

(2018) 10 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 305, 353 Of 2018, MP No. 01, 02 Of 2018

Rajinder Singh And another @APPELLANT@Hash State And Others

Date of Decision : 04-10-2018

Acts Referred:

Jammu And Kashmir Civil Services (Classification Control And Appeal) Rules, 1956 — Rule 24, 24(1)
Jammu And Kashmir Rural Development (Subordinate) Service Recruitment Rules, 2007 — Rule 3, 3(2), 10

Citation : (2018) 10 J&K CK 0025

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Abhinav Sharma, K.D.S.Kotwal, Amit Gupta, Arshad Malik, P.N.Raina, JA Hamal, Sunil Sethi, Mohsin Butt, GS. Thakur

Judgement

1. Order of respondent No.2 issued vide No.25-DRD of 2018 dated 15.01.2018 whereby the respondents 3 to 12 along with few others have been deployed to look after the work of Incharge Inspector Panchayat-II in different blocks is subject matter of challenge in this writ petition filed by the petitioners. The petitioners also claim a direction to the official respondents to promote them to the post of Panchayat Inspector Grade-II with effect from the date the private respondents have been so deployed/promoted. The petitioners also seek prohibition against the respondents to promote the respondents 3 to 12 (hereinafter referred to as private respondents) as Panchayat Inspector Grade-II on substantive basis.

2. The facts leading to the filing of this writ petition lie in a very narrow compass. The petitioners claim to have been appointed as Multi- Purpose Workers (MPWs) in the Rural Development Department on 01.04.1997 whereas private respondents were appointed as Village Level Workers (VLWs) in the Rural Development Department in the years 1998 and 2000, i.e., much after the appointment of the petitioners as MPWs. The grievance projected by the petitioners in this writ petition precisely is that though both VLWs and MPWs are clubbed together and put in the same category, which serves as feeding source

for promotion to the post of Panchayat Inspector Grade-II and that they are seniors to the private respondents, the official respondents by virtue of Order impugned have entrusted the higher responsibility of Panchayat Inspector Grade-II to the private respondents, thus, ignoring the superior claim of the petitioners. Reference in this regard is specifically invited to Schedule 1-A of the Jammu and Kashmir Rural Development (Subordinate) Service Recruitment Rules, 2007 (the Rules of 2007 for short). It is, thus, submitted that both VLWs and MPWs are at par and therefore, eligible to be promoted to the post of Panchayat Inspector Grade-II. Dwelling upon the sequence events which led to the en-cadrement of the MPWs on the Rural Development (Subordinate) Service constituted by the Rules of 2007, it is pleaded that vide Govt. Order No.309-Agri of 1989 dated 27.04.1989, sanction was accorded to the creation of agency of Multipurpose Worker for each Panchayat on contractual basis. Subsequently, vide Govt. Order No. 166-Agri of 1997 dated 18.03.1997; the Multi-Purpose Workers appointed on contractual basis were regularized w.e.f. 01.04.1997. The petitioners further claim that pursuant to the aforesaid Govt. Order, their services too were regularized w.e.f. 01.04.1997, which is the date of their appointment as MPWs indicated in the tentative seniority list of MPWs of Jammu Division as it stood on 30.04.2010 appended with the writ petition as Annexure-A. The private respondents, it is pleaded, were recruited as VLWs after the appointment of the petitioners, some in the year 1998 and some thereafter. Reliance in this regard has been placed on the seniority list of VLWs of Jammu Division as it stood on 01.05.2010 appended with the writ petition as Annexure-B.

3. On the basis of the aforesaid factual background, the petitioners claim that they are seniors to the private respondents and, therefore, have a prior right to be deployed/promoted as Panchayat Inspector Grade-II, but the official respondents have ignored the whole category of MPWs and have chosen only VLWs including the private respondents, who are juniors to the petitioners for their deployment as Incharge Inspector Panchayat Grade-II which, as pleaded, in the writ petition, is not in consonance with law. This, in nutshell, is the grievance projected by the petitioners in this writ petition.

