

(2018) 07 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No.2971 Of 2015, Ia Nos.1 Of 2015 & 1 Of 2016,
With Service Writ Petition No.835 Of 2018, 3039 Of 2015

**Sanjeev Kumar And Anr @APPELLANT@Hash State Of Jammu & Kashmir
And Other**

Date of Decision : 18-07-2018

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 43, 45, 124

General Clauses Act, 1897 — Section 21

Jammu and Kashmir Press (Subordinate) Service Recruitment Rules, 1980 — Rule 4

Citation : (2018) 07 J&K CK 0067

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In this batch of petitions, the petitioners have essentially called in question the Government Order No.11-ARI of 2015 dated 12.10.2015 whereby

the government has accorded sanction to the re-designation of the post of Junior Inker Feeder/Senior Inker Feeder as Orderly/Jamadar respectively.

The petitioners have also assailed the advertisement notification No.01 of 2015 dated 20.10.2015 issued by the General manager, Ranbir Government

Press, Jammu to fill up the posts of Orderlies/Jamadars. The petitioners have also prayed for their consideration against the post of Inker Feeder in

terms of advertisement Notification No.01 of 2009 dated 28.12.2009.

2. Since the controversy in these writ petitions is same and arisen in the identical factual background, as such, the facts have been picked up from

SWP No.2971/2015.Â

Â The petitioners in this petition are 10+2 and matriculate respectively and have undergone apprenticeship training from Ministry of Labour, Govt. of

India's National Council for Vocational Training. Vide advertisement notification No.01 of 2009 dated 16.12.2009, the General Manager, Ranbir

Govt. Press, Jammu invited applications for filling up different posts lying vacant in the divisional cadre which included 25 posts of Inker Feeder. The

minimum qualification prescribed for the posts was matriculate with apprenticeship in press of repute. The notification had also provided the maximum

qualification as 10+2. The post of Inker Feeder is borne on the divisional cadre of the Jammu and Kashmir Press (Subordinate) Service created by

the Jammu & Kashmir Press (Subordinate) Service Recruitment Rules, 1980 (hereinafter referred to as "the Recruitment Rules") promulgated

by SRO 403 dated 01.08.1980.Â Â

The petitioners claim to have responded to the aforesaid advertisement notification. The aforesaid advertisement notification had not proceeded

further when the General Manager, Ranbir Govt. Press issued another notification bearing No.01 of 2010 dated 28.06.2010.Â This notification was in

continuation to the earlier notification issued on 16.12.2009 with a clear stipulation that the candidates who had already applied for the post re-

advertised were not required to apply again. As is apparent from the 2010 notification, the respondents varied qualification.

The qualification mentioned in the earlier notification "apprenticeship in press of repute" was substituted by "with minimum two years

experience in press of repute". Finding the prescription of new qualification contrary to the Rules, the petitioners and many others filed writ petitions

in this Court.Â Â

The writ petitions were clubbed with the lead case of Sunil Kumar and others v. State of J&K and others (SWP No.1559/2010) which were disposed

of by a Bench of this Court by judgment dated 22.10.2011. The advertisement notification No.01 of 2010 dated 28.06.2010 was found to be in

violation to the Recruitment Rules and was, therefore, quashed leaving it open to the respondents to re-advertise the posts after ensuring that the

advertisement notice is strictly in accordance with the Recruitment Rules. With a view to safeguard the right of those candidates who had already

responded to the notifications issued in the year 2009 and 2010, it was provided that, if they satisfy the eligibility conditions, they shall not be asked to

apply again for the posts.

3. In compliance to the judgment, the respondents did not proceed with the selection in terms of the quashed advertisement notification but decided

not to avail of the liberty granted by the Court to re-advertise the posts in strict compliance of the eligibility conditions laid down in the Recruitment

Rules. When this did not happen, one of the petitioners, namely Sanjeev Kumar approached the respondents by way of an application under Right to

Information Act, 2009 asking certain information with regard to the selection of Inker Feeders. In response to the queries raised by the petitioner-

Sanjeev Kumar, the Public Information officer of the respondents intimated to the petitioner that there were in as many 25 vacant posts of Inker

Feeder. It was also intimated that the posts of Inker Feeder have neither been re-designated nor its nomenclature changed but the department has

taken up the matter with the administrative department for re-designation of these posts as Helpers on the ground that due to introduction of

modern/sophisticated digitalized printing machines, manual inking had been replaced by automatic inking process. It was further intimated that function

of the Inker Feeders was to feed ink in printing machines and in view of the sophisticated/digitalized printing machines, process of manual inking is no

more required and, therefore, there is no need to recruit Inker Feeders. These were the reasons explained by the Public Information Officer for

taking up the matter with the administrative department for re-designation of these posts as Helpers.

