
(2020) 03 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Contempt Petition No. 18 Of 2018, Miscellaneous Civil Cases No. 109 Of 2019, CM No. 202 Of 2019

Tara Singh And Others

APPELLANT

Vs

B.B. Vyas, Chief Secretary And Others

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 15

Citation : (2020) 03 J&K CK 0003

Hon'ble Judges : Rajesh Bindal, J; Sindhu Sharma, J

Bench : Division Bench

Advocate : P.N. Raina, B. S. Jamwal, J. A. Hamal, Soonam Dorjay, K. D. S. Kotwal

Final Decision : Disposed Of

Judgement

RAJESH BINDAL, J

1. This order will dispose of CPLPA No. 18/2018 and MCC No.109/2019 filed in LPASW No. 44/2016 by the State.

2. Before noticing the arguments raised by the learned counsels for the parties and also dealing with the two matters listed before the court, we deem

it appropriate to notice the facts.

3. The petitioners in the contempt petition were the employees of Co-operative Societies which were wound up in the year 1990 on account of

embezzlement/mismanagement and misdeeds by the management of the societies. Some of the employees of the societies filed SWP Nos. 1648 &

1371 of 1998 claiming parity in treatment as was given to the employees of Rural Electric Co-operative Society, Samba. It was pertaining to

engagement of the wound up co-operative societies in the government

departments. The aforesaid writ petitions were disposed of on 31.05.2001 with the following directions:

â??â??.(iii) That the State Government would also consider the claims of the petitioners in the same way as has been done in the case of employees of Rural Electric Cooperative Society, Samba, and would accord same treatment to the petitioners;â??.â??

4. When the State in compliance to the aforesaid order rejected the claim of the petitioners therein vide order dated 19.12.2002, the same was subject matter of challenge in SWP No.1691/2004. The aforesaid writ petition came up for final disposal before the learned Single Judge of this court and the same along with two petitions bearing SWP Nos.1963/2001 & 1786/2004 were dismissed vide judgment dated 01.02.2016. The operative part of the order passed by the learned Single Judge reads as under:

â??35. In the present case, the right of absorption, contrary to rules, is not a fundamental right much less a legal or a statutory right. What has been highlighted in the present case is only the fact that the petitioners were similarly situate as the employees of RECS, Samba, who had been absorbed in the Government Service. Equality, it has been held, is a positive concept which cannot be invoked in a manner which would have the effect of defeating Articles 14 and 15 of the Constitution as regards those who despite being eligible, but not being parties to these selections would be affected.

36. In my view, therefore, the petitioners would not have any right to seek a mandamus to the respondent State to absorb them in the State Service contrary to rules or the spirit of the Constitution.â??

5. The aforesaid judgment was subject matter of challenge in LPASW No. 44/2016. The same was allowed on 27.04.2017 along with two other appeals bearing LPASW Nos. 64 & 65/2016. The direction was in the following terms:

â??10. In these circumstances, the impugned judgment cannot be sustained and the respondents are directed to comply with the earlier directions dated 31.05.2001, to which we have referred above, in letter and spirit within a period of six months from today.â??

6. It was in tune with the direction issued by the learned Single Judge of this court in first round of litigation. In fact the same was reiterated to be complied with.

7. Two matters before this court are off-shoot from the aforesaid judgment of the Division Bench of this court. One is a Contempt Petition filed by the petitioners alleging non-compliance of the judgment. Whereas another one is an application filed by the State seeking clarification of the order dated

27.04.2017. It is in light of the fact that against the order passed by the Division Bench of this court on 27.04.2017, Special Leave Petition (Civil)

Diary No(s). 38750/2017 titled "The State of Jammu and Kashmir and others v. Tara Singh and others" was filed by the State before Hon'ble the

Supreme Court. The same was disposed of on 28.09.2018 by passing the following order:

"Learned counsel for the petitioners seeks permission to withdraw this petition with liberty to seek clarification of the impugned order from the

High Court.

Permission is granted.

The special leave petition is, accordingly, dismissed as withdrawn with the aforesaid liberty."

