

(1998) 11 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2215 Of 1998

Parveena Akhtar

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1999) KashLJ 165 : (1999) 3 SCT 335 : (1998) SriLJ 381

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : H.I.Hussain, G.Mustaffa, Advocates appearing for the Parties

Judgement

1. Mr. G.Mustaffa, GA, has entered appearance and taken notice on behalf of respondents.

Admit.

2. On the consensual submissions of the counsel for the parties, case is taken up for final disposal.

3. Petitioner, who joined in the office of Director, Technical Education of State, as Workshop attendant in October, 1992, On her promotion to

Junior Grade Instructor, in the grade of 12002050, was on transfer, posted as Junior instructor Cutting and Tailoring I.T.I. Kargil, vide order

dated 1341993, of Director of Technical Education. Srinagar for posting in any I.T.I in Kashmir Division (AnnexureB). Petitioner joined and

reported in the Directorate of Technical Education in Kashmir Division, but, thereafter, she was not given any posting. Her salary was withheld.

However, after filing SWP No: 943/95, in which direction was issued for payment of salary to her (Annexurec), she got her salary. Respondent

No. 2, Director Technical Education, despite instructions to his Deputy, Respondent No.3, to give petitioner posting (Annexured), the respondent has not given her posting, though Respondent No.3 passed instructions on 27/5/1995, asking the Superintendent, Industrial Training Institute

Ganderbal, Respondent No.4, to draw petitioner's salary against the post of Senior Instructor, while she was asked to attend I.T.I. Srinagar, (AnnexureE).

4. On the instructions of Respondent No.3, and pursuant to his communication dated 15/2/1996 (AnnexureF), she withdrew the Writ petition with

liberty to file a fresh petition, but even so, she was not given the posting and her pay was not being released regularly. Her pay is withheld for

months together. For the above inaction and ignorance of the duties by the respondents, the petitioner is seeking a Writ/direction for her

adjustment and release of her salary.

5. Mr. G.Mustaffa, GA, has admitted that the appointment and thereafter the promotion of the petitioner is on a clear vacancy and on substantive

basis and without any matters. Her transfer to Kashmir Division is without any precondition. In terms of the Government Order, Edu47Edu (Tech)

of 1994 dated 17/10/94, she joined and reported in the office of Directorate of Technical Education Srinagar for her posting in any I.T.I, in Kashmir

Division. It was the duty of Director Technical Education to post her in any I.T.I. of Kashmir Division, against available vacancy of Junior

Instructor in the grade of 12002050. The Director, instead of posting her as Junior Instructor against the available post in any I.T.I, of Kashmir

Division, posted her temporarily in I.T.I. Srinagar, till the post of Junior Instructor is vacant in near future. For purpose of salary, some post of

Senior Instructor available in I.T.I. Ganderbal was ordered to be operated upon. Even so, the petitioner. Jaments her grievance, that she has been

neither paid salary regularly, nor she is given any work or posting in any I.T.I of Kashmir Division despite clear orders of the Government.

6. There is substance in the contention of the petitioner, that she was forced to withdraw the earlier petition. AnnexureF reveals, that the Deputy

Director, did threaten the petitioner to withdraw the Writ petition as otherwise her pay dues will be withheld. The conduct of the Deputy Director

is objectionable and unbecoming. Much less one comments on this aspect of the

case, the better it is. All the same the fact is that, the pay/salary is right of an employee, which he or she earns for the work rendered and the authority cannot deprive him or her of such remuneration under, any pretext so long he or she is not blame worthy. After all, to receive the salary is a right of the employee enforceable in the Court under Article 226 corresponding to Section 103 of the Constitution of Jammu and Kashmir State. With holding of pay or failure to disburse the pay without any reason, or may be because of administrative difficulties, amounts to punishment. The pay can be withheld only in due course of law on certain recognized grounds, at least not attracted to this case. Similarly, a Government Servant cannot be prevented wrongly from discharging his or her duties

7. Every employee has to be given some posting and assigned duties commensurate with his or her status, class or grade. Circumstances have to be created and steps taken to enable an employee to function and render service commensurate with the benefits he/she has to receive in a particular grade. It is not appropriate to continue an employee without giving the employee proper posting and work. In case the employee is not given posting and work to his/her status, obviously, the employee is not treated properly and in that situation has to be paid either for no work or for less work or for work not commensurate with her status in the applicable grade or class of service.

8. If an employee is to be paid, work has to be taken from the employee and he has to be assigned normal official work as contemplated under the applicable rules and orders of the competent authority.

9. In the result, direction is issued to Respondent No.2 ad 3 to give petitioner posting in accord with the status as Junior Instructor in the grade of Rs. 12002050 and forthwith to disburse her unpaid earned salary. The order of posting to be given to the petitioner by the competent authority shall be informed of all relevant circumstances, including the one that the petitioner is a lady, who has already served full term in District Kargil.

10. Writ petition is accordingly disposed of alongwith connected C.M.PS.