

(2020) 03 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 265, 655, 836 Of 2019, Writ Petition (C) No. 518, 1161, 1482 Of 2019, CM No. 1, 3093, 2467 Of 2019

Pawan Kumar Sapolia And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 10-03-2020

Acts Referred:

Citation : (2020) 03 J&K CK 0017

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Rozina Afzal, Ravinder Gupta, K.D.S.Kotwal

Final Decision : Disposed Off

Judgement

1. In this bunch of writ petitions, the petitioners serving as Draftsmen and borne on the cadre of Engineering Service are seeking their placement in the pre-revised grade of Rs.1600-2660 (Revised Rs.5150-8300) with effect from their date of initial appointment in the cadre with all consequential benefits on the analogy of the similarly situated draftsmen, who were petitioners in SWP No.1328/2004 and SWP No. 2047/2003. In these three writ petitions, i.e., SWP No. 265/2019, SWP No. 655/2019 and SWP No. 836/2019, the respondents have passed consideration orders in terms of the judgments passed by this Court in the earlier round of litigation filed by the petitioners and rejected the case of the petitioners. The requisite government orders issued by the respondents are subject-matter of challenge in these three writ petitions.
2. The services of the petitioners are admittedly governed by the Jammu and Kashmir Engineering Subordinate Service Recruitments Rules, 1997

(hereinafter referred to as "the Rules of 1997") notified vide SRO 180 dated 26.05.1997. The pay scale attached to the post is notified with

Rules of 1997. In the year 1992, when revision of pay scales of the State Government employees was effected by promulgation of J&K Civil Services

(Revised Pay) Rules, 1992 notified vide SRO 75 of 1992 read with SRO 174 of 1992, two sets of grades of draftsmen were prescribed; one at the

entry level and other after completion of eight years of service. This pattern was followed in the J&K Civil Services (Revised Pay) Rules of 1998

issued vide SRO 18 of 1998. The draftsmen (two years diploma/certificate holders) carrying the pay scale of Rs.1600-2660 were placed in the pay

scale of Rs.5150-8300. So far as fresh recruits were concerned, they were to be placed in the entry grade of the draftsmen, i.e., Rs.4000-6000 and

would become entitled to be placed in the higher grade of Rs.5150-8300 after the completion of eight years of service.

3. Admittedly, the petitioners came to be appointed after promulgation of SRO 18 of 1998 of J&K Civil Services (Revised Pay) Rules of 1998 and

therefore, were to be treated as fresh recruits and placed in the entry grade of draftsmen, i.e., Rs.4000-6000. The petitioners, on their appointments,

were admittedly placed in the same pay scale. They accepted the aforesaid pay grade which, otherwise, was in consonance with the statute and

continued to perform their duties without any protest or objection. The petitioners do not dispute that going by the statutory prescription contained in

SRO 75 of 1992 and SRO 18 of 1998, the petitioners, on their appointments, were entitled to entry level grade of draftsmen, i.e., Rs.4000-6000 and not

the higher grade of Rs.5150-8300 to which they would become entitled to only after the completion of eight years of service in the entry grade.

4. It appears that the respondents did not follow the mandate of Pay Revision Rules in letter and spirit and selectively put some draftsmen in the entry

grade of Rs.4000-6000 and some in the higher pay scale at the time of their initial appointments. The provisions of SRO 18 of 1998 were, thus, flouted

by the respondents with impunity. The draftsmen, who were discriminated in the matter of their placement in the higher pay scale of draftsmen, came

to this Court by way of several writ petitions. The writ petitions were allowed and the judgments passed by this Court were complied with. The writ

petitioners in those writ petitions were given the benefit of higher pay scale, though as per the statute they were not so entitled. In the year 2003, 27

draftsmen, who on their appointments, had been placed in the entry grade, filed SWP No. 2047/2003 before this Court. This Court took note of the

earlier judgments passed by this Court and the fact that the said judgments had been implemented, allowed the writ petition vide its judgment dated

21.11.2008. The respondents were directed to pass appropriate orders placing the petitioners in the higher grade initially from the date of their

appointments as draftsmen instead of lower grade to which they had been appointed. They were also held entitled to all consequential benefits.

