
(2019) 02 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal (LPASW) No. 84 Of 2016

State Of Jammu & Kashmir & Ors

APPELLANT

Vs

Sheikh Rashid Ahmad & Ors

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Jammu And Kashmir Civil Service (Revised Pay) Rules, 1992 — Rule 9, 9(f)

Citation : (2019) 02 J&K CK 0040

Hon'ble Judges : Gita Mittal, CJ; Sanjeev Kumar, J

Bench : Division Bench

Advocate : M.A.Chashoo, Mian Tufail, M.A.Qayoom

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against the judgment dated 28.03.2014 passed in SWP No.1279/2013 titled Sheikh Rashid Ahmad and ors vs. State and ors. The writ Court has allowed the appeal and has directed the appellants to pass appropriate orders placing the respondents-writ petitioners in higher grade from the date of their appointments as Draftsmen. The respondents have also been held by the writ Court entitled to all consequential benefits. The writ Court has passed the aforesaid direction on the analogy of the writ petitioners in SWP No.2047/2003, who have been granted such benefits vide Oder No.91-PDD of 2013 dated 22.03.2013.

2. Briefly stated, the facts leading to the filing of the petition are:-

3. Pursuant to the recommendations of Jammu and Kashmir Service Selection Board, the respondent No.1 was appointed as Draftsman in the pay scale of Rs.4000-6000 vide Government Order No.429-PW(Hyd) of 2004 dated 27.10.2004. The respondents 2 to 5 were, however, so appointed as Draftsmen vide Government Order No.28-PW(Hyd) of 2008 dated 11.01.2008. The respondents-writ petitioners claimed that their placement should have been in the grade of Rs.5150-8300 instead of Rs.4000-6000. It is seen that in terms of

Rule 9 of the J&K Civil Service (Revised Pay) Rules, 1992 (hereafter for short 'the Rules of 1992') all Draftsmen (two years diploma certificate holders) carrying the pre-revised pay scale of Rs.1200-2170 were to be placed in the pay scale of Rs.1660-2600 and the fresh recruitment was to be made in the pay scale of Rs.1200-2040 and they were to be placed in higher pay scale of Rs.1600-2660 after putting in eight years of service. It is the case of the writ petitioners that the aforesaid provision in the Rules of 1992 became subject matter of challenge in several writ petitions filed before this Court. Two writ petitions, SWP No.1276/2008 and SWP No.1426/2009, were filed in this Court at Srinagar in which the vires of Rule 9(f) of the Rules of 1992 was challenged and a direction was sought to place the petitioners therein in the higher pay scale of Rs.5150-8300 retrospectively with effect from their initial appointment with all the consequential benefits. While the aforesaid two writ petitions were pending adjudication in this wing of the High Court, the writ petition SWP No.2047/2003 on similar lines came to be filed in this Court at Jammu. The writ petition at Jammu (supra) was disposed of by this Court on 21.11.2008 by directing the respondents to pass appropriate orders placing them in the higher grade from the date of their appointment as Draftsmen. The Government implemented the directions and placed the writ petitioners therein in the higher pay scale of Rs.5150-8300 subject to the outcome of LPA No.146/2009, which was later on dismissed by the Division Bench on 28.12.2016 and SLP preferred there against too has not been entertained by the Hon'ble Supreme Court.

4. The short grievance projected by the respondents before the writ Court was that they are similarly situated with the beneficiaries of the earlier judgment passed by the Single Bench of this Court in SWP No.2047/2003 which has been upheld up to the Supreme Court and, therefore, they cannot be treated differently than those who have been conferred the benefit of higher pay scale.

5. The precise case set up by the respondents in the writ petition was that the respondents are also holding the posts of Draftsmen and are similarly placed with the beneficiaries of the judgment passed in SWP No.2047/2003 and, therefore, they cannot be discriminated.

6. Respondents contested the writ petition, primarily, on the ground that the benefit of higher pay scale to the writ petitioners of SWP No.2047/2003 and others was granted by the Government in view of the specific directions passed by this Court. In the objections it was also claimed that Rule 9(f) of the Rules of 1992, as amended vide subsequent SROs, was not declared ultra vires by the Court, and, therefore, the same would apply with all its rigors to the petitioners and others who came to be appointed as Draftsmen subsequent to the promulgation of the Rules of 1992. The writ Court after considering the submissions made by learned counsel for the parties came to the conclusion that the respondents herein and the writ petitioners of SWP No.2047/2003 are similarly situated and both set of petitioners came to be appointed as Draftsmen after the promulgation of the Rules of 1992 and, therefore, there is no reason or

justification to discriminate the respondents vis-à-vis the petitioners of SWP No.2047/2003. The writ Court, therefore, has allowed the writ petition. The State feeling aggrieved has come up in appeal before us by way of instant appeal.

7. Having heard learned counsel for the parties and perused the record, we are of the view that the order of writ Court does not call for any interference. It is not disputed before us that the respondents herein and the writ petitioners in SWP No.2047/2003 are similarly situated and were appointed as Draftsmen post issuance of the Rules of 1992. As per Rule 9(f) of the rules of the Rules of 1992, they were all entitled to be placed in the lower pay scale, but, on account of intervention made by this Court in SWP No.2047/2003, the writ petitioners of aforesaid writ petition were held entitled to be placed in the higher pay scale. The order passed in the aforesaid writ petition was challenged by the State before the Division Bench of this Court and then leave to file appeal was also filed before the Hon'ble Supreme Court. The State failed and implemented the directions of the writ Court. Though the directions issued by the writ Court in SWP No.2047/2003, disposed of on 21.11.2008, were directions in personam, but, the net impact and effect of the directions was to place the Draftsmen appointed post issuance of the Rules of 1992 in the higher pay scale, contrary stipulation in the rules, notwithstanding. Once the Government implemented the directions passed by the writ Court, upheld to the level of Supreme Court and granted higher pay scale to the writ petitioners of aforesaid writ petition, there was no reason or justification to deny the same relief to the respondents and similarly other Draftsmen appointed post issuance of the Rules of 1992. Ideally, the State should have amended the rules and granted the higher pay scale to all Draftsmen across the board but it chose not to do so and, thus, invited unnecessary litigation.

8. Be that as it is, on careful perusal of the judgment impugned and going through the records, we do not find any infirmity in the order impugned. As a result, the appeal fails and the same is, accordingly, dismissed.