4. It appears that at the request of the department and for the reasons given above, the administrative department of ARI and Trainings took the

decision and vide order impugned in this petition re-designated the available posts of Junior Inker Feeders/Senior Inker Feeder as orderlies/Jamadars.

In pursuance of the aforesaid re-designation ordered by the administrative department, the Chairman, Divisional Level Recruitment Committee for

recruitment of Class-IV, Ranbir Govt. Press set in motion the process for recruitment of Orderlies/Jamadars etc by issuing impugned notification

dated 20.10.2015.

5. The petitioners in all these petitions are aggrieved of the order impugned and have assailed the same primarily on the ground that the order

impugned has the effect of amending the Recruitment Rules and the same could

not have been done by executive order. It is, thus, stated that the impugned order has been issued by the government in exercise of its executive power and, therefore, cannot amend the statutory Rules issued under proviso to Section 124 of the Constitution of Jammu and Kashmir. Additionally, it is urged that even the Government order impugned has not been issued in terms of the Business Rules in as much as, the impugned government order is not backed by any cabinet sanction.Â

6. Per contra, the learned counsel appearing for the respondents submit that the Government order has been issued in exercise of power conferred

upon the government by the Recruitment Rules only and, therefore, cannot said to be beyond the jurisdiction and competence of the government. The

learned counsel appearing for the respondents also explains the *raison d'être* beyond issuance of the impugned government order. He elaborates

that the posts of Inker Feeder were incorporated in the Recruitment Rules when there was manual process of inking in the printing press and the

services of the inker feeders were required. However, due to the department having replaced the old machines with sophisticated/digitalized

machines, the process of manual inking has now been replaced by automatic inking process.Â In nutshell, it is submitted that the department no

longer needs the services of Inker feeders and, therefore, the matter was taken up with the administrative department for re-designation of these

posts as orderlies/Jamadars.

7. Having heard learned counsel for the parties and perused the record, it would be appropriate to first reproduce the relevant Rules.

Â 2.Â Definitions

Â In these rules, unless the context requiresâ

(a) âCadreâ means cadre of the Service;

(b)

(c)

(d) âScheduleâ means the schedule annexed to these rules;

Ââ

Â 3.Â Organization

The service shall comprise the posts, classes, categories and grades as are indicated in Schedule âIâ.Â

Â 4.Â Cadre

The Cadre of the service shall consist of such number of permanent and temporary posts as stand sanctioned on the day these rules come into force

and such number of them as may be sanctioned for each of its classless and categories from time to time by the government.â??

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Â 13.Â Residuary matters

Â In regard to all matters not specifically covered by these rules, the members of the service shall be governed by rules, regulations and orders

applicable to the State Civil Services in general.â??

8. From a reading of the aforesaid rules, it is clear that initial cadre of service consisted of such number of permanent and temporary posts as stood

sanctioned on the day the Rules came into force. The number of permanent and temporary posts is indicated in the Schedule appended to the Rules.

Rule 4 gives power to the Government to sanction posts for each of the Classes and categories of the cadre from time to time. A plain reading of

Rule 4 would suggest that the cadre of service created by the Recruitment Rules was not envisaged to be static and the government was empowered

to increase or decrease the strength of any Class or Category borne on the cadre of service.Â Â

9. On behalf of the petitioners, it is argued that though Rule 4 confers powers on the government to inflate the cadre by sanctioning more posts in any

class or category but such power can be interpreted to mean that the government has the power to reduce the posts by abolition.Â I am not

impressed with the argument for the reason that it is now trite that the power to do includes the power to undo. On the similar analogy, the power to

create/sanction includes the power to abolish/reduce. The re-designation of posts vide government order impugned is nothing but abolition of posts of

Junior Inkers Feeders/ Senior Inker Feeder and simultaneously creating equal number of additional posts of Helpers/Jamadars. The government order

impugned is, therefore, required to be understood in the aforesaid manner. Once it is conceded that under Rule 4 of the Recruitment Rules, the

government has the power to sanction additional posts in any class or category; it would logically mean that the government has the power to reduce

the number of posts at any time. Reduction of posts have to be by way of process of abolition and addition by way of creation. The order impugned does both the things simultaneously in a single act. The impugned government order, therefore, cannot said to be beyond jurisdiction and competence of the government.