5. The State assailed the judgment aforesaid by way of LPASW No. 146/2009 and this Court relying upon the earlier Division Bench judgment dated

21.05.2007, passed in LPA No.681/1999 dismissed the appeal and upheld the judgment passed by the Single Bench. State even preferred SLP before

the Supreme Court, but, the same also met the same fate. The judgment of the Single Bench attained finality and the same was implemented by the

respondents vide Govt. Order No. 91-PDD of 2013 dated 22.03.2013 granting the petitioners in the aforesaid writ petitions higher grade of Rs.5150-

8300 on the analogy of Rev (LPASW) No.81/1999 titled Manohar Singh and others V. State and others read with judgment dated 05.11.1999 passed

in SWP No. 1300/96 titled Roshan Din Choudhary Vs State and others.

6. The petitioners, who are similarly situated with the writ petitioners in SWP No.2047/2003 titled Sham Paul Randhawa and others Vs. State and

others filed SWP No. 871/2014 claiming inter alia their placement also in the higher grade of Rs. 5150-8300 w.e.f. their appointments with all

consequential benefits. They sought to draw the analogy of writ petitioners of SWP No. 1328/2004 and SWP No.2047/2003. The writ petition was

allowed by this Court vide judgment dated 28.03.2014 and the direction was issued to the respondents to consider the claims of the petitioners in the

light of the judgment dated 21.11.2008 titled Sham Paul Randhawa v. State and others provided the aforesaid judgment squarely covers the case of

the petitioners. In compliance to the aforesaid judgment dated 28.03.2014, the matter was examined by the respondents, but, the same was rejected on

the ground that the judgment passed in Sham Paul Randhawa's case was contrary to the statute and therefore, could not be treated as precedent

to be followed in the subsequent cases.

7. The consideration order passed in all these cases are on similar lines and have

been assailed by the petitioners on the ground that the same are not in conformity with the judgments passed by this Court in their cases. It is specifically pleaded and argued by the petitioners that the direction to the respondents was to consider their cases in the light of the judgment passed in Sham Paul Randhawa's case subject only to the condition that the said judgment squarely covered their cases. It is contended that the State does not dispute that the petitioners in the petitions on hand and the writ petitioners in Sham Paul Randhawa's case are similarly situated. The respondents have not been able to demonstrate as to how the judgments passed in the case of Sham Paul Randhawa upheld upto the level of Hon'ble Supreme Court is not applicable to the petitioners. The plea taken by the respondents to deny the relief of placement in the higher grade as highlighted in the consideration orders is preposterous and without any substance.

8. The respondents have not filed their objections, but, have opposed the writ petitions contending that the higher grade of the draftsmen cannot be granted to the petitioners in violation of the statute. The reasoning given in the consideration orders for rejecting the claim of the petitioners for their placement in the higher grade of draftsmen has been adopted by the respondents to contest these petitions.

9. Having heard learned counsel for the parties and perused the record, I am of the view that the consideration orders passed by the respondents are not sustainable in law. As rightly contended by the learned counsel for the petitioners that the direction to the respondents was to consider the claim of the petitioners in light of the judgment dated 21.11.2008 passed in the case of Sham Paul Randhawa and this was only subject to one condition that the judgment squarely covered the case of the petitioners. Despite all vehemence at command, the respondents have not been able to point out distinguishing features between the case of the petitioners and Sham Paul Randhawa. Indisputably, the petitioners in these writ petitions and the petitioners in SWP No. 2047/2003 (Sham Paul Randhawa) are similarly situated and have been appointed as draftsmen in the Engineering Department of the Government. Their services are governed by the Rules of 1997 and they are entitled to the pay scale attached to the post. It is not disputed that when pay revision took place in the years 1992, and 1998, the Government

