

(2010) 01 J&K CK 0007
In the Jammu And Kashmir High Court

Tarseem Singh Chib and Others

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 01-01-2010

Acts Referred:

Citation : (2010) 1 JKJ 113

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—Vide Advertisement Notice No. 3 of 1997 dated 20.4.1997, applications were invited for appointment of Junior

Environment Engineers in the J & K State Pollution Control Board. The grade of the Junior Engineers (Environmental) in the advertisement notice

was reflected as Rs. 1760-3200 (revised to Rs. 5700-10100). The selection process was initiated and the petitioners along with other candidates

were subjected to selection/interview. The selection list came to be issued by the respondent-J & K Service Selection Board. Thereafter,

respondent No. 4 J & K State Pollution Control Board issued an appointment orders in respect of the petitioners. In the appointment orders it was

revealed that the petitioners have been appointed in the grade of Rs. 4500-125-7000 instead of Rs. 5700-10100/-.

2. Feeling aggrieved of this, petitioners have filed the instant writ petition praying therein that respondents be directed to grant the petitioners the

grade of Rs. 1760-3200(revised Rs. 5700-10100) from the date of their appointment.

3. It is not in dispute that the Advertisement Notice reflects the grade of Junior

Engineer (Environmental) as Rs. 1760-3200 (Revised 5700-10100). Their appointments in lower grade i.e. Rs. 4500-7000 has been done by invoking SRO18 of 1998 which provides grade of Rs.

4500-7000 to the Junior Engineers working in the other government departments. Petitioners thus claim that:

a/ That the post of Junior Engineers(Environmental) in the J & K State Pollution Control Board are plan posts and the budgetary allocation for the

said posts is fixed at Rs. 5700-10100/- (which is the revised grade of Rs. 1760-3200). The Board has been claiming the salary/grade for the said

post at the rate of Rs. 5700-10100/-.

b/ That the Advertisement Notice itself provided the grade against which petitioners were required to be appointed and the SRO 18 of 1997 is not

applicable to them.

4. On the other hand stand of the respondents is that posts were referred to the Recruitment Board for selection. It is further stated that the

Government issued (Revised pay) Rules 1998 wherein Rule 15(g) of the said rules provides that all the Junior Engineers, presently in the pay scale

of Rs. 1760-3200/- are to be placed in the revised pay scale of Rs. 5700-10100/-. It is further stated that fresh recruitment to the posts of Junior

Engineers (both Diploma and Degree Holders) are to be made in the pay grade of Rs. 4500-7000/- and they will be placed in the revised pay

scale of Rs. 5700-10100/- after putting in 8 years of service in the former scale. This being the position the petitioners are not entitled for the

higher grade.

I have heard learned Counsel for the parties.

5. The contention of learned Counsel for the petitioners is that even though their selection was made by the Recruitment Board, but by way of

allocation for the said posts grade is fixed @ Rs. 4500-7000/-. This salary/grade for the said posts @ Rs. 5700-10100/- is being received in the

Pollution Control Board. It is also admitted that advertisement notice indicates that the salary of the petitioners would be Rs. 1760-3200/-

(Revised 5700-10100). In the light of the objections filed by the respondents, that the petitioners in terms of SRO 18 of 1998 are to be initially

placed in the grade of Rs. 4500-7000/- and are entitled to the grade of Rs. 5700-10100/- after completion of eight years of service is required to

be examined.

6. The right course for the respondents was to appoint all the Junior Engineers in the lower grade of Rs. 4500-7000/-. This issue has been

considered by me in SWP 2043/2003 titled Sham Paul Randhawa and Ors. v. State and Ors. Similar question for determination arised in the said

petition and after hearing the parties the following observation was made:

The right course for the respondents, was to appoint all the Draftsmen at lower grade i.e. Rs. 4000-6000 (pre-revised) as per the mandate of

SRO 18. This seems to have not been done by them uniformly. In case of petitioners, the rigor of this rule has been applied strictly whereas in case

of petitioners mentioned hereinabove, they have been permitted to be appointed against the higher grade. The effect of this selective application has

only perpetuated an illegality. Mr. Sethi, learned Counsel for the petitioners conceded this position in law, he however, states that the State by

implication, relaxed this condition of SRO 18 and allowed some persons to be appointed directly in the higher grade. He has also brought to the

notice of the court that various judgments have been passed by me co-ordinate bench of this Court, which are part of the writ petitions. Reliance

has been placed on judgment dated 21-5-2005 passed in Rev. LPA (SW) No. 81/99. The Division Bench of this Court while disposing of the

aforesaid Rev(LPA), passed the following directions.

This review petition is disposed of with a direction to respondents to consider the issue and decision be taken in accordance with law. Fact that

State Government has implemented the decision given by this Court in Roshan Din Chowdhary's case on 9.4.2002 copy whereof is retained on the

file as annexure C/1 would be taken note of while considering the claims of the appellants. Let claim of the appellants be considered within a

period of three months from the date copy of the order passed by this Court along with copy of the judgment given by this Court in Roshan Din

Chowdhary's case and Ors. material on which reliance is being placed are made available by the appellants to the respondents.

7. The aforesaid judgments of the court has been implemented by the respondents vide Government Order No. 58 PW(R&B) dated 13.06.2003,

the relevant portion of which, is reproduced as under:

Now, therefore, in compliance of orders passed by Hon'ble High Court in Rev

(LPA) SW 81/99 titled Manohar Singh and Ors. v. State and Ors.

and SWP No. 1300/1996 dated 5.11.1999 read with CMP SW No. 98-D/99 dated 7.3.2000 titled Roshan Din Choudhary v. State and Ors.

Sanction is accorded to the placement of 46 (Forty Six) Draftsmen (petitioners) in REV (LPA) SW No. 81/99 titled Manohar Singh and Ors. v.

State and Ors. Who were appointed as draftsmen vide Gov. Order Nos. 381-PW of 1999 dated 11.9.1999. 52-PW of 1995 dated 2.2.1995.

136-PW of 1995 dated 13.3.1995 and 602-PW of 1995 dated 19.10.1995 and where names are indicated in Annexure ""A"" appended to this

order in the pay scale of 1600-2660(pre-revised) in place of 1200-2040(pre-revised) subject to the terms and conditions as envisaged in the

above mentioned Court Orders.

By Order of Govt. of Jammu & Kashmir.

8. In the face of these facts, it seems that the State has implemented the aforesaid judgment of the court and given the benefit to the persons who

claimed higher grade at the entry level. On the other hand, contentions raised by Mr. Vinod Bakshi states that petitioner-5 has been given benefit

of higher grade only after the completion of eight years.

9. For what has been stated hereinabove, it is manifest that once the State Government has complied the direction of the court in various

judgments, where similar question of law were raised, the petitioners also claimed that they are also entitled to the same benefit, even though the

State Government has granted this benefit to the similarly situated persons without amending the aforesaid SRO. But it has to be assumed in law

and by implication that the power has been exercised by the State Government by relaxing this condition in the SRO. To put it straight, the State

Government after relaxing the aforesaid condition, have permitted the persons to be appointed directly in higher grade and not in the lower grade at

the entry level. The same power is also required to be exercised by the State in the present writ petition.

10. I, therefore, direct the respondents to pass appropriate orders placing the petitioners in higher grade initially from the date of their appointments

as Junior Environmental Engineers instead of the lower grade to which they have been appointed and consequently they be also given all the

consequential benefits including monetary benefits. Let this exercise be Complete

within a period of three months from the date copy of this order is received by the respondents.

11. Petition allowed along with connected CMP(s), if any.