

(2005) 03 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 762 Of 2003

Raghubir Lal Kohli & Ors.

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Jammu and Kashmir Land Revenue Act, 1996 — Section 15

Citation : (2006) KashLJ 442

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Sunil Hali, S.C.Gupta, Deepika Mahajan, Amrish Kapoor, Advocates appearing for the Parties

Judgement

Permod Kohli, J.—It is unfortunate that the judicial employees are compelled to seek judicial remedies time and again for the redressal of

their grievances particularly while seeking parity with the Government Employees working in the Secretariat. As far the Secretariat Employees are

concerned, they are allowed benefit of the promotion/higher pay scales voluntarily by the Government and when it comes to conferment of the

similar benefits on the basis of the entitlement of the judicial employees impediments are being created on one pretext or the other forcing the

judicial employees to seek legal remedies. Petitioners herein are judicial employees and this is their third round of litigation for the redressal of their

grievances through judicial intervention. It may be useful to briefly noticed the background where under the petitioners have been forced to

approach this court in series of litigation.

2. All the petitioners are presently posted as Principal Private Secretaries to the Hon'ble Judges of this Court and are placed in the payscale of

900014100. Being denied similar treatment as given to the Private Secretaries working with the Ministers and Ministers of State in the State

Government falling under J&K Secretariat (Gazetted Service), some of the petitioners filed writ petition No. 987/91 invoking principle of equal

pay for equal work and parity with their counter parts working with the Ministers, Minister of State and Head of the Department in the executive.

This writ petition was allowed vide judgment dated 17th July, 92 and appeals preferred there from right up to the Apex Court came to be

dismissed. As a consequence of the aforesaid judgments, petitioners were treated at par with the Private Secretaries working in the Secretariat,

referred to above. Subsequently the Private Secretaries working in the Secretariat were placed in the selection grade of Rs. 900014100 equivalent

to 25% of the cadre strength with at least 5 years service in the regular grade of 21253600 (prerevised) vide Government Order No. 476GAD of

1996 dt. 3rd July, 96. The benefit of Selection Grade was allowed w.e.f. 2nd June, 96. This was followed by Government Order No.

142GAD/98 dated 19111998 whereby eleven more Private Secretaries working in the Secretariat were granted Selection Grade of Rs.

900014100. Though petitioners were earlier treated at par with the private secretaries working in the Secretariat, they were not allowed similar

benefits. Denial of such a benefit compelled the petitioners to file another writ petition (SWP) No 295/98 for grant of the similar benefits as were

allowed to their counterparts in the Secretariat Service. This writ petition also succeeded vide judgment dated 742000 by the writ court. After

observing that the petitioners are at par with the private secretaries working in the Secretariat, the writ court thus observed:

iv) That benefit of selection grade of Rs. 25004000 (Old) now revised to Rs. 900030014100 would be given to the 25% of cadre strength of

petitioners from the same date i.e. 22.6.1996, from which date it has been given to the Private Secretaries falling in J&K Secretariat (Gazetted)

Service (Vide Government Order No. 476GAD of 1996 dated 371996) along with all consequential benefits including arrears.

3. While issuing aforesaid direction, respondents were given 90 days time to implement the judgment failing which interest was ordered @ 12%.

This judgment dated 742000 was appealed against before the Division Bench of this court, however, in the meanwhile State issued Government

Order No. 705/LD(A) of 2001 dated 17301 whereby sanction was accorded for the creation and up gradation of various posts in High Court and

subordinate judiciary which inter alia included grant of selection grade of Rs. 900014100 for 25% of the sanctioned number of posts of Private

Secretaries. With the sanction of aforesaid posts High Court issued Order No. 181 dated 28th May, 01 redesignated the petitioners as Principal

Private Secretaries from the date they were placed in the Selection Grade of Rs. 900014100. Government also issued Government Order No.

2642LD(a) dated 161001 providing selection grade of Rs. 900014100 for the 25% sanctioned number of posts of Private Secretaries. This order

was, however, subject to the outcome of the appeals pending before the Division Bench i.e. LPA (W) 268/2000 and LP (W) no. 27/2000. Both

these LPA's were dismissed on 29th November, 01 by a common order. As a consequence of the dismissal of the LPA petitioners have been

placed in the Selection Grade of 900014100 w.e.f. following dates:

Petitioners No. 1 and 2 : 22/06/96

Petitioner No. 3 : 01/10/96

Petitioner No. 4 : 22/04/2000

Vide Order No. 14899900/GS dated 29103.

4. While the petitioners were granted benefits equivalent to their counter parts in the Secretariat through judicial intervention, the State Government

issued another Government Order No. 80GAD of 2003 dated 160103 pursuant to Cabinet Decision No. 4/1 dated 16th January, 03 whereby

nine Principal Private Secretaries working in the Grade of Rs. 900014100 in the J&K Secretariat (Gazetted) ServiceII PSS have been inducted

into Kashmir Administrative Service and given higher grade of Rs. 10,00015,200/. Out of these nine inductees to KAS three of the Principal

Secretaries have been re designated as Special Assistants and Deputy Secretaries respectively vide

Government Order No. 120GAD/03 dated 22nd January, 03. Petitioners are seeking similar treatment as has been granted to the Principal Private

Secretaries working in the J&K Secretariat (Gazetted Service) on the doctrine of equal pay for equal work and parity.