provided two pay scales/grades for the draftsmen; one at the entry level ; and 2nd on completion of eight years. All the draftsmen (two years diploma/certificate holders), who at the time of promulgation of Pay Revision Rules of 1992, were carrying pre-revised pay scale of Rs. 1200-2040 were placed in the pay scale of Rs.1600-2660. The fresh recruitment to the posts of draftsmen were, however, provided to be made in the pay scale of Rs. 1200-2040 and new recruits were held entitled to be placed in the pay scale of Rs.1600-2660 after putting eight years of service. This provision which was embodied in the J&K Civil Services (Revised Pay) Rules of 1992 was carried forward and adopted in J&K Civil Services (Revised Pay) Rules of 1998 as well. The entry level pay scale for the posts of draftsmen was prescribed as Rs. 4500-7000 and draftsmen appointed in the aforesaid pay scale were held entitled to the higher pay scale of Rs.5150-8300 on completion of eight years of service. It was further provided that fresh recruitment to the post of draftsmen would be only in the pay scale of Rs. 4500-7000. It is in tune with the statutory rules, i.e., Rules of 1992 and the Rules of 1998, the petitioners came to be appointed as draftsmen in the entry level grade of Rs.4500-7000. As is contended and not disputed by the petitioners, the posts against which the petitioners were appointed had been notified by the Jammu and Kashmir Service Selection Board only in the pay scale of Rs. 4000-6000. The same was the position with regard to the petitioners in SWP No.2047/2003. Their writ petition was allowed by Single Bench of this Court vide Order dated 21.11.2008. Although the Court in the aforesaid judgment clearly noted that the right course for the respondents was to follow SRO 18 of 1998 and appoint all the draftsmen on the lower pay scale of Rs.4000-6000 (pre-revised), yet, the respondents violated the mandate of statutory rules with impunity and selectively conferred the benefit of higher pay scale of Rs.5150-8300 in favour of some employees. Aggrieved draftsmen, who were similarly situated came to this Court by way of different writ petitions and their writ petitions were disposed of directing the respondents to consider their cases also on the analogy of the persons, who had been placed in the higher grade. The judgments were implemented and the benefit of higher grade was given to such writ petitioners also. As noted by the Single Bench, this created an anomalous situation where similarly situated employees (draftsmen) borne in the Engineering

Service of the State were given two different pay scales. The Court found constrained to allow SWP No. 2047/2003 and directed the respondents to extend the benefit of higher pay grade to the writ petitioners in the aforesaid writ petitions also. The judgment was assailed by the State before the Division Bench and thereafter by way of SLP before the Supreme Court. The LPA preferred by the respondents as also the SLP were dismissed.

The judgment passed by Single Bench attained finality and the same was implemented. The petitioners also succeeded in the writ petition and got the directions to the respondents to consider their cases also on the lines of Sham Paul Randhawa's case. The respondents having found no distinguishing features between the two sets of the petitioners were expected to extend the same benefit to the petitioners as was extended by them to writ petitioners in SWP No. 2047/2003 more so when the respondents did not further challenge the order of Single Bench dated 28.03.2014 passed in SWP No.871/2014 filed by the petitioners. If that be the position, it is not possible for this Court to hold that the petitioners despite being similarly situated with the petitioner in SWP No. 2047/2003 are not entitled to the benefit of their placement in the higher grade. While there is no denying the fact that the judgment passed by a Court of law, which is in violation of the statutory provisions, is not to be followed as precedent in the subsequent cases and, in that, the State is well within its right to persuade the Court in the subsequent litigation that the earlier judgment being in violation of statute be not followed. That would be different situation altogether. This argument perhaps was available to the respondents had they contested SWP No.871/2014 or filed LPA challenging the judgment dated 28.03.2014 passed in the aforesaid writ petition. Having failed to do so and having allowed the judgment dated 28.03.2014 to attain finality, this argument, I am afraid, is not now available to the respondents. The concern of the respondents is that by placement of the petitioners in the higher pay scale of Rs. 5150-8300, an anomaly would be created, inasmuch as, the Junior Engineers requiring a qualification of three years degree/diploma would be placed in the lesser pay scale than that of the draftsmen at the entry level. The difficulty pointed by the respondents is understandable, but, cannot be helped at this stage. The respondents may have to look for some other remedial measures to remove disparity, and nothing prevents the respondents to do so when they embark upon the next pay revision. However, for the moment,

it would be travesty of justice if one set of draftsmen is placed in the higher pay grade and the other set of draftsmen, who are similarly situated, is placed in the lower pay scale. There would be no grave injustice than treating equals unequal.

10. For the forgoing reasons, I am not persuaded to buy the reasoning given by the respondents in the rejection orders. And, accordingly, allow all

these writ petitions and direct the respondents to re-consider the case of the petitioners for their placement in the higher pay scale of Rs. 5150-8300

on the same analogy, which was adopted by the respondents by granting the said pay scale to the writ petitioners in SWP No. 2047/2003 titled Sham

Paul Randhawa v. State and others. Impugned consideration orders are, accordingly, set aside. Let fresh consideration order in all these matters be

passed within a period of eight weeks from the date certified copy of this judgment is served upon the respondents. The petitioners shall be entitled to

all benefits which have been conferred on the writ petitioners of SWP No. 2047/2003.

11. Disposed as above along with connected CM(s).