

(2008) 06 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 449 of 2007 c/w Contempt Petition Nos. 166 Of 2007, 399 Of 2006

Mohmmad Amin Wani

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 06-06-2008

Acts Referred:

Citation : (2009) 1 JKJ 279

Hon'ble Judges : Bashir Ahmed Kirmani, J

Bench : Single Bench

Advocate : A.Haqani, M.M.Khan, B.A.Bashir, Advocates appearing for the Parties

Judgement

1. Vide judgment dated 30.9.2005 passed in SWP No. 1839 of 1999 this Court passed following directions:

1. The Government shall implement the Cabinet decision No. 109/12 dated: 15.7.1999 and for that purpose should constitute a committee of

officers within a period of one month from the date copy of the order is served on the respondents.

2. The committee so constituted shall look into the suitability of the petitioners for their permanent adjustment in the Government department.

Committee shall find out as to whether the petitioners were suitable for their adjustment in Government department i.e. whether they fulfill the other

conditions such as qualification, health condition and permanent residence etc. for government employment. Those whose are found suitable should

be offered posts commensurate with their qualification and the pay scale which they were holding in the CONFED. Those not found suitable for

government job due to lack of qualification or any other reasonable cause shall be offered the Golden Hand shake and for that purpose scheme be

formulated within a period of three months from the date the order is served on the respondents. , 3. Those employees of the CONFED who have

at any stage accepted the offer or asked for the Golden Handshake scheme shall be given the benefit of the same and modalities thereof shall be

formulated within three months from the date this order is served on the respondents.

2. This order appears to have been challenged by respondents by way of an LPA which was dismissed by learned appellate bench with the

observation that since appellant Government had already implemented the judgment in part by constituting a committee which had furnished report

to the Government and directed that the writ court judgment impugned in the LPA be placed before Cabinet for taking decision on report of the

committee. Around an year after writ court judgment the Registrar, Cooperative on basis of Government order No. 66Coop of 2006 dated:

28.8.2006 issued a communication dated: 12.1.2007 spelling out the details of employees and modalities of Golden Handshake Scheme without

mentioning the officials who would benefit therefrom.

3. Complaining that respondent/Government was trying to side line them under the pretext of having accepted the offer of Golden Handshake

Scheme, petitioners in these petitions seek settlement of their cases in terms of the spirit of writ court judgment and the Cabinet Order of 1999

mentioned therein, on the ground that they did not accept the Golden Handshake Scheme and even though some of them might have agreed to it at

some point of time, the non performance on part of government side rendered the agreement useless because their inaction scrapped the whole

idea. Accordingly they pray that the said committee constituted under the Government order No. 33Coop of 2006 dated: 20.1.2006 and order

No. 8Coop of 2007 dated: 3.4.2007 be asked to examine their cases for adjustment in service to exclusion of Golden Handshake scheme etc.

This is resisted by other side by pleading that all the petitioners in the writ petitions had opted for Golden Handshake scheme prepared by

Government for them and as such they could not jump over the agreement regarding acceptance of the scheme to seek adjustment in terms of

Cabinet Order of 1999 particularly because the same stands modified vide certain later orders. During course of submissions the appearing

counsel have reiterated their respective stands taken in pleadings.

4. I have heard learned counsel and considered the matter. Records show that J&K Cooperative Consumer Federation Limited", in short

CONFED" originally registered as a Cooperative Society in 1943 under the name and caption of "Kashmir Peoples Cooperative Service Limited

renamed as CONFED in 1980 with extension of the area of its operation to the whole State for distribution of fertilizers, Kerosene oil, rapseed oil,

sugar etc: through its marketing societies/stores which was later withdrawn with the result that the society suffered recession and low turn over and

with a huge wage bill ran in continuous losses which necessitated the cabinet decision No. 109/12 dated: 15.7.1999 for winding up the society and

adjustment of its employees suitably while taking the decision the cabinet sought a detailed proposal from the department who while working out

details faced difficulties on account of the proposed adjustment of employees whereupon it was decided in a meeting chaired by Chief Secretary

that a Golden Handshake Scheme be formulated for them.

A memo was accordingly submitted to Government in April, 2002 which vide decision No. 68/7 of 24.7.2002 decided that any Golden

Handshake Scheme in the matter should be financed by sale of the assets of society because Government funds would not be available for the

purpose and accordingly directed Divisional Commissioners of Kashmir and Jammu to evaluate assets of the Cooperative Societies and submit a

report. Simultaneously the negotiations reported to have been initiated between Agriculture Minister and the employees of CONFED to discuss

the problems of employees including their adjustment, revival of the society and Golden Handshake Scheme in accordance with the cabinet

decision of 1999 ultimately resulted in a resolution for submission to cabinet proposing three options. First, a complete revival of CONFED

involving clearance of liabilities and provision for funds, secondly part revival involved engagement of only 24 employees and offer of Golden

Handshake scheme to other 93 and arranging funds for the same and thirdly restoration of Cabinet decision No. 109/12 dated: 15.7.1999. This

proposal appears to have been deferred by Cabinet vide its decision No. 154/11 dated: 4.8.2003. Thereafter the case was reportedly further

examined and referred to Finance Department who opined that CONFED be

closed down and necessary legal process initiated to offer Golden

Handshake Scheme to 117 employees expenses whereof would be borne by sale of the land/assets of CONFED, meanwhile the order of

Registrar, Cooperative relating to liquidation of CONFED appears to have been put in abeyance by J&K Special Tribunal vide its order dated:

28.10.2003 where after the department submitted another proposal to the cabinet proposing authorization of Government to close down

CONFED and initiation of legal process in due course of time for offering Golden Handshake Shake to 117 employees and realization of the

expenditure incurred thereupon by sale of the land/assets of the CONFED. What precisely was decided by Cabinet on this proposal is not

available on the record, however, a few communications on the subject appearing to have been made after above said proposal are indicative of

the decision taken.