5. Despite notice of this petition to the respondents, objections were not filed. This petition was admitted to hearing on 17th October,03 and

thereafter various opportunities were provided for filing counter. On the failure of the respondents to file counter, right to file counter was closed on

4th March, 04. Petition finally heard for final disposal.

6. Only question needs to be examined is whether the petitioners are entitled to be placed in the higher payscale of Rs. 10,000/15200 on the

ground of parity and equal pay for equal work. With a view to find out whether the principle of equal pay for equal work is applicable or not, it is

useful to refer to above mentioned judgment of this court.

Relevant part of the judgment dated 17792 passed in Writ Petition No. 987/91 be quoted as under:

It has not been disputed by the respondents that under the General Clauses Act of the State the expression ""Minister"" includes ""Judges of the High

Court"" for the purposes of protocol, status and other benefits. It is also not disputed that the PAs now private Secretaries of the Ministers and the

PAs of the Judges were performing the same type of duties and the fact that they form one class of the employees similarly situate. The

respondents have not been in a position to justify their action of making discrimination in respect of making different provisions for the grant of

salary to the petitioners who were similarly situate along with the PAs of the Ministers and Ministers of the State. When the nature, character and

duties of the posts are the same, the petitioners cannot be treated differently in the matters of emoluments.

7. Above observations by this court clearly establish that the petitioners are similarly situate as the Private Secretaries in the Secretariat belong to

J&K Secretariat (Gazetted Service) were. It is also no denial of the fact that the nature of the duties of Private Secretaries of the Judges of the

High Court and those working with the Hon'ble Ministers and Minister of State and head of the departments are same. Duty of the Private

Secretaries working with the Hon'ble Judges is more onerous and sensitive. They have to maintain utmost secrecy. Their responsibilities are also

atleast equal, if not, more than the Private Secretaries working with the Hon'ble Ministers. Therefore, they cannot be treated differently, separately

and with hostility. They have to be treated equally and at par with their counter parts working in the Secretariat. Merely because the State has the

financial control over the employees of the judiciary, the State cannot be

permitted to treat similarly situated employees of the High Court and those working in the Government differently. The question of their similarity of job already stands adjudicated upon by this court and the findings have been confirmed by the Apex Court. Therefore, petitioners are to be treated at par with the Private Secretaries working in the Secretariat. No doubt petitioners cannot be inducted into KAS as has been done in case of the Private Secretaries Vide Government Order No. 80GAD/03 dated 16103, but definitely they have to be placed in the payscale equivalent to the payscale of the inductees i.e. Rs. 10,00015,200. It is also relevant to note here that the State has issued Government Order No. 705LD (a) of 2001 dated 17301 whereby certain posts have been upgraded in the High Court in the payscale of Rs. 10,000 15,200, the payscale equivalent to the payscale of inductees into KAS. Relevant extract of this

Government Order is quoted hereunder for reference:

Government Order No. 705LD (A) of 2001. Dated: 17032001.

Sanction is accorded to the creation/upgradation of the following posts in the High Court and Subordinate Judiciary:

I. High Court

(1) Creation of two posts of Deputy Registrars in the pay scale of Rs. 10,00015,200;

(2) Creation of two posts of Protocol Officers in the pay scale of Rs. 750012000 by corresponding reduction of two posts of Court Officers (Rs. 650010500);

(3) Provision of selection scale of Rs. 900014100 for 25% of sanctioned number of posts of Private Secretaries (Rs. 750012000);

(4) Provision of selection scale of Rs. 900014100 for 25% of the sanctioned number of posts of Readers (Rs. 750012000); and

(5) Creation of one post of Registrar (Rules/Protocol) in the scale of Rs. 1200016500 by corresponding reduction of one post of Deputy Registrar

(Rules) in the scale of Rs. 1000015200.

II.....

8. This Government Order clearly establish that an equivalent payscale i.e. Rs. 10,00015200 is available in the High Court and there is no reason

that the benefit of this payscale be not allowed to the petitioners. What

designation is to be given when petitioners are given the benefit of higher
payscale, be left to the wisdom of the High Court, but in so far as the financial
benefit is concerned State/Respondent is under legal obligation to
give the same benefits to the petitioners as has been allowed to the Private
Secretaries working in the Secretariat. This petition accordingly
succeeds and a direction is issued to the respondent/State to place the
petitioners in the higher payscale of Rs. 10,000-15,200 w.e.f. 16-10-2013, the
date similarly situated persons in the J&K Civil Secretariat (Gazetted) Service-II
PSS were given. The salary/emoluments of the petitioners shall be
fixed accordingly.