

(2000) 05 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 222/96

Mubark Ahmad Khan

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 17-05-2000

Acts Referred:

Citation : (2000) 2 SriLJ 446

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Advocate : S.Majid, M.I.Qadiri, Advocates appearing for the Parties

Judgement

1. The petitioner is a peon in the Education Department and has filed this writ petition claiming the reliefs of writ in the nature of mandamus

directing the respondents to release the salary attached to the post of teacher since 14101992 and regularise his services as a teacher as he has

been performing the duties as a teacher. In support of this petition he has placed on record annexure B to E which show that communications were

sent to him by the functionaries of respondent at different times to provide the requisite information and to attend the office regularly.

2. The counsel appearing for the petitioner contends that petitioner had been performing the duties of a teacher since 14101992 therefore he is

entitled to be regularised to the pay scale of a teacher on the basis of equal pay for equal work.

3. Mr. M.I. Qadri, SAAG learned counsel appearing for the respondents has contended that petitioner belongs to the ministerial cadre of the

department in terms of the J&K Educational (Subordinate Service Recruitment) Rules of 1979 and he could be promoted to the post of Junior

Asstt. in terms of the rules and not as a teacher, which post falls in executive cadre as per schedule B of the said rules. The ZEO was not a

competent person to change the cadre which could be changed only by the Government. On the facts of the case learned counsel has referred to

Annexure B which shows that ZEO had directed the petitioner to work in Primary School Devipora which was a closed school at that time against

his own post till further orders and the post at the relevant time held by the petitioner was that of a peon. In support of his contention learned

counsel has cited AIR 1997 SC 1992 1922 and AIR 1997 SC 7129. In the case of AIR 1997 SC 1922 clerk discharged the duties of a teacher

and it was held that it did not confer any right of appointment to teaching post. With regard to the doctrine of equal pay for equal work the apex

court in AIR 1997 SC 2129 dealt with the case of daily wagers who worked against the post of clerk and it was held that they were not entitled to

same pay scale as regular clerks since their recruitment was not made in accordance with the rules. Concluding his argument the counsel has

contended that in the present case, the recruitment of the petitioner has not been made in accordance with the recruitment rules in the case of

executive category (teacher) so he is neither entitled to the regularisation of his services nor to the pay which was payable to a teacher.

4. After considering the respective contentions of the counsel for the parties and going through the law cited by Mr. M.I. Qadri, SAAG it is found

that petitioner is not entitled to the reliefs claimed by him in the petition. The petitioner worked in the Primary School, Devipora in terms of the

initial order issued by ZEO on his own post till further orders and he is not entitled to the appointment of a teacher which belongs to different

cadre. The argument advanced by Mr. Qadri, SAAG have legal force in them. In the result the writ petition stands dismissed.