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**(2007) 09 J&K CK 0005**  
**In the Jammu And Kashmir High Court**

Mohd. Shafi

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 26-09-2007

**Acts Referred:**

**Citation :** (2009) 2 JKJ 183

**Hon'ble Judges :** Nirmal Singh, J

**Bench :** Single Bench

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### **Judgement**

Nirmal Singh, J.—Petitioner who was initially appointed as Teacher in the Education department in the year 1984 in the grade of Rs. 950-

1830, was selected as Supervisor in the Cooperative department in the year 1990 for which post he had applied through proper channel. As the

pay scale attached to the post of Supervisor was Rs. 800-1500/- and the petitioner was initially in a higher grade in a different service, he

represented before the authority concerned for protection of his pay in terms of Article 77 of the Civil Service Regulations. Accordingly,

respondent No. 4 Registrar, Cooperative Societies. J & K Srinagar, who was the competent authority, vide its order dated 19th of Jan' 91,

protected the pay of the petitioner and this was fixed at Rs. 1050/- w.e.f. the date of his joining the new assignment. The petitioner thereafter was

promoted to the post of Senior Supervisor in the grade of Rs. 4000-6000/-. Respondent No. 4, however, vide his letter dated 28th of Feb' 02

(Annexure D), sought consideration of the matter for grant of ex-post facto sanction of benefit of pay protection of the petitioner from respondent

No. 3 in relaxation of rules. The matter was thereafter referred to the Finance Department but the case of the petitioner for ex-post facto sanction

of pay protection was rejected which was communicated to the respondent No. 4 vide letter dt. 4th of June' 04, passed by Under Secretary to

Government. Cooperative Department. The respondent No. 4 accordingly issued order dt. 22nd of July '04 (annexure J), vide which appropriate

action has been directed to be taken against the petitioner. It is this action taken by respondents which is the subject matter of challenge in the present petition.

2. The grievance of the petitioner is that the pay of the petitioner was rightly protected in terms of Article 77 of the Civil Service Regulations, vide

order dt. 19th of Jan' 91, and therefore, there was no necessity for referring the matter to the Finance Department in the year 2002 for seeking ex-

post facto sanction of protection of pay. It is stated that the Government has been allowing this benefit to other similarly situated employees. One

such Government order passed by the Commissioner/Secretary to Government, Revenue department bearing No. (Gaz) 105 of 2001 dt. 1st of

June' 01, has been placed on record. It is thus submitted that the petitioner cannot be discriminated and respondent-authorities cannot pass an

order effecting recovery from the petitioner.

3. Respondents have filed objections stating therein that the appointment of the petitioner as Supervisor in the Cooperative Department was a

direct recruitment, and therefore, he is not entitled to the relief of pay protection. It is stated that the respondent No. 4 had allowed this benefit in

favour of the petitioner vide his order dt. 19th Jan' 91, without referring the matter to the State Government. It is stated that the Government now

after considering the matter afresh has rightly rejected claim of the petitioner and passed the orders for effecting recovery against the petitioner

amounting to Rs. 1,72,176.

4. I have heard Learned Counsel for the parties and perused the record.

5. Petition admitted. Taken on board for final disposal.

6. Before considering the respective submissions of the Learned Counsel for the parties, it would be apt to notice the relevant provisions of Article

77 of the J & K Civil Service Regulations. These read as under:

77. The initial substantive pay of a Government servant who is appointed substantively to a post on a time scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended:

(i) When appointment to the new post involves the assumption of duties and responsibilities of greater importance (as interpreted for the purposes

of Article 66) than those attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in

respect of the old post;

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time scale which is equal to his

substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal allowance equal to the

difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post

or for the period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum pay of the time scale of

the new post is higher than his substantive pay in respect of the old post, he will, draw that minimum as initial pay;

(iii) When appointment to the new post is made on his own request and the maximum pay in the time scale of that post is less than his substantive

pay in respect of the old post, he will draw that maximum as initial pay....

7. A perusal of Article 77(a)(i) shows that when appointment to a new post is made and this involves the assumption of duties and responsibilities

of greater importance than those attached with the permanent post on which the employee concerned was working, then his initial pay is to be

fixed next above his substantive pay in respect of the old post. In terms of provision (ii), noticed above, in case, the appointment to the new post

does not involve any such assumption as in noticed in provision (i), then the minimum initial pay which is to be fixed on the new post is to be same

as was drawn by the said employee in his substantive capacity against the old post if the time scale of the new post is lower than that of the old

one.

8. The petitioner has specifically pleaded that while he was working as Teacher in the Education department in the pay scale of Rs. 900-1830/-, he

applied through proper channel for the post of Supervisor in the Cooperative Department, for which he was selected. The said post carried a

lower pay scale of Rs. 800-1500/-. Therefore, in terms of the afore-noticed provisions, the petitioner is entitled to get minimum of the pay on the new post which he was getting while working in substantive capacity as Teacher in the Education Department. The plea of respondents that the petitioner being direct recruit against the post of Supervisor in the Cooperative Department, and this appointment having been made at his own request, he is not entitled to the pay protection, can also not be accepted in view of Clause (iii) of Article 77 noticed above. The aforesaid provision clearly lays down that even if the appointment to the new post is made at the request of the employee concerned and if the maximum pay of that post is less than his substantive pay in respect of the old post, then the said employee is to draw that maximum as initial pay on the new post.

9. Even otherwise, the respondent State has been allowing similar benefit regarding pay protection to other employees of the State Department.

Reference in this regard can be made to Government Order No. Rev(Gaz) 105 of 2001 dt. 1st of June'01, on which reliance has been placed by

the Learned Counsel for the petitioner. A copy of this order has also been placed on record.

For the reasons mentioned above, this petition is allowed. Order impugned dated 4th of June'04 and 22nd of July'04 shall stand quashed. The

petitioner is entitled to pay protection in terms of the afore-noticed provisions of Article 77 of the Civil Service Regulations. The pay scale of the

petitioner on the new post shall be fixed keeping in view the scale which he was getting while working in substantive capacity as teacher in the

Education Department.