

(2001) 03 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2346 of 2000

Niyaz Ahmed

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 3 SCT 923

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : D.S. Chouhan, I.H. Bhat, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, J.—There cannot be any other better case where the petitioner has made one after the other unsuccessful attempt to see

that he achieves the same result by filing writ petitions before this Court. Relief claimed in this writ petition is in the following effect :

(i) Writ of mandamus, commanding the respondents to change the cadre of the petitioner from Chowkidary to Lab Bearer with all the

monetary/consequential benefits from the year 1988 as given to respondent No. 4 as teacher. With a further direction to respondents 5 and 6 to

complete the investigation and produced the challan against the respondent No. 7.

(ii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be issued in

favour of the petitioner and against he respondents.

2. Petitioner claims that he came to be appointed as ClassIV Lab Bearer in the Education Department vide AnnexureA. His name figure at S.No.

93 and that of respondent No. 4 did not figure in the said list at all. One establishment clerk Abdul Gani is alleged to have made some cutting on

the appointment order of the petitioner and changed his cadre as Chowkidary from ClassIV (Lab Bearer). This was aimed to accommodate

Harbans Singh respondent No. 4 whose order was issued on 06.04.1988 and he joined on 14.04.1988. Petitioner submitted his joining report

without appointment on 06.01.1990 he obtained from Gujjar Hostel, Poonch and it was only then he came to know the Abdul Gani respondent

No. 7 had done cutting and thus cadre of petitioner from Lab. Bearer to Chowkidary was allegedly changed. He further claims that his case was

forwarded to the Commissioner/Secretary to Govt. Education by the Deputy Commissioner, Poonch for change of cadre against cutting. Petitioner

claims to have made complaint before C.J.M., Poonch which resulted in registration of FIR No. 234/98 at Police Station Poonch. He claims that

in his place respondent No. 4 has been wrongly adjusted as Lab. Bearer. It is in these circumstances, that aforesaid reliefs have been claimed.

Respondents when put to notice have filed their objections. Shri Chouhan, learned counsel appearing for respondents has filed objections.

According to respondents petitioner filed SWP No. 1233/98, wherein following relief was claimed :

In the premises, it is most respecting prayer before this Hon'ble Court to issue the following writ in the nature of :

a) writ of certiorari whereby quashing the order tempered by respondent No. 6 by virtue of which the petitioner herein has been lowered in rank

and status to which initially appointed.

b) writ of mandamus whereby the directing the respondents No. 2 and 3 to appoint the petitioner to the post of Laboratory bearer (Gasman) from

retrospective effect.

c) writ further writ of mandamus, whereby further directing the respondent to fix the seniority of the petitioner w.e.f. the date of initial appointment

as Laboratory bearer (Gasman) along with all other promotional as well as seniority and other ancillary benefits with retrospective effect.

d) Any other writ order/orders/directions which this Hon'ble Court deems fit in the circumstances of the case in favour of the petitioner and against

the respondents.

This writ petition was dismissed. It will be appropriate to extract the judgment of this Court passed in SWP No. 1233/98 which was in the

following terms :

1. The only question involved in this petition is whether the petitioner was appointed as Gasman or against ClassIV vacancy.

2. The contention of the petitioner is that he was appointed as Gasman, whereas the stand of the respondents is that his appointment was as

Chowkidary in Gujjar and Bakerwal Hostel, Poonch. The admitted facts of the case are that as many as 96 persons have been appointed against

ClassIV in the year 1988 in district Poonch. The petitioner was one of them and his name existed in the list of appointees at serial No. 93. While

making the adjustment, the then District Education Officer erroneously shown the appointment of the petitioner against the post of Gasman, which

was subsequently corrected while adjusting him as Chowkidar in Gujjar and Bakerwal Hostel, Poonch vide order dated 6.4.1988. Eversince the

petitioner admittedly has continued to work as Chowkidary in the Gujjar and Bakerwal Hostel, Poonch. The discrepancy, it appears was noticed

by him only in the year 1998, when this petition came to be filed.

3. Admittedly, the post of Gasman is also in the category of ClassIV post. There was no separate order of appointing him as Gasman against the

available vacancy was issued.

4. The argument put forward on behalf of the petitioner is that although he was appointed as Gasman, but this was later changed by overwriting

made therein when his cadre was changed.

5. The stand of the respondents is that the category of Gasman has been wrongly shown and after verification, this was corrected. The service

book of the petitioner supports the stand of the respondents. Even otherwise since the post of Gasman is also in the category of ClassIV, none of

the rights of the petitioner are violated by the aforesaid cutting. This apart, he has accepted the post of Chowkidar and continued to work for 10

years and at this stage, he cannot say that change in his cadre is prejudicial to him specially when there is no appointment order indicating the

nature of the post on which he was appointed.

6. In view of the above, there is no merit in this petition, which is dismissed.

3. Still petitioner wanted to take another chance which probably was with the aim that he may be able to get something from the court. Therefore,

he filed SWP No. 1862/2000 wherein following relief was claimed :

In the premises, it is therefore most respectfully prayed that in view of the submissions made hereinabove and those to be urged at the time of

hearing, your lordship may very kindly be pleased to allow this writ petition and issued orders in the nature of :

i) writ of mandamus commanding the respondents to change the cadre of the petitioner from Chowkidary to Lab. Bearer with the all the

monetary/consequential benefits from the year 1988.

ii) any other writ, order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case may also be issued in favour

of the petitioner and again the respondents.

When this matter came up on 28.09.2000, it was dismissed as withdrawn. However, liberty was reserved to file a fresh petition, which was

granted while disposing of the same on 28.09.2000, hence the present writ petition. Sh. Chouhan has produced the record of the case which

suggests that petitioner had filed the first writ petition i.e. SWP No. 1233/98 which stood dismissed on 19.9.2000, thereafter the second writ was

filed that was withdrawn with the liberty to file a fresh one.

4. A perusal of the present writ petition shows that there is not a murmur of the earlier litigation.

5. Faced with the situation Shri Bhat, learned counsel appearing for petitioner stated that in the circumstances of this case, there was no necessity

to have mentioned about the writ petitions as the present writ petition has no connection directly, indirectly or even remotely with the earlier two

writ petitions. According to him since the matter in sub judice on the basis of FIR referred to above as such this writ petition is maintainable.

6. On the other hand official respondents have stated that there was some mistake, therefore, cutting was done to correct the same. As such no

benefit can be derived by the petitioner from such cutting and he is unnecessarily creating hue and cry on that account without any lawful basis for

the same.

7. When a reference is made to the prayer made in the first writ petition which is extracted hereinabove, it cannot be said that relief claimed in the

earlier writ petition was either different or was in any manner independent from one claimed in the present writ petition. In addition to this grounds

pleaded in this writ petition were also available to the petitioner when the previous petitions were filed. Those having not been pleaded and thus no

relief having been claimed on the basis of such facts, then those shall be deemed to have been waived. As such present writ petition is not

maintainable at all on this ground also. Thus allowing the present petition to be maintained by the petitioner will be against the public policy; as

litigation will never come to end particularly in case of an unsuccessful litigant like petitioner who can keep on continuing with the same by putting

up his case one after another.

No other point is urged.

8. In view of the aforesaid facts and circumstances of this case, there is no merit in this writ petition which is accordingly dismissed. Petitioner will

pay costs to the respondents which are fixed at Rs. 1000/. Record produced by Mr. Chouhan has been returned to him in Court today.