

(2011) 05 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2073/09

Sushma Gupta and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 2 JKJ 624

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—Petitioners are aggrieved of order dt. 17th of Aug'09, passed by Respondent No. 2, whereby their claim for salary has been rejected.

2. Petitioners were the employees of erstwhile Milk Federation, Jammu, working against the posts of Accounts Assistant and Computer Operator

respectively. After the winding up of the aforementioned Milk Federation, its employees were absorbed in other departments of the State in

pursuance to a Cabinet decision No. 68/05 dt. 13th of Feb'04. As the Petitioners were not given the said benefit and were also not paid the salary,

they filed a writ petition bearing SWP No. 598/2005. During the pendency of the aforementioned petition, the Petitioners were also absorbed and

paid their salary from Dec'02 to Nov'04. Regarding unpaid salary, the Petitioners filed representations before the authority concerned. Meanwhile,

vide order dt. 16th of May'08, the aforementioned writ petition filed by the Petitioners came to be disposed of by this Court with a direction to the

Respondents therein for considering the case of the Petitioners for release of

unpaid salary in their favour on the analogy of similarly situated employees.

3. In compliance to the aforementioned order passed by this Court, the Respondents have passed order dt. 17th of Aug'09, rejecting the claim of the Petitioners. It is this order which is subject matter of challenge in the present petition.

4. The grievance of the Petitioners is that during the intervening period for which they have not been paid their salary, they worked with

Respondent No. 4, regaining which necessary information was not given to Respondent No. 2, by Respondent No. 3, which led to the rejection of

their claim for payment of the salary. It is asserted that the ground taken in the order impugned for rejecting the claim was one of the objection

raised by the Respondents before this Court in writ petition, SWP No. 598/2005, which was decided by order dt. 16th of May'08. The said

objection was not accepted by this Court while passing the aforementioned order and, as such, the order impugned now passed by the

Respondents on the same ground is in violation of the directions already issued by this Court. It is stated that till the permanent absorption of the

Petitioner in other department in pursuance to the Cabinet decision, referred to above, they remained continuously working with the Respondent

No. 4, who had communicated this fact to Respondent Nos. 2 and 3, and also requested them to release the unpaid salary of the Petitioners but

the said aspect of the matter was not taken into consideration by the authority concerned who has passed the order impugned.

5. It is further contended that the order dt. 1st of Feb'08, of which reference is made by the Respondents while passing the order impugned was

passed prior to the passing of the judgment dt. 16th of May'08, referred to above, and therefore, no reliance can be placed by the Respondents on

order dt. 1st of Feb'08, regarding conveying their decision to the Petitioners that they are neither borne on the establishment of the department nor

having worked in the department from Dec'04, onwards. It is, thus, stated that the Respondents without taking note of the facts and circumstances

of the case as also the judgment of this Court referred to above, have passed the order impugned rejecting the claim of the Petitioners illegally.

6. On notice, Respondents 1 to 3 have filed objections stating therein that on

winding up of the Milk Federation, Jammu, a decision was taken by the Government to adjust its employees in other departments on lower posts due to non availability of the respective posts against which they were working in the erstwhile Milk Federation. This having not been accepted by the employees, cases of those who had given their option in this regard were submitted to the Administrative department. Thereafter orders of their adjustment in other departments as per their option were passed. Petitioners, however, had not submitted their options which led to their non absorption in other Government departments. However, later on, their absorption was also made and they were paid their dues of salary from Dec'02 to Nov'04, as a decision in this regard was taken by the Administrative department that salary of such employees be drawn for the above period only.

7. The further contention raised is that since the Petitioners were neither borne on the establishment of the Respondent department nor have worked in any other government department from Dec'04 onwards, they are not entitled to any salary for the period they have not performed any duty. It is stated that in compliance to the judgment passed by this Court dt. 16th of May'08 in SWP No. 598/05, the Respondents have considered the matter regarding payment of salary to the Petitioners and found them not entitled to the said benefit.

8. Heard learned Counsel for the parties.

9. Petition admitted.

10. It be seen that in the present case, the Petitioners had earlier preferred writ petition bearing SWP No. 598/05, which was disposed of vide order dt. 16th of May'08. The Respondents were directed to consider the case of the Petitioners for release of their salary on the analogy of similarly situated persons. It is in compliance to the aforementioned order passed by this Court that the Respondents after consideration of the case of the Petitioners have rejected their claim vide order impugned.

11. The Petitioners in the present case, have categorically stated that they had been working with Respondent No. 4 till their permanent absorption and the said Respondent had also recommended their case to the authority concerned for payment of unpaid salary for the period they remained attached with the office of Respondent No. 4. The Respondents have not denied

this fact in their objections. A perusal of Annexure A with the writ petition shows that Respondent No. 4 vide its communication dt. 27th of Aug'07, has informed the Respondent No. 3-Director, Animal Husbandry, regarding the pending liabilities on the part of the department towards the Petitioners in respect of their unpaid salary for the period they have worked with the said Respondent. The Respondent No. 4, in the above communication has mentioned this period as 1st of Dec'04 to 26th of April'07. The Respondents, as indicated above, while passing the order impugned have not taken the above aspect of the matter into consideration.

12. For the reasons mentioned above, this petition is allowed. Order impugned dt. 17th of Aug'09, is quashed. The Respondents are directed to accord consideration to the claim of the Petitioners for payment of their salary due to them for the period they have actually performed their duties after December'04. While according the said consideration, the Respondents, shall take note of communication dt. 27th of Aug'08, issued by the office of Respondent No. 4 to Respondent No. 3. Let this consideration be done and appropriate orders passed within a period of two months from the date, a copy of this order is made available to the Respondents by the Petitioners.

Disposed of accordingly.