

(2010) 02 J&K CK 0027
In the Jammu And Kashmir High Court
Case No : Swp. No. 259 of 2004

Tariq Ahmed Shah and Others	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 1 JKJ 47

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, Judge

1. Petitioners came to be appointed as Technician-III/electricians in respondents' department after undergoing through proper selection process

which was initiated in terms of advertisement Notice No. 06/1997 dated 01.07.1997. Petitioners after their appointment claimed benefits given by

rules called Jammu and Kashmir Civil Services (revised pay) Rules 1973, (for short rules of 1973). Service writ petition No. 1514/02 filed by the

petitioners was disposed of without notice to respondents by order dated 12th Dec. 2002, calling upon the respondents to examine the claim(s)

put-forth by the petitioners in the writ petition and to take a reasonable decision within three months from the date of the receipt of copy of the

judgment as also of the writ petition.

2. Respondents considered the claim of the petitioners and vide order No.DC/PD/Adm-iv/302 of 2003 dated 20th Oct. 2003 rejected the claim

of the petitioners. The petitioners being aggrieved of the said order have

challenged the same in this writ petition.

3. Respondents have filed objections in which it is stated that petitioners having been appointed after 1981 they are not entitled to any benefit

which was available in terms of rules of 1973. Reference is also made to some judgment(s) passed by the court on the same subject matter. A

specific stand is taken by respondents in the objections that the rules of 1973 notified vide SRO 149 of 1973 stand repealed vide SRO 381 of

1981, thus no benefit can be extended to the petitioners in pursuance of the rules which are non-existent.

4. Petitioners have also filed supplementary affidavit wherein some government orders have been placed on the record, which orders have been

passed in the year 2006 and 2008 allowing benefit of higher pay scale which was provided in terms of rules of 1973 to the 1TI trained

workers/employees.

5. Heard Id counsel for the petitioners. Considered the matter. Id counsel for the petitioners vehemently argued that the benefit provided to the

skilled workers (ITI trained workers) in terms of rules of 1973 has been wrongly denied to the petitioners, as in the submission of the Id counsel

for the petitioners, government has even after denial of the said benefit to the petitioners extended benefit to scores of employees working in many

other departments of the State government. The Id counsel submitted that as the benefits are given to similarly circumstanced persons denial thereof

to the petitioners not only works harsh against their service rights, but tantamounts to subjecting the petitioners to invidious discrimination which

cannot be countenanced in law in view of the guarantees enshrined in Article 14 and 16 of the Constitution of India as applicable to the State of

J&K. Id counsel thus submitted that the stand taken by respondents is incongruous to what they have been doing in practice.

6. The rules of 1973 were notified vide SRO 149 dated 7th April 1973. In schedule (c) of the said rules classification has been made between

skilled and unskilled workers and the employees who would be covered by the definition of skilled Workers and were ITI trained, were given pay

scale different to those of unskilled workers. This benefit remained in force until such time the subsequent revised pay rules as also Recruitment

Rules of the service were notified.

7. A person who is appointed to government service, though his initial appointment originates in contract, but after his appointment, he attains the status and his services thereafter are governed by the statutory rules occupying the field. The employee is entitled to all the benefits which are available to him under the rules occupying the field.

8. Admittedly the petitioners have been appointed in pursuance to the advertisement notification No.06/1997. There is no dispute that rules of 1973 and 1981 were not in force at the time of appointment of petitioners into service. The petitioners would be thus entitled to benefits and rights which would be available to them on the basis of rules occupying the field at the time of their appointment. Petitioners are appointed as Technician-III/electrician, and are admittedly appointed in the pay scale available at that point of time. The Recruitment Rules governing the service conditions of the petitioners are to be followed.

9. Petitioners cannot project the grievance on the plea that they are entitled to pay scale which was available under rules of 1973. Petitioners were not born in service at that point of time. The subsequent revised pay rules and Recruitment Rules did not extend the benefit available in terms of rules of 1973. The petitioners thus would not be entitled to any benefit with the rules of 1973 provided. The claim of the petitioners has been rightly rejected by the respondents.

10. The grievance of the petitioners is that even after the rejection of the claim of the petitioners and even after filing of the objections, the state authorities have extended the benefit available in terms of rules of 1973 (since repealed) to many employees of the different departments. The Id counsel has placed on record evidence in the shape of orders passed by authorities to support his contention. The Id counsel thus submitted that the petitioners have been subjected to hostile discrimination by not giving them the same treatment.

11. The Constitutional Provisions as contained in Article 14 and 16 of Constitution of India cannot be implored to achieve the negative ends. If an authority commits mistake either intentionally or otherwise and extends the benefit to some employees which benefit cannot be extended in law, it is an illegal act committed by the authority and no person can derive any benefit from such illegal act. The laws are made and institutions created to

maintain and preserve the moral fabric of the society. Laws cannot be pressed in to service in the courts of law to achieve negative goals. What is not permissible in law cannot be given by the courts of law.

12. In an identical situation a Division Bench in LPA No. 379/99 negated the contention of the appellants therein. The appellants therein had

sought like benefits which petitioners herein are seeking, on the ground that rules of 1973 would entitle them to get the said benefits as also on the

ground of equal pay for equal work. The Hon'ble D.B negated both the contentions raised in the writ petition and LPA. This case is squarely

covered by judgment of the D.B passed in LPA No. 379/99 copy whereof is available on the record of the writ petition.

13. This case being meritless, is accordingly dismissed along with all connected CMPs.