4. The official respondents as also some of the private respondents have contested the writ petition and have filed their respective objections. The official respondents have taken the stand that prior to the promulgation of the Rules of 2007, the service conditions of the VLWs were governed by the Jammu and Kashmir Rural Development (Subordinate) Service Recruitment Rules, 1990 issued vide SRO 133 of 1990 dated 09.04.1990 and that there was no mention of the MPWs in the aforesaid Rules. It is stated that consequent to the Cabinet Decision, respondent No.1 vide Govt. Order No.309-Agri of 1998 dated 27.04.1998 created an agency of MPWs to be engaged on contractual basis. They were put to pay on a consolidated remuneration of Rs.500/- PM. It is further submitted that though initial engagement was envisaged to be contractual on payment of consolidated remuneration but later on, the respondents vide No.166-Agri of 1997 dated 18.03.1997 accorded sanction for the regularization of the

services of MPWs subject to the fulfilment of certain conditions enshrined in the aforementioned order. It is also not disputed that the petitioners along with others came to be regularized as MPWs in the pay scale of Rs.950-1500 w.e.f. 01.04.1997. This was done by the respondent No.2 vide his Order No.174-DRD of 1997 dated 11.06.1997. It is further pleaded in the objections that though MPWs were supposed to work under VLWs, but later on with the promulgation of Rules of 2007, they were clubbed with the category of VLWs and were put in the feeding cadre/category for promotion to the post of Panchayat Inspector Grade-II. It is, thus, stated that as a sequel to the en-cadrement of MPWs in the service constituted by the Rules of 2007, the official respondents decided to prepare a common seniority list of VLWs and MPWs based on length of their service. This, however, became subject matter of challenge in SWP No.2524/2011, but the claim of the writ petitioners for preparing separate seniority list of MPWs and VLWs was rejected and consequently writ petition was dismissed. The official respondents, therefore, issued tentative seniority list of VLWs as it stood on 01.01.1997 which was later on finalized after receiving and considering the objections from the concerned quarters. The final seniority list was issued by the respondent No.2 vide his order dated 29.12.2016. The seniority list of VLWs was updated and another seniority list of VLWs of Jammu Division as it stood on 01.01.1997 to 31.03.2007 was issued. It is stated that the aforesaid final seniority list has not been objected to or challenged by the petitioners. It is, thus, submitted that since the seniority list of VLWs had attained finality and therefore, their placement against the post of Panchayat Inspector Grade-II is immune from challenge, that too, at the instance of the petitioners. This, in nutshell, is the stand taken by the official respondents.

5. The private respondents too have filed their separate objections but the stand taken by them is virtually in line with objections filed by the official respondents. Additionally, in the objections, filed by the respondents, 3,4,6 and 8, the plea has been taken that since the very engagement and the regularization of the petitioners is dehors the rules and unsustainable in law and therefore, they cannot seek parity or superiority over and above the private respondents, who have entered the Government service through legitimate process of selection. In another set of objections, the plea taken is that by virtue of order impugned, the private respondents have only been deployed as Incharge Panchayat Inspector Grade-II in the interest of administration and to carry out the duties in the wake of announcement of the elections to the Urban Local Bodies and therefore, the official respondents committed no illegality in picking up senior most available VLWs from the seniority list duly finalized, for the purposes of deployment. It is, thus, pleaded that since order impugned only makes temporary arrangement and does not confer any right to claim promotion on substantive basis and therefore, cannot be made subject matter of challenge. This, in nutshell, is the stand taken by the private respondents in their objections.

6. Having heard learned counsel for the parties and perused the record, it is noticed that pursuant to the Cabinet Decision No.25 dated 18.02.1989, the

respondent No.1 vide Govt. Order dated 27.04.1989 created an agency of MPWs for each Panchayat Halqua on contractual basis and consolidated remuneration of Rs.500/- per month. The MPWs were to be appointed initially for a year but their engagement was subject to the renewal on yearly basis. The aforesaid Government order also laid down a job chart of the MPWs. Indisputably, the petitioners who also came to be engaged as MPWs pursuant to the aforesaid Government order continued in service till they were regularized against the graded post of MPWs created in the pay scale of Rs.950-1500. The decision to regularize the MPWs engaged by the respondents from time to time, was taken by the Cabinet vide its decision No.49/5 dated 13.09.1997. The Government order No.166-Agri of 1997 dated 18.03.1997 was issued to give effect to the aforesaid cabinet decision. The petitioners who were working as MPWs on consolidated remuneration became the beneficiary of the aforesaid Government order and were, accordingly, regularized w.e.f. 01.04.1997 against the graded post of MPWs in the pay scale of Rs.950-1500. At this juncture, it is important to note that nobody including the private respondents ever challenged either the engagement of the petitioners as MPWs on contractual basis or their subsequent regularization against the graded post of MPWs effected pursuant to Government Order dated 18.03.1997. The private respondents were not even in service at the relevant point of time. It may be further interesting to note that though the petitioners came to be regularized and appointed as MPWs on substantive basis w.e.f. 01.04.1997, but, they were not en-cadred on the J&K Rural Development (Subordinate) Services constituted by the Jammu and Kashmir Rural Development (Subordinate) Service Recruitment Rules 1990. The VLWs were on the cadre of the service constituted by the Rules of 1990. The isolated cadre of MPWs, therefore, continued to exist with no avenues of promotion. Rules of 1990 were, however, later on replaced by the Rules of 2007 and with a view to provide promotional avenues to the MPWs and to en-cadre them on the Rural Development (Subordinate) Service, the posts of MPWs were brought on the sanction strength of Rural Development Subordinate Service indicated in Scheduled-1 (b) of Rules 2007. The post of MPW was clubbed with the post of VLW and was placed in class IV category (b). The relevant extract of the Schedule laying down the manner of recruitment to the post of VLWs/MPWs is reproduced here under:-

