(1997) 09 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 227/96

Union of India APPELLANT

Vs

Manzoor Ahmad Shah RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (1998) SriLJ 41

Hon'ble Judges : Bhawani Singh, C.J and M.Y.Kawoosa, J

Bench : Division Bench

Advocate : N.A.Beigh , M.M.Hussain , Advocates appearing for the Parties

Judgement

Kawoosa, J.—This Letters Patent Appeal No. 227/ 96 is directed against the judgment of learned Single Judge passed in SWP No. 584/91

titled ""Manzoor Ahmad Shah and others Vs. Union of India and others"" dated 22.8.1996. By virtue of this judgment, the writ court has allowed

the writ petition filed by the respondents and has issued a writ of mandamus directing the present appellants to give the same treatment to the

present respondents from 27.3.1990 as has been given to the similarly situated employees of other Departments working under the Central

Government in the Valley.

2. Briefly put, the facts giving rise to the writ petition are that the petitioners are employees of Handicrafts Department, a unit of Central

Government working under the Ministry of Textiles. It is averred that the other sister Departments working under different Ministries of the Central

Government in Kashmir Valley, namely, Posts and Telegraphs, Ministry of Telecommunication, Ministry of Finance have been given certain perks by the Central Government. Admittedly, the valley is passing through abnormal situation due to militancy and especially in 1990 militancy was at its

peak. It was very difficult for the employees of the Government to come to offices and to run the administration. So the Ministry of

Telecommunication, Ministry of Finance and Ministry of Posts and Telegraphs etc. passed orders that the employees, who were deployed in the

militancy hit valley, had opted to serve in the Valley and were not willing to move their families to a declared place of residence outside the valley,

were given a perdiem allowance of Rs. 10/ for each day of attendance to compensate them for any additional expenses on transport to and from

they were incurring in coming to their offices. The above orders were to take effect from 27th March, 1990. This order was made applicable in the

first instance for six months. On the basis of this order, employees of certain departments of the Central Government were allowed to receive

Rs.10/ as perdiem.

3. The respondents, who are employees of the Handicrafts Department, were denied this incentive notwithstanding they too choiced not to remove

their families from the Valley and have been performing the duties in the Valley like others in the same circumstances. Appellants, who were

respondents before the writcourt, filed their counter and resisted this demand on the ground that this incentive was allowed only to those

employees whose services were declared essential and important services. According to the appellants, the incentive was not given to all the

employees of all the Departments of Central Government. However, the plea taken by the appellants did not find favour with the learned Single

Judge who allowed the writ petition on the ground that all the employees of the Central or State Government are working in the militancy hit State

in similar circumstances, so the petitioners also are entitled to such incentive. Hence this appeal.

4. Heard learned counsel for the parties in detail and considered the arguments advanced. The record produced by the appellants were also

perused.

5. The main argument of learned counsel for the appellants is that proper classification of employees was made by the Central Government before

sanctioning the incentive in the nature of perdiem at the rate of Rs. 10/. Central

Government sanctioned this incentive only to the employees who

belong to the essential and other important service Order dated 28 August, 1991 issued by the Ministry of Finance, which forms annexure 'A4' to

the LPA, has been referred to in this behalf. Learned Counsel for the appellants has vehemently argued that Telecommunication Department

belongs to essential services, so the incentive was sanctioned in favour of the employees of that Department. Much of the time was spent by

learned counsel for appellants to justify the classification and he tried to convince us that the essential service form a separate group, therefore, it is

valid in law, and the employees of essential services cannot be equated with other department like the department to which the petitioners belong.

He has cited law on the point to justify that the classification on the basis of essential services is in accordance with Article 14 of the Constitution. It

was contended that the Handicrafts Department is not an essential service, so the employees of the department are not entitled to such incentive,

6. Secondly, it was argued by him that, the employees of other departments are governed by their respective Ministries. Ministry of Textiles has,

after considering the matter of the petitioners, declined to extend this facility to its employees. He has referred to Annexure 'A2' which is a letter

written by Additional Development Commissioner, Handicrafts, Mr. K.S.Mehra to Shri S.S. Sharma, Regional Director, Northern Region, Office

of the DC Handicrafts, New Delhi dated 2.12.1994. Relevant portions of this letter are extracted below:

The Cabinet Secretary, Government of India vide D.O.Letter No. 12013/10/90K dated 14.5.1991 had issued instructions for providing

concessions/facilities to the Central Government employees working in the Kashmir Valley for maintenance of essential and important services.

These concessions include special incentives like payment of additional HRA, daily allowance, messing facilities, transportation subsidies, etc. In

pursuance of instructions from the Cabinet Secretary, some of the Central Government offices functioning in the Kashmir Valley had considered

giving concessions to their staff. The Department of Personnel vide the D.O.Letter No. 18016/5/90Estt. (L) dated 12th April, 1990 had circulated

instructions to various Secretaries/head of Department having presence in the Kashmir Valley; the intention being that in case they would like to apply these orders to their offices in Kashmir Valley they could come up to the Finance Ministry for necessary approval. It, therefore, appears

from this that the instructions of the Government of India were applicable at discretion depending on whether the services were essential or

nonessential.

It is a fact that some of the Central Government Departments having presence in Kashmir Valley have extended these facilities to their staff.

