of writ of mandamus, respondents are directed to consider the claim of the petitioners for being appointed by way of promotion on the next higher post. While considering the claim of the petitioners, the respondents will also accord consideration to the claim of three retired petitioners also.

iii. The respondents are further directed to get pay parity issue settled either by anomaly committee or by any appropriate authority. The respondents also to consider the claim of the petitioners for grant of insitu promotion in terms of Jammu and Kashmir Civil Services (Higher Standard Pay Scale) Rules, 1996.

This exercise be initiated and concluded by the respondents preferably within a period of twelve weeks from the date copy of this order is served on them.

Disposed of alongwith all connected CMP(s)."

12. Mr. Altaf Haqani, learned appearing counsel for the petitioners submits that the Judgment of the writ Court passed on 09.02.2012, has been confirmed by the Division Bench, while dismissing the appeal. It is the submitted that as a consequence of the implementation of the Judgment, the respondents have promoted all the Accountant-Cum-Storekeepers as Assistant Carpet Training Officers. It is further submitted that all the employees similarly situated with the petitioners under the Scheme have been promoted except the petitioners and private respondent.

13. Heard learned counsel for the parties, perused the records and considered the matter.

14. There is no denial of the fact that the respondents have adopted hide and seek policy in considering the claim of the same group of employees belonging to same class to the disadvantageous position of these petitioners. Admittedly, all the employees of the services have been promoted by adopting the policy of removal of stagnation against the higher posts, available in the hierarchy, but the petitioners and private respondent have not been considered, despite the fact that the higher posts are available in the department.

15. The contention of Mr. Altaf Haqani, learned appearing counsel for the petitioners is that the respondents had initiated the process of adopting the same yardstick by ordering practical test of the Copyist in terms of order No. 136-Ind of 2015 dated 28.08.2015. It is submitted that the action was only aimed at, showing the respondent No. 3 having qualified some practical test and paving way for his promotion, otherwise there is no scope in terms of any rule or Government order, providing for undergoing such practical test.

16. Mr. Altaf Haqani, learned appearing counsel for the petitioners submits that the Director, Handicrafts, J&K, Srinagar, is making the arrangement of Junior Assistants on the clearance of DPC against the post of Assistant Carpet Training Officer, and the same yardstick can be followed in the case of petitioners and

private respondent. Director, Handicrafts, J&K, Srinagar, seemingly is adopting a yardstick by ensuring removal of stagnation in the case of other category employees, which has reference to the promotion of Junior Assistant against the post of Assistant Carpet Training Officer.

17. Learned appearing counsel for respondent No. 3, submits that in order to remove the stagnation from the post of Taleem Writer/Copyist, Department has adopted a policy of considering the post available after taking the practical test from the copyist, when asked he could not justify the conducting of such test with reference to application of any rule or Government order. Mr. S. Naqashbandi, learned AAG also could not convince the Court with reference to holding of such practical test.

18. For the above stated reasons this petition is disposed of in the following manner:-

- i. By issuance of writ of mandamus, official respondents are directed to consider the claim of the petitioners and private respondent for being appointed by way of promotion on the next higher post of Assistant Carpet Training Officer.
- ii. Official respondents are further directed to release the benefit of In-situ promotion in terms of SRO 14 of 1996 in favour of the petitioners and private respondent if not already released.

The exercise shall be concluded by the respondents preferably within a period of four months from the date copy of the order is served upon respondents.

19. Both the writ petitions are disposed of along with connected CM(s).

20. Registry to place copy of this order on each of the file.