Class

Category

Designation

Grade

Minimum qualification for direct recruitment

Method of recruitment

IV

B

Village Level Worker/Multi Purpose Worker

3050- 4910

10+2

(a) By direct recruitment and

(b) 30% by promotion from class V categories A,B and C with minimum qualification of matric and five years' experience in that category. They will initially be appointed in the pay scale of Rs.3050-4810 and will be placed in the grade of Rs.4000-6000 after putting 08 years' service.

7. For the purpose of their recruitment and further promotion, the Rules of 2007 treated the VLWs and MPWs at par. The post of Panchayat Inspector Grade-II/ Plantation Ranger, which exists in the Schedule II-A (Executive) as class-III post is provided to be filled up 100% by promotion from class IV category B with five years' experience in that category in the following manners:-

(a) 75% from the general seniority of VLWs/MPWs in the grade of 4000-6000;

(b) 20% from the Graduate VLWs/MPWs in the grade of Rs. 4000-6000; and

(c) 5% from VLWs/MPWs in the grade of 4000-6000 with post graduate Diploma in Rural Development from recognized University/Board and in case sufficient number of eligible persons in this category are not available, the balance posts will go to category (b) above.

8. It would be appropriate to reproduce the relevant entry as well which reads as under:-

Class

Category

Designation

Grade

Minimum qualification for direct recruitment

Method of recruitment

III

A

Panchayat Inspector GII/Plantation Ranger

5000- 8000

10+2

100% by promotion from class IV category B with five years' experience in that category in the following manner:

- (a) 75 from general seniority of VLWs/MPWs in the grade of 4000-6000.
- (b) 20% from graduate VLWs/MPWs in the grade of 4000- 6000 and
- (c) 5% from VLWs/MPWs in the grade of 4000- 6000 with post graduate Diploma in Rural Development from recognised University/Board provided that where sufficient number of eligible persons in this feeding category is not available, the balance posts will go to (b) above.

9. From the bare reading of Rules of 2007, it is crystal clear that by putting MPWs in Class IV category B along with VLWs, the two have been treated at par for all purposes including their promotion to the next higher post of Panchayat Inspector Grade-II/Plantation Ranger. It is thus, obvious that while drawing the eligibility list/ promotion list of Class IV category B for the purposes of making promotion to the post of Panchayat Inspector Grade-II/Plantation Ranger, there has to be single seniority list to be prepared in accordance with Rule 24 of the Jammu and Kashmir Civil Services (Classification Control and Appeal) Rules, 1956. Rule 10 of the Rules of 2007 clearly provides that seniority of the members of service would be regulated under Jammu and Kashmir Civil Services (Classification Control and Appeal) Rules, 1956. Rule 10 of the Rules of 2007 is reproduced here as under:-

"10. Maintenance of Seniority List.

Seniority of the members of service shall be regulated under the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. The head of department shall maintain an up to date and final seniority list of the service."

10. Rule 24 of the Rules of 1956, which deals with the fixation of seniority of a Government employee also needs to be noticed, at least, to the extent it is relevant for the purpose. Rule 24 sub Rule 1 reads as under :-

" 24. Seniority -(1). The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service class, category or grade as the case may be."