ARGUMENTS ON BEHALF OF STATE

8. While pressing the prayer made in the application seeking clarification of the order, Mr. Kotwal, learned Dy. AG submitted that way-back in the

year 1990, certain co-operative societies were wound up on account of embezzlement and mismanagement. No doubt, employees of some of the

societies were absorbed but it was immediately thereafter. The facts in those cases were different. In the case of the petitioners, it will not be possible

to absorb them in any government employment at this stage for the reason that they have already attained the age of superannuation. The aforesaid

fact could not be brought to the notice of the Division Bench when the matters were heard and decided on 27.04.2017. Otherwise, the learned Single

Judge had dismissed the writ petitions filed, finding the claim of the petitioners to be not tenable. In the SLP filed against the judgment of the Division

Bench, Hon'ble the Supreme Court had granted liberty to the State to file application for clarification. This is an important fact as the petitioners

herein are seeking entry into government service at a time when they have already attained the age of superannuation and are seeking all the benefits

without working even for a single day. Public exchequer cannot be wasted in the manner sought to be suggested by the petitioners.

9. He further argued that as per the direction issued by the learned Single Judge in SWP No.1963/2001, the cases of the petitioners were to be considered. It was not a mandate to grant them relief. The court had in fact not finally opined on that. In any case, the employees of the erstwhile wound up cooperative societies, who were engaged were having some technical qualifications, hence, were adjusted in the Public Development Department. To claim any relief a party before the court has to make out a positive case and not merely claim parity. There cannot be negative discrimination. He further submitted that there was no policy of the government to absorb employees of any wound up cooperative societies which could confer any right on the petitioners to be enforced in court. In the light of the aforesaid argument, the prayer was that the order passed by learned Division Bench on 27.04.2017 be clarified to the extent that the petitioners are not entitled to any relief, while upholding the judgment of the learned Single Judge dated 01.02.2016

ARGUMENTS ON BEHALF OF THE PETITIONERS

10. In response, Mr. P. N. Raina, learned Senior Counsel for the petitioners submitted that the applicant/State is trying to address the arguments in the application seeking clarification of the order as if it is an appeal against the order. Clarification can be sought only on some typographical error which is apparent on the face of record. Re-arguments are not permitted. Hon'ble the Supreme Court had allowed the State to withdraw the SLP only for filing application for clarification not even to file review. The arguments being addressed are directly on the merits of the controversy which cannot be entertained. Hence, the application deserved to be dismissed.

11. As far as the contempt petition is concerned, it was submitted that the order passed by the Division Bench of this court on 27.04.2017 is crystal clear that the petitioners have to be granted parity in terms of the employees of Rural Electric Cooperative Society, Samba who were engaged by the State after winding up of the society they were working in. The direction is plain and simple. Once those employees were engaged by the State, the petitioners also deserve the same treatment. The order having been passed about three years back, the State has committed clear contempt of this court while not implementing the same till date despite seeking adjournment after adjournment. Even the application seeking clarification was also filed

much after the liberty was granted by the Supreme Court. He further referred to judgments of the Srinagar Bench of this Court whereby direction

was issued for engagement of the employees of the erstwhile cooperative societies which were wound up. Reliance was placed on judgment of this

court in State of J&K and others v. Gh. Ahmad Reshi and others, 2014 (5) JKJ 478[HC].

ARGUMENTS OF RESPONDENTS IN CONTEMPT PETITION

12. In response, learned counsel for the respondents in the contempt petition submitted that at this stage no effective relief can be granted to the

petitioners for the reason that they have already attained the age of superannuation. They cannot be permitted to enter in service at this stage when

even the date of retirement has also crossed. State exchequer cannot be burdened with undue liabilities. It would amount to unjust enrichment to the

petitioners. They may be gainfully employed during this period as no one sits idle as he has to take care of his family. The prayer is for dismissal of the

Contempt Petition.

13. Heard learned counsels for the parties and perused the relevant referred record.

14. The case has a chequered history originating from the year 1990. Meaning thereby more than three decades have passed. The petitioners were

employees of the cooperative societies which were wound up in the year 1990 on account of embezzlement and mismanagement, as was pointed out

at the time of hearing, SWP No.1648/1998 was filed in this court claiming multiple reliefs. The same was disposed of on 31.05.2001 with a direction to

consider the cases of the petitioners in the light of decision taken for the employees of the Rural Electric Cooperative Society, Samba. The direction

has already been reproduced in Para No. 3 above. The cases of the petitioners were considered by the competent authority and the same were

rejected vide order dated 19.12.2002. The same was subject matter of challenge in SWP No. 1691/2004. The aforesaid writ petition along with two

other writ petitions bearing SWP Nos.1963/01 & 1786/2004 were dismissed by the learned Single Judge on 01.02.2016.

