

(2003) 10 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : SWP 786 of 2003

Mohd. Rafi Mir

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 14

Citation : (2004) 1 JKJ 589

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : P.N. Bhat, for the Appellant; K.S. Johal, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Petitioner has claimed relief of regularization on the basis of Government Order No. 1220-GAD of 1989 dated

11.9.1989 with effect from 1.6.1987 and consequential relief of fixation of seniority from the said date and payment of unpaid salary. He has

further prayed for criminal action against the officials, who have filed wrong affidavit in SWP No. 44/94 as also LPA No. 130/99.

2. This appears to be a fourth round of litigation by the petitioner. Brief facts leading to the filing of present petition are that, the petitioner was

engaged as teacher in Primary School, Goha, Dhanori from 1.6.1987 for a period of one month in the first instance. He was, however, allegedly

allowed to work upto December, 1991. According to the averments made in the petition, he was paid salary only for a period of two months.

After December, 1991, he was not permitted to work. SWP No. 694/88 was initially filed by him for regularization and release of salary. Said writ

petition was, however, withdrawn with a liberty to make representation to competent authority vide order dated 29.10.1991. According to the

petitioner, he withdrew writ petition on some assurance by the respondents that his services will be regularized. There is no such assurance on

record. Petitioner appears to have made some representation but without any response, though he continued to work upto December, 1991 as

claimed by him. On account of non- consideration of his representation, another SWP No. 44/94 was filed wherein some interim direction was

passed for release of his salary. SWP No. 44/94 came to be finally disposed of vide order dated 22.2.1999 with the following directions:

The question as to whether the petitioner had actually worked or not is a disputed question of fact. The respondent-authorities are accordingly

directed:

(i) To look into the certificate issued by the concerned Education Officer which has been placed on the record alongwith the rejoinder.

(ii) To look into those papers where the presence of the petitioner is marked.

If it is case of the respondent-State that some documents have been fabricated then a firm finding be recorded they would in this situation be at

liberty to refer the matter to police authorities for registering a case.

As indicated above, this a disputed question of fact. The decision in this regard is left to be taken by the respondent-authorities.

Let decision be taken within a period of four months. The period of four months would begin from the date copy of the order passed by this Court

is made available by the the petitioner to the respondent-authorities.

3. Pursuant to the aforesaid direction of the court, some criminal proceedings were initiated against the Petitioner. Accordingly, he preferred LPA

No. 130/99 against the judgment dated 22.2.1999. The LPA Court disposed of appeal with the following direction vide its order dated

24.4.1999:

We find merit in this contention and direct that proceedings against the appellant will follow only if it is found after inquiry that the certificate (s)

produced by him from concerned Education Officer is fabricated and the papers on the basis of which, the same is issued, do not support the

appellant.

Consequently the impugned order is modified to the extent afore-said. Appeal is disposed of.

4. Consequent upon the order of the Hon'ble Division Bench, enquiry was conducted in regard to the period for which the petitioner actually served. Based upon the finding of the enquiry, order dated 24.9.2000 was passed whereby petitioner was found entitled to salary with effect from August, 1987 to December, 1991, which was ordered to be released and as admitted by the petitioner in para-11 of the petition that he has already received the salary for the said period.

5. Now the petitioner has filed present petition seeking his regularization as teacher on the strength of Government Order No. 1220-GAD of 1989 dated 11.9.1989. Relevant portion of Government Order is reproduced as under:-

All adhoc appointments to non-gazetted posts recruited from time to time upto 29.12.1988, who are still in service be treated to have been

appointed on regular basis on probation or trial as the case may be, with effect from the date of issue of this order, dispensing with reference of

posts held by them to the Service Selection Board or the District Level Committees in the case Class- IV Posts constituted in pursuance of

General Administration Department's Circular No. 64 -GAD of 1988 dated 29.12.1988, provided that:

an incumbent working on adhoc basis was fulfilling all the pre-requisites of eligibility i.e. qualification and age appointment was made.

Adhoc appointments made by various Departments during the period falling between the issuance of the ban viz 29.12.1988 and the date of issue

of Government Notification No. SRO 291 Dated 28.7.1989 amending Rule 14 of The Jammu and Kashmir Civil Services (Classification, Control

and Appeal) Rules, 1956 and are still continuing without break shall be submitted to the Chief Minister for orders through the General

Administration Department with detailed reasons for making such appointments in disregard of the ban imposed.