11. From the conjoint reading of Rule 10 of Rules of 2007 and Rule 24 of the Rules of 1956, it is manifest that the seniority of an employee has reference to his service and is to be determined by the date of his appointment to such service. In the context of this prescription laid down in the Rule 24, the seniority of the petitioners vis-s-vis respondents 3 to 12 is required to be determined. Admittedly, the petitioners came to be appointed to the service, for the first time when Rules of 2007 came into force, i.e., on 09.05.2007, which is the date of publication of Rules. Prior to 09.05.2007, the petitioners were not the members of any service and constituted an isolated cadre. For the purposes of determining

their seniority, the petitioners shall be deemed to have been appointed to the Jammu and Kashmir Rural Development (Subordinate) Service constituted by the Rules of 2007 on 09.05.2007. So far as the respondents 3 to 12 are concerned, indisputably, they were substantively holding the post of VLW and were a member of J&K Rural Development (Subordinate) Service constituted by the Rules of 1990. With the enforcement of the Rules of 2007 and in terms of Rule 3 thereof, the petitioners constituted the initial constituent of service in terms of proviso to Sub Rule 2 of Rule 3 of the Rules of 2007. With a view to better appreciate the distinction with regard to the appointment of the petitioners to the service, and the respondents 3 to 12 becoming the initial constituent of service, it would be beneficial to reproduce Rule 3 of the Rules of 2007 as well. Rule 3 of the Rules of 2007 reads thus:-

"3. Constitution of the Service:

(1) From the date of commencement of these rules, there shall be constituted the Jammu and Kashmir Rural Development (Subordinate) Service.

(2) The Government may on commencement of these rules, appoint to the service any person who at the time of such commencement of is holding substantively any post in its sanctioned scale of pay included in the cadre of the service;

Provided that for the purpose of initial constitution of service the person holding any post in a substantive capacity to which he was appointed by the competent authority under proper rules included in the cadre of the service under these rules if he/she is fully qualified for appointment under these rules unless he/she opts otherwise within 15 days from the commencement of these rules."

12. A bare perusal of Rule 3 would clearly indicate that so far as MPWs are concerned they were not holding any post in a substantive capacity, to which they could claim to have been appointed by the competent authority under proper rules and therefore, could not have been treated as initial constituent of the service as provided under proviso to Sub Rule 2 of Rule 3 of the Rules of 2007. Whereas VLWs, who were holding the post on substantive capacity having been appointed by the competent authority under the Rules 1990, in law became initial constituent of service. So far as MPWs are concerned, they can, at best, claim to have been appointed in terms of Sub Rule 2 of Rule 3 of the Rules of 2007, which clearly provides that the Government may at the commencement of rules appoint to service any person who at the time of commencement of such rules is holding any post substantively in the sanction scale of pay included in the cadre of service. Admittedly, the post of MPWs in the sanction scale of pay is now included in the cadre of service constituted by the Rules of 2007 and the petitioners at the time of commencement of the rules were holding the post of MPWs on substantive basis. Therefore, by the operation of Sub Rule 2 of Rule 3 of Rules of 2007, they shall be deemed to have been appointed to the service. It is because of this reason, the petitioners who were appointed to the service for

the first time or shall be deemed to have been appointed to the service for the first time on 09.05.2007 will have to reckon their seniority from the said date and not from any date anterior thereto. That being the position, the petitioners cannot claim seniority over the respondents 3 to 12 and other VLWs, who were appointed under the Rules of 1990 and were treated as initial constituent under the Rules of 2007. Having held thus, the respondents 3 to 12, who are far senior to the petitioners, have a better right to be deployed or promoted as Panchayat Grade-II. The grievance of the petitioners that they being the appointees of 1997 are seniors to the respondents 3 to 12, who came to be appointed in the year 1998 and afterwards, is devoid of any merit. The seniority has to be determined in terms of Rule 24 of the Jammu and Kashmir Civil Services (Classification Control and Appeal) Rules, 1956 from the date of first appointment to the service. The expression used in Rule 24 and highlighted by me hereinabove, that is, the seniority shall be determined by the date of first appointment to such service, is of great significance and leaves no manner of doubt that the seniority of an employee has reference to service, class, category or grade with reference to which the question has arisen and such seniority is to be determined from the date of his first appointment to such service, class category or grade as the case may be. It cannot be refuted by the petitioners that to J&K Rural Development (Subordinate) Service, class IV category B and grade 3050-4910, the petitioners were for the first time appointed on 09.05.2007, i.e., the date when Rules of 2007 came into force. There is thus, no justification to reckon the seniority of the petitioners from any date anterior to 09.05.2007. On the other hand, the respondents 3 to 12 are VLWs, who had been substantively appointed to the service, i.e, J&K Rural Development (Subordinate) Service, constituted by the Rules of 1990 and by operation of proviso to Sub Rule 2 of Rule 3 of the Rules of 2007 became the initial constituent of the service constituted by the Rules of 2007. They are, therefore, well within their right to have their seniority fixed with reference to their initial date of appointment to the service constituted by the Rules of 1990.

13. For the aforesaid reasons, I do not find any force in the arguments of learned counsel for the petitioners. The petition, is therefore, devoid of any merit and deserves to be dismissed. Ordered accordingly.