

(2005) 11 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1986/2001

Syed Mushtaq Ahmed

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 19-11-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2006) SriLJ 290 : (2006) 1 SriLJ 290

Hon'ble Judges : Bashir Ahmed Kirmani, J

Bench : Single Bench

Advocate : M.I.Dar, M.A.Beigh , Advocates appearing for the Parties

Judgement

1. Objections already filed on behalf of respondents have been treated as counter and petitioner's counsel states that he does not intend to file a

rejoinder thereto. With agreement of counsel therefore the matter is heard and taken up for final disposal.

2. Admitting to have been regularized vide Government Order No. 197 of 2000 dated : 02.12.2000 after putting in seven years as Daily Wager

the petitioner maintains that the regularisation effected should in terms of certain judgments of the court read with SRO 64 of 1994 have been given

effect from 1997 when he completed seven years as Daily Wager. In reply, the respondents have pleaded that due to non availability of a post at

the relevant time petitioner's regularisation could not be given retrospective effect as claimed. Thus, the controversy is limited to the date of giving

effect to order of regularisation.

3. On consideration, I find that the question of giving effect to regularisation under SRO 64 of 1994 stands already settled by an authoritative

judgment of this court in "" State of JandK and Ors V. Mahraj Krishan Bhat and Ors"" reported as 2004(2) SLJ 612, wherein it has been laid

down; that regularisation in terms of aforesaid SRO could be effected only against an available post, because under rules the appointments are

required to be made in regular pay scale, and if no posts are available or sanctioned or created by competent authority there can be no valid

appointment. In the instant case, the regularisation has been given effect from the date of issuance of Govt. Order No. 197 of 2000 dated:

02.12.2000. Nothing has been pleaded by petitioner to suggest, muchless to show or substantiate, that, prior to that, regular posts were available

with the concerned department against which petitioner's appointment could or should have been regularised. That being so, petitioner's prayer for

giving retrospective effect to his regularisation appears to be unsubstantiated.

4. At the same time however, the question of retrospective effect stated to have been given to regularisation of respondent No. 6 with whom

petitioner claims parity on the ground that he was similarly situated with him, can not be left unanswered. So the petition is disposed of with the

observation that if respondent No. 6 is found to have been lawfully regularised as claimed, and petitioner's claim of parity with him in all respects is

found to be correct, then respondents may, consider petitioner's claim at par with hand, and while doing so, if necessary, provide him opportunity

to substantiate his parity claim as such.

5. Matter stands accordingly, disposed of along with all connected CMP(s).