10. Section 21 of the General Clauses Act specifically provides that the power to make also includes power to add to, amend, vary or rescind. If the power of the government to create/sanction additional posts is conceded, as is apparent from a bare reading of Rules, by necessary analogy power to abolish has to be necessarily deemed to have been conferred upon the government. For facility of reference Clause 21 of the General Clauses Act, 1977 is reproduced as under:-

â??21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws

Where, by any Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power, exercisable

in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws

so issued.â??

11. From a reading of Clause 21 of the General Clauses, it is abundantly clear that if power is conferred upon the authority to create something by

issuing an order it would include power to add, amend, vary or rescind also.

12. In view of the aforesaid position of law, I am not inclined to accept the arguments raised by the learned counsel for the petitioners that the

government had no power to re-designate the posts of Inker Feeders as Helpers/Jamadars. This brings me to another question raised by Mr.

D.C.Raina, learned senior Advocate, appearing for the petitioners that the order impugned have not been issued in terms of the Business Rules

framed under Section 43 of the Constitution of Jammu & Kashmir. I am not impressed with the argument for the simple reason that Section 45 of the

Constitution of Jammu and Kashmir specifically provides that all orders and other instruments executed in the name of Governor or Government of

Jammu and Kashmir are required to be authenticated in such manner as may be specified in the Business Rules and the validity of an order or

instrument which is so authenticated shall not be called in question on the

ground that is not an order or instrument made or executed by the Governor or as the case may be by the Government of Jammu & Kashmir. For facility of reference, Section 45 of the Constitution of Jammu & Kashmir is reproduced hereunder:-

45. Form of orders and instruments and their authentication

(1) All executive action of the Government shall be expressed to be taken in the name of the Governor or of the Government of Jammu and Kashmir.

(2) Orders and other instruments made and executed in the name of the Governor or of the Government of Jammu and Kashmir shall be

authenticated in such manner as may be specified in the rules to be made by the Governor and the validity of an order or instrument which is so

authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor or, as the case may

be, by the Government of Jammu and Kashmir.

13. Otherwise also, on facts I have not been able to find any averment in any of the petitions that the impugned order which was required to be issued

with sanction of the Cabinet has not been so issued. In the absence of this factual plea having been taken by the petitioners, there was no occasion

for the State-respondents to explain its position. Rule 4 of the Recruitment Rules gives power to the government and the same has been exercised by

the government by issuing the order impugned. The order has also been found to have been authenticated in the manner provided in Section 45 of the

Constitution of Jammu & Kashmir and therefore, same is presumed to have been issued by the government. This Court need not to lift the veil and go

behind the order to find as to whether the order has the sanction of the cabinet or not or that the order required such sanction or not. Having held

thus, I find no illegality in advertisement notification impugned whereby the posts of Class-IV have been notified for selection. The petitioners if

eligible have right to apply for the aforesaid posts, but they have no right to claim that the respondents should fill up the post of Inker Feeders, even if,

these are not required by them. Even in the judgment passed by this Court in a batch of writ petitions on 22.10.2011 there was no command issued to

the respondents to re-advertise the posts of Inker Feeder. The liberty granted by this Court, however, was not exercised for the reasons amply

explained by the respondents.

14. The government has taken a policy decision to abolish the post of Inker Feeders on the ground that these are no longer required in view of the modern technology being put in use in the printing press and create equal number of posts in the cadre of Orderlies/Jamadars. There is, thus, no creation of new posts with new nomenclature. The order impugned only adds few more posts to the existing cadre of orderlies/Jamadars. Therefore, in my considered opinion, no amendment to the Recruitment Rules was required. The order impugned has been issued in exercise of the power which flows from Rule 4 of the Recruitment Rules and therefore, legally valid.Â

15. For all the reasons stated above, I find no merit in these writ petitions. Accordingly, all the three writ petitions are dismissed. Â