5. Under Communication No. Agri/Accts/Dgt/9798/312 dated: 28.7.2004 addressed by Special Secretary, Agriculture Department to Registrar

Cooperative while referring to a previous communication of 17.6.2004 relating to the Golden Handshake scheme he appears to have informed that

Government had agreed to the Scheme for employees of CONFED after its decision to close it down and accordingly wanted him to take steps

for removal of all legal hurdles that may come in the way. Vide another letter dated: 21.9.2004 addressed by Special Secretary to Registrar

Cooperative be sought further action regarding withdrawal of writ petitions pending in the matter from High Court so that the orders regarding

closing CONFED and Golden Handshake to employees could be issued. In his communication dated 27.9.2004 addressed to Advocate General

of the State, Registrar Cooperative appeasers to have informed about agreement of State Cabinet to extension of Golden Handshake scheme to

employees of the CONFED which has seized to function. All the decisions and communications aforesaid appear to have finally culminated into

Government order No. 4Coop of 2005 dated: 2.3.2005 whereunder sanction was accorded to winding up the CONFED, Kashmir and extension

of Golden Handshake scheme to the employees of Kashmir Division, modalities whereof were to be identified separately; which, however, appear

to have been so formulated vide annexure *A* to Government order No. 29RCS/

P&S of 2007 dated: 12. 1. 2007 with reference to Government

order No. 66Coop of 2006 dated: 28.8.2006

6. Viewed in backdrop of foregoing communications and the ultimate decision that came to be taken regarding Golden Handshake scheme to the

employees of CONFED details whereof were spelt out in January, 2007, the question that arises is as to what credence can be given to the stand

of respondents that petitioners having accepted the offer of Golden Handshake scheme could not turn round to seek their adjustment in terms of

Government order of 1999 referred to above, for appreciation whereof it would be appropriate to notice the third direction passed by writ court in

petitioners earlier writ petition No. 1839/1999 under its disposal of 30th Sept. 2005 whereunder the benefit of Golden Handshake scheme was

directed to be given to ""those employees of CONFED who had accepted the offer or asked for it at any stage"". In terms of the order, therefore, it

would only be those employees who had offered or accepted the Golden Handshake scheme at any stage prior to disposal of the writ petition i.e.

30.9.2005 and obviously not beyond that, because in terms the reference was to any stage in past and not to future developments unforeseen at

that time. Now as percolates from the sequence of developments narrated hereinbefore till the final proposal was submitted to cabinet way back in

2004 and thereafter till the Government Order regarding winding up CONFED was passed on 12.3.2005, the Golden Handshake scheme was no

where in existence. There is no doubt that there has been a mention of the expression ""Golden Handshake scheme"" in Government orders and

correspondences preceding the said order but as a matter of fact no scheme had by then or for that matter till 30.9.2005 when the earlier writ

petition came to be disposed of, been formulated to spell out the content and contours of the proposed Golden Handshake scheme which as

already noticed came to be set forth as late as 12.1.2007 only after a committee in terms of the court order of September, 2005 was constituted

under Government order No. 37 of Coop of 2006 dated: 20.1.2006. In otherwords that means that till 20.1.2007 nothing like a Golden

Handshake scheme was in existence that could have been offered to the employees of the CONFED at any stage prior thereto or prior to the

disposal of their earlier writ petition. That being so the stand of respondent/

department that 117 employees of the CONFED had already accepted Golden Handshake scheme offer appears to be bogus for the reason as already said that no scheme as such has been for the same as such ever existed till disposal of the petitioners earlier writ petition, even while and idle talk of the Golden Handshake scheme going on which without visible features could neither be offered nor accepted for want of specifics. In fluid form if at all any of the employees said ""Yes"" to the Golden Handshake Scheme that cannot be termed to be a valid acceptance for the simple reason that neither the maker of the offer nor the alleged acceptor knew anything about contents of the scheme which was yet to germinate from the embryo. Viewed thus the respondent/department can perhaps not take refuge under court direction No.3 of the order passed in earlier writ petition because the same would cover the acceptance of Golden Handshake scheme, if any, made at any stage before the date of the disposal of that writ petition, which question does not arise because in view of official record and Government orders, the scheme for Golden Handshake scheme came to be spelt out only in January, 2007 which is required to be put to employees for their consideration and consequent acceptance/nonacceptance, only thereafter.

7. All that has been stated above by necessary implication means that essentially the petitioners are required to be considered under the original cabinet order No.FO.9/12 of 1999 dated 15.7.1999 read with Golden Handshake scheme formulated under later order of 20.1.2007 in view whereof all these petitions are disposed of by providing that the petitioners herein be considered in supercession of all orders to contrary for adjustment under the Cabinet order of 1999 and such of them as may not aspire or be eligible for adjustment except for age which has already been directed to be considered segregated by this court previously, be offered the Golden Handshake scheme formulated under Cabinet order dated: 12.1.2007 as already mentioned. These entire matters stand accordingly disposed of.