6. Petitioner's case is that he was working as adhoc employee (teacher) as on 29.12.1988 and in terms of the aforesaid Government Order, he is

entitled for regularization. His further submission is that it was only on the basis of false affidavit by respondents in SWP No. 44/94 and LPA No.

130/99 that he was deprived of benefit of regularization. It is further contended

that now on the basis of enquiry conducted by respondent which culminated into order No. CEO/D/Camp/J/25-30 dated 24.9.2002. It is established that petitioner was working upto December, 1991, hence entitled for regularization.

7. In the objections filed to the present petition, it is stated that petitioner's first writ petition was dismissed without any liberty to file fresh petition and he was not entitled to file subsequent writ petition. On facts, it is stated that petitioner was engaged by Tehsil Education Officer, Gandoh for a period of one month on 1.6.1987 in Primary School, Goha(Dhanori) and worked only upto 5.6.1987 due to summer intervention of summer vacations in the meanwhile. He was subsequently engaged vide Order No. 152 dated 29.6.1987 by Tehsil Education Officer, Gandoh as teacher temporarily in place of one Krishan Lal in Middle School, Thalora w.e.f. 2.7.1987 for a period of 30 days. Thereafter, engagement of the petitioner beyond 31.7.1987 was never extended. He was allowed to continue by local officer unauthorisedly and without the knowledge of the higher authorities. His salary was accordingly paid only upto the period of engagement and not thereafter. Petitioner's right of regularization on the strength of Government Order No. 1220-GAD of 1989 dated 11.9.1989, is denied.

8. I have heard learned counsel for the parties and perused the pleadings and record placed with the writ petition by the parties.

9. It is established that petitioner was initially engaged as teacher w.e.f. 1.6.1987 for a period of one month as per admission of the petitioner in para-2 of the writ petition. How he continued thereafter, has not been indicated in the writ petition. Petitioner has concealed from the court that he was subsequently engaged temporarily vide Order No. 152 dated 29.6.1987 by the Tehsil Education Officer, Gandoh in leave arrangement with effect from 7.2.1987 to 31.7.1987. It is also admitted position that the temporary engagement of the petitioner has not been extended by any order whatsoever, though he continued to work upto December 1991. As regard the question of payment of salary for the period petitioner has worked is concerned, it already stands paid to him in terms of order dated 24.9.2002, which fact is acknowledged by the petitioner in para-11 of the writ petition. The only question that require adjudication in the present petition, is the claim of the petitioner for his regularization as teacher on

the basis of Government Order No. 1220-GAD of 1989 dated 11.9.1989. From the perusal of the aforesaid Government Order, relevant para

whereof has been quoted, it appears that it is only an adhoc employee who was engaged temporarily against available vacancy in terms of Rule 14

of J&K Civil Service(Classification, Control and Appeal) Rules, 1956, is entitled to regularization, if working as on 29.12.1988 and continuing on

the date of issuance of the Government Order uninterruptedly. Petitioner's engagement was against the leave vacancy of one Krishan Lal for a

period of one month. It was purely a stop gap arrangement. There was no vacancy available against which the petitioner was appointed in terms of

Rule 14 of J&K Civil Service (Classification, Control and Appeal) Rules, 1956. Krishan Lal had lien on the vacancy. How and under what

circumstance, petitioner continued to serve till December,1991, has not been disclosed either by the petitioner or by the respondents.

Admittedly, his continuance beyond 31.7.1987, is without any order of engagement. In what capacity and against which post, he continued to

work, is not forthcoming. Petitioner is now out of service from December, 1991. Under Government Order No. 1220-GAD of 1989 dated

11.9.1989, only such adhoc employee is entitled for regularization, who was working against the available vacancy and was engaged in terms of

Rule 14 of J&K Civil Service (Classification, Control and Appeal) Rules, 1956. Petitioner's appointment was not against any available vacancy but

only as a stop- gap arrangement during the period of leave of one Krishan Lal, His appointment/engagement cannot be termed as adhoc measure

under Rule 14 of J&K Civil Ser-vice(Classification, Control and Appeal) Rules, 1956. Petitioner's claim for regularization interims of the aforesaid

Government Order, cannot be accepted.

10. Other relief claimed in the petition emanates from the main relief of regularization and since main prayer of the petitioner has not been accepted,

he is not entitled to other relief.

11. This petition is accordingly dismissed.