

(2008) 11 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2047 Of 2003

Sham Paul Randhawa & Ors.

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Citation : (2009) 1 JKJ 312 : (2009) 1 KashLJ 165 : (2009) 2 SriLJ 490

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Vinod Bakshi, Sunil Sethi, Advocates appearing for the Parties

Judgement

1. Various SROs such as SRO 75 of 1992, 174 of 1992 and 18 of 1998 have been issued, which provided two sets of grades for Draftsmen; one

at the entry level and the other after the completion of eight years of service. Consistently, the State Government has flouted aforesaid SROs by

appointing some Draftsmen in various departments of the State Government on higher grade and some on the lower grade. It is this controversy,

which is required to be determined by this court, as to whether respondents could be permitted to apply the aforesaid SROs in the matter of

granting grades selectively to the Draftsmen.

2. Petitioners stand appointed as Draftsmen. The details of their appointment is given in the writ petition, which is not in dispute. All the petitioners

have been appointed initially in the lower grade at the entry level. They have been appointed in various departments of the State Government. It is

not in dispute that only one grade has been provided under the SRO for all the Draftsmen working in various departments. Petitioners state that the

Draftsmen working in various departments of the State Government have been

promoted in the higher grade at the entry level; the details of which are contained in Annexures J and O annexed with the petition. Petitioners have also placed on record copies of the appointment orders of these

Draftsmen. For facility of reference, these orders read as under:

Sanction is accorded to the regular temporary appointment of the following candidates against post and scale mentioned against each, in the Two

Planning Organization, Jammu:

S.No. Name, parentage and address of the candidate Designation and grade to which appointed. Place of posting

1. Vikas Mahajan S/O Sh. Jia Lal Mahajan C/o R.K. Electronics, Ramnagar Road Talab Salin, Udhampur (R/o Batote Tehsil Ramban Distt.

Doda. Draftsmen 16002600 CTP Office Jammu

2. Kamal Krishore (SC) S/o Sh. Lal Singh R/o Village Kala Kam Block Bhalwal, Tehsil & Distt. Jammu do do

In pursuance to the selection list furnished duly recommended by the Secretary, J&K Service Selection Board, Jammu vide his letter No,

SSB/1721/93 dated 411993 regarding filling up of the posts of Draftsman (Civil), following candidates are hereby appointed temporarily as

Draftsman in the pay of Rs. 16002600 in the offices shown against each:

S.No. Name Parentage & Address Office where posted

1. Gopal Krishen S/o Lachman Dass R/o H.No. 71, W. No. 1 Mohalla Barrian, Udhampur Asstt. Soil Conservation Officer, Rajouri

2. Rakesh Verma S/o Diwan Chand R/o H.No. 133, W. No. 9 Lambi Gali Udhtunpur do Udhampur

3. Suresh Kumar S/o Sita Ram R/o Reasi C/o Sita Ram (XEV) Old Dak Bangloo, Reasi (SC) do Doda

4. Sushil Kumar S/o Ram Rattan R/o H.No. 34, W. No. (Paba) Street, Udhampur. do Ramban (Doda)

5. S. Kulbir Singh S/o Janak Singh R/o Chak Mohd. Yar C/o Guru Nanak Rice Mills, R.S, Pura, Jammu do Kathua

6. Shabir Ahmad Malik S/o Gh. Nabi do Dharmari, Disst. Udhampur

7. Rajinder Kumar Sharma S/o G.S. Shanna, R/o 21A/B, Gandhi Nagar Jammu. do (I&P) Jammu.

3. Perusal of the aforesaid orders reveal that the Draftsmen have been appointed

in various departments in prerevised grade of Rs. 16002600 now revised Rs. 51508300. According to SRO18, this grade is available to Draftsmen after the completion of eight years of service. The entry grade of Draftsmen is Rs. 40006000. The import of aforesaid SRO is that a person appointed to the post of Draftsmen initially in the grade of Rs. 40006000, becomes entitled to be placed in the higher grade of Rs. 51508300 after the completion of eight years of service.