However, it may kindly be seen that it has been done on a selective basis as is clear from perusal of a copy of the D.O. No. V.

16011/5/90/CTR/442 dated 28.8.1991 from Deptt. of Expenditure. In para 4 of this letter, it is stated as follows

........the list of employees prepared by them in consultation with the Government of Jammu and Kashmir who would be required for the

maintenance of essential and other important services. These officials are to be advised to report for duty in the Valley and payment of leave salary,

etc. in their care should be stopped thereafter. Others are to be quickly adjusted elsewhere against available vacancies and/or, if necessary, by

temporary transfer of the Posts making it abundant clear to them that it is a purely temporary measure and after the normalisation in the Valley they

will be required to return to their respective establishments in the Valley.

Developing his argument on the basis of this letter, learned counsel submitted that the petitioners did not belong to the essential service, so they are

not entitled to such incentive.

7. Learned counsel for the otherside has virtually admitted that the department to which the petitioners belong does not come under the category of

essential services, but his stress was on the point that in the basic order of the Government of India, as referred to above, the incentive was

ordered to be given not only to the employees who belong to essential services, but to the employees of important services as well. Secondly, he

argued that the situation which prevailed and continues to prevail in the Valley, fully justifies for the incentive to be given to the employees of all

services who are working in the Valley at the risk of their lives.

8. After hearing the rival arguments of the learned counsel for the parties, we are of the definite view that the Government of India Sanctioned this

incentive not only to the employees who belong to essential services, but it was extended to the employees who belonged to other important

services as well. Learned counsel for respondents has rightly argued that Article 14 of the Constitution of India does not forbid classification, but it

must be done on two conditions: firstly, the classification must be founded on an intelligible differential which distinguishes the things or members

that are grouped together from others left out; secondly, it must have a rationale relationship i.e. nexus to the object sought to be achieved by the

Statute forming the classification. (See. Gori Shanker Vs. Union of India, 1994 Vol (6) SCC 349; DC Bhatia and others Vs. Union of India, 1994

Vol. (6) SCC 349; DC Bhatia and others Vs. Union of India, 1995 (1) SCC (104).

9. We need not go into the depth of this argument, because the learned counsel for respondents himself accepts the legal position that classification

on the basis of essential services cannot be assailed and cannot be said to be violative of Article 14 of the Constitution. On what he makes stress

is, that the appellants have given the incentive not only to the employees of essential services, but to the employees of important services also.

However, the important services have not been defined or mentioned anywhere. Learned counsel for the respondents has rightly argued that every

service is an important service, otherwise such services would not be created. A department and its services are created when there is dire need of

such service. If we look from the economic angle also, we can easily and safely reach to a conclusion that the Handicrafts Department is an

important service for, it gives a big revenue and foreign exchange to the State. It is on this foreign exchange the whole economy depends therefore

the service of Handicrafts department also is no less important a department because it earns foreign exchange. So there is no reason not to treat

the services of this Department as important service.

10. Secondly, learned counsel for the respondents has controverted the plea of appellants that the incentive perdiemwas confined only to the

employees of essential and important services. He has contended that such incentive was extended to employees of other departments like

Sericulture Research Training Institute, Reid Publicity and Tourism Department. Copies of certain orders issued by the concerned authorities in this

behalf have been produced by learned counsel for the respondents before us. These orders have not been rebutted or controverted by the appellants, except that the orders have subsequently been passed in 1995 and 1997. We are in full agreement with the learned counsel for

respondents that these subsequent orders also show that the employees belonging to other services, who have been serving in the militancy hit

Valley, have been given such incentives; even at this time, it is continuing. It demonstrates that the concerned Ministries of these Departments also

have realised that the grievances of employees of other services are genuine. This point has been raised by the respondents before the writ court

also in paras 8 and 9 of their writ petition. In the counter the appellants have not adequately replied the pleas taken by the petitioners respondents

in this behalf, but have stated that orders issued by various Ministries will apply to the departments falling under those Ministries. This is no reply to

the pleas taken by the writ petitioners that they be given the same treatment which is being given to the employees of other departments not

belonging to essential services who are working under the Union of India. Learned counsel for the respondents has rightly stated that petitioners

are being discriminated under Article 14 of the Constitution and on this ground they are entitled to the incentive granted to other employees of

other departments.

11. Last, but not the least, we must say that the petitioners are very much justified in claiming such incentive. The ground realities of the Valley

justify the claim. The Valley for the last many years is hit by militancy. Every space in the Valley had become a battle field. Situation was so

explosive that it was not safe at all to come out of the houses. The persons in such circumstances, who attended their offices, were really running a

big risk to their lives. Writ of militants was prevalent here. It was not the question of essential services only, but the Government was trying its best

to put the administration back on its rails. Effort was being made that all the offices run at any cost. It was the endeavour of the local Government

and the Government of India to see that the shutters of offices should not be closed down at any cost. The employees who have been attending

their offices at the risk of their lives have been doing an important and great service to the nation. In such circumstances, we do not think that the

stand of the Appellants is reasonable or has nay rationable.

For these reasons, therefore, we do not see any ground for interference in the judgment of learned Single Judge. The appeal is dismissed.

12. No order as to Costs.