15. At the time of hearing, none of the counsels pointed out that there was any policy framed by the State for engagement of the employees of the

wound up cooperative societies in government department. There is no reference

to any such policy either in the order passed by the learned Single Judge dismissing the writ petition or by the Division Bench, whereby the appeals filed against the order passed by the learned Single Judge were allowed. All what has been stated in the order passed by the learned Division Bench is that the direction issued by the learned Single Judge in the earlier round of litigation on 31.05.2001 were positive and those should be complied with. The entire claim was on the basis of the parity.

16. There were three appeals decided by the Division Bench bearing LPA Nos.44, 64 & 65/2016 decided on 27.04.2017. CPLPA No. 18/2018 filed in LPASW No.44/2016 is listed. It was not pointed out by the learned counsel for the State as to whether there was any Contempt Petition filed in the case of other two appeals.

CONDUCT OF THE STATE

17. As if it is a Standard Operating Procedure (SOP) in Jammu and Kashmir that litigation is not to be taken seriously by the officers of the departments concerned, at any stage; either at the time when the cases are filed or when the objections/replies are to be filed or at the stage when the orders are to be complied with and further at the stage when any of the order is required to be challenged. All the cases are dealt with casually. In the court no one is present from the litigating department to assist the State counsel to give upto date instructions. In complying with the orders passed by the court also government had been selective. In many of the cases which have come before the court, it has been noticed that orders passed by one bench in the case of similarly placed employees are complied with whereas identical orders passed by the other bench are not complied with and those are pushed in litigation. To avoid different judgments on the same issue pending before two benches of the High Court, the State never made an effort to apprise the court so that the cases pending in both the benches can be taken up together and disposed of at the same time. This puts a severe dent on the public trust and confidence in the system. Glaring examples of some lapses have come before the court. Information is not furnished despite repeated requests by the court. The only possible conclusion can be that someone is interested in delaying the processes in the court or having different decisions in similar matters listed before two benches. Another glaring aspect is that even the decision on the similar issue taken by one

bench is not brought to the notice of the court when the matter is taken up by the other bench of the High Court. It is the duty of the State counsels.

Drastic corrective steps are required to be taken by the State in monitoring the litigation.

THE CASE IN HAND

18. Now coming to the conduct of the officials in the case in hand. Against the order passed by the learned Single Judge dated 31.05.2001, LPA No.

D-8/2002 was filed. On 15.11.2002, Division Bench of this court directed that in case the objections are not removed within a period of one week, the

matter shall stand dismissed for non-prosecution. The needful was not done. Hence, the appeal which remained in defect was consigned to record. It

is not the case in isolation where the conduct of the government departments in the cases decided against them is impersonal. Apparently they work

as if it is an obligation to discharge their official duties for which they are paid and the second conclusion can be connivance. This all is possible

because there is no monitoring of litigation and accountability.

19. Now coming to the facts of the case in hand, the societies in which the petitioners were working were wound up way-back in the year 1990 on

account of mismanagement and embezzlement. Under which policy, employees of some of the societies were engaged in the government service is

not forthcoming on record, as none of the counsels pointed out the same. The erstwhile State had been selective in giving appointments is not a secret.

There were more back door than the front door, which normally remained closed. In the case in hand as well, without there being any policy, at least

brought to the notice of the court, some of the employees from the cooperative societies which were wound up on allegations of embezzlement and

mismanagement, were engaged in government departments. The petitioners are in litigation for the last more than two decades. The other employees

were adjusted in 1990s as no specific date as such has been pointed out. In the case in hand, the fact remains that all the employees have now

attained the age of superannuation and they are seeking their entry into service by engagement in any government department and that too from back

date when the other employees were absorbed. The factum of the petitioners having attained the age of superannuation was not brought to the notice

of Division Bench, when the appeals were allowed. This certainly was a material

fact in a case where the petitioners were claiming entry into service.

The consequential effect of the same, which the petitioners would claim is the salary and thereafter the retiral benefits. That too without working even

for a single day, which cannot be granted to the petitioners. At this stage the petitioners cannot be granted any relief.

20. The contempt petition as well as the application are disposed of accordingly.