4. The State has not filed the objections. Objections have been filed only on behalf of respondents 2 and 3. Right to file objections by respondents 1 and 4 to 8 has already been closed vide order dated 26/9/2005. Respondents 2 and 3 in their objections have stated that petitioners 1 to 5 have been given the higher grade after the completion of eight years of service in the department. Regarding Bisma Syed, it is stated that the higher grade has been released in her favour in terms of the direction of the court passed in SWP No. 1346/99.

5. I have heard the learned counsel for the parties and perused the record.

6. The right course for the respondents, was to appoint all the Draftsmen at lower grade i.e. Rs. 40006000 (prerevised) as per the mandate of

SRO 18. This seems to have not been done by them uniformly. In case of petitioners, the rigor of this rule has been applied strictly whereas in case

of petitioners mentioned hereinabove, they have been permitted to be appointed against the higher grade. The effect of this selective application has

only perpetuated an illegality. Mr. Sethi, learned counsel for the petitioners conceded this position in law, he however states that the State by

implication, relaxed this condition of SRO 18 and allowed some persons to be appointed directly in the higher grade. He has also brought to the

notice of the court that various judgments have been passed by the coordinate bench of this court, which are part of the writ petitions. Reliance has

been placed on judgment dated 21/5/2005 passed in Rev. LPA(SW) No. 81/99. The Division Bench of this court while disposing of the aforesaid

Rev (LPA), passed the following directions:

This review petition is disposed of with a direction to the respondents to consider the issue and decision be taken in accordance with law. Fact that

State Government has implemented the decision given by this court in Roshan Din Chowdharys case on 9/4/2002 copy whereof is retained on the

file as annexure C/I would be taken note of while considering the claims of the appellants. Let claim of the appellants be considered within a period

of three months from the date copy of the order passed by this court alongwith copy of the judgment given by this court in Roshan Din

Chowdharys case and other material on which reliance is being placed are made available by the appellants to the respondents.

7. The aforesaid judgment of the court has been implemented by the respondents vide Government Order No.58 PW(R&B) dated 1362003, the relevant portion of which, is reproduced as under:

Now, therefore, in compliance of orders passed by Hon'ble High Court in Rev (LPA) SW 81/99 titled Manohar Singh and Ors. Vs. State and

others and SWP No. 13 007 1996 dated 5111999 read with CMP SW No. 98D/99 dated 732000 titled Roshan Din Choudhary vs. State and

Ors. Sanction is accorded to the placement of 46 (Forty Six) Draftsmen (petitioners) in REV (LPA) SW No. 81/99 titled Manohar Singh and

Ors. Vs. State and Ors. Who were appointed as draftsmen vide Govt. Order Nos. 381PW of 1999 dated 1 191999. 52PW OF 1995 dated

221995. 136PW of 1995 dated 1331995 and 602PW of 1995 dated 19101995 and where names are indicated in Annexure A appended to this

order in the pay scale of 16002660 (prerevised) in place of 12002040 (prerevised) subject to the terms and conditions as envisaged in the above

mentioned Court Orders.

By Order of Govt. of Jammu & Kashmir.

8. In the face of these facts, it seems that the State has implemented the aforesaid judgment of the court and given the benefit to the persons who

claimed higher grade at the entry level. On the other hand, contentions raised by Mr. Vinod Bakshi, Dy AG are not in dispute. He states that

petitioner5 has been given benefit of higher grade only after the completion of eight years.

9. For what has been stated hereinabove, it is manifest that once the State Government has complied the direction of the court in various

judgments, where similar question was raised, the petitioners also claimed that they are also entitled to the same benefit. Even though the State

Government has granted this benefit to the similarly situated persons without amending the aforesaid SRO. But it has to be assumed in law and by

implication that this power has been exercised by the State Government by relaxing this condition in the SRO. To put it straight, the State

Government after relaxing the aforesaid condition, have permitted the persons to be appointed directly in higher grade and not in the lower grade at

the entry level. The same power is also required to be exercised by the State in the present writ petition.

10.1, therefore, direct the respondents to pass appropriate orders placing the petitioners in higher grade initially from the date of their appointments

as Draftsmen instead of lower grade to which they have been appointed and consequently they be also given all the consequential benefits. This

exercise be completed within a period of three months from the date copy of this order is received by the respondents.

11. Petition allowed alongwith connected CMPs, if any.