

(2000) 08 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1648 of 1997

Yoginder Singh Jamwal

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Jammu and Kashmir Municipal Corporation Act, 2000 — Section 252(A)
Jammu and Kashmir Municipality Subordinate Services Rules, 1970 — Rule 6

Citation : (2001) 3 SCT 947

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.S. Nanda, K.K. Jandial, D.C. Raina, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—As per the petitioner, he was initially appointed as Sanitary Inspector in the Notified Area Committee, Akhnoor. He was

promoted as Food Inspector in Notified Area Committee, Samba. This position is not being disputed by the respondent Municipality and the

counsel who has put in appearance for the Local Bodies department.

2. The further fact is that on 27.4.1979, the petitioner came to be appointed as Food Inspector in Notified Area Committee, Vijaypur. This was

by way of transfer. This is apparent from the order itself.

This order reads as under :

Government Order No. 279/HUD/LSG of 1979

DATED : 27.4.1979.

Sanction is accorded to the transfer of following Food Inspectors to Jammu Municipality :

1. Shri Rehmat Ali Food Inspector, Notified Area Committee, R.S. Pora.

2. Shri Y.S. Jamwal Food Inspector, Notified Area Committee, Vijay Pur.

3. Shri Jagdish Dutt Food Inspector, Town Area Committee, Udhampur.

3. Another fact which is projected is that the petitioner was supposed to clear certain examinations in terms of a Notification issued by the

Government on 10.8.1979. The petitioner submits that he has qualified the same. He was given the revised pay scale of Food Inspector also. Not

only this, he has been given in situ promotion also. The petitioner submits that for all intents and purposes, he has become an employee of the

Jammu Municipality. For this, reliance is being placed on a Seniority list of Food Inspectors, wherein petitioner's name is also shown. He figures at

S.No. 10 in the said seniority list (Annexure ""E"") at page 26 of the writ petition. This is dated 1.5.1993. On the basis of this, it is submitted that the

petitioner has become an employee of the Jammu Municipality, and he cannot be sent back to his parent department.

4. The stand taken by the Jammu Municipality is that the petitioner never became an Officer/servant of the Jammu Municipality. It is submitted that

if a person has to acquire the status of an Officer/servant of the Municipality, then appointment has to be made in terms of Section 52 of the J&K

Municipal Act. These appointments are governed by J&K Municipality Subordinate Services Rules of 1970. Rule 6 of the said Rules deals with

the method of recruitment. This rule contemplates direct recruitment and also appointment to higher post by way of promotion. Rule 6(C) deals

with the case of an employee who is in deputation to the Municipality from a Government department. The petitioner specifically places reliance on

rule 6. Reliance is being placed by the respondents on Section 252(A) of the J&K Municipal Act. This section reads as under :

252A. Notwithstanding anything to the contrary contained in this Act or in any other law, rule or byelaws for the time being in force, the Minister

Incharge Local self Government shall have the power and shall be deemed always to have had the power of transferring officers and servants from

one Council of a Notified Area Committee to the other Council or a Notified Area Committee, from a Council or a Notified Area Committee to a

Town Area Committee and from a Council or Notified Area Committee to a Department of the Government and vice versa :

Provided that the conditions of service of such officers and servants are not affected by such transfers.

5. According to the learned counsel, the Government is competent to transfer an Government employee to Municipality and vice versa. It is

submitted that it was in the exercise of this power, the petitioner came to be transferred to Municipality and he can also be sent back to his parent

department. It is urged that the petitioner never came to be sent to the Municipality by way of deputation, therefore, rule 6 on which reliance has

been placed by the petitioner, would not be attracted to the facts of this case.

6. The facts which have come on the record be again recapitulated. These are :

i) That the petitioner came to be initially appointed in the Local Bodies department;

ii) That later on by virtue of an order passed by the Government on 27.4.1979, the petitioner was transferred to Jammu Municipality;

iii) The name of the petitioner has been reflected in the seniority list of Food Inspectors and he has been given in situ promotion also;

iv) That there is nothing on the record to indicate that petitioner's lien was ever brought to an end, in so far as the Local Bodies Department is concerned;

v) There is also nothing on the record to indicate that the petitioner came to be absorbed in the Municipal service in terms of Rule 6, because he was never sent on deputation.

The net result, therefore, is that the petitioner's case would be governed by Section 252(A) of the J&K Municipal Act of 2000 BK. Further, he

came to be transferred by the Government from Local Government department to Jammu Municipality, therefore he can always be recalled to his

parent department. In the present case, the order has been passed by the State Government, which is annexure ""N"". This order has been passed

on 22.10.1997. For facility of reference, this is being reproduced below :

Government Order No : 273 HOD/LSG of 87

dated 22.10.1997.

In the interest of Administration Sh. Joginder Singh Food Inspector Jammu Municipality is hereby transferred immediately and directed to report to

Director Local Bodies, Jammu for further posting. His salary will be drawn against

any available post.

By order of Government of Jammu and Kashmir.

Sd/

Additional Secretary to Govt. Housing and Urban Development Department,
Srinagar.

If above be the position and in case the petitioner has been recalled by the State Government, then it cannot be said that this order has been

passed without there being any statutory backing to the same. This is duly supported by the clear enactment of Section 225(A).

In view of the above, the petitioner could be sent back. He was never absorbed in the Jammu Municipality. He has no right to continue there for all times to come.

7. The apprehension of the petitioner is that he is likely to be deprived of the benefits which he earned while working in the Jammu Municipality.

He also submits that if he goes back now to his parent department, then he would be called upon to work under those persons who were junior to

him. This aspect of the matter has been duly taken care of by the proviso to Section 252(A) of the J&K Municipal Act, which proviso is to the

effect that the conditions of service of an employee would not be affected by such transfers. As and when the petitioner now joins the Local

Bodies Department, he would be given all such benefits which have been given to his juniors. The apprehension of the petitioner that he is not going

to be taken in the Local Bodies Department, is again misconceived. The Government itself has passed the order annexure ""N"". The question of

petitioner's not being taken back in the Local Bodies Department is an apprehension which is totally unfounded.

8. In view of the above, there is no merit in this petition and the same is dismissed with an observation that the petitioner be given the benefit of

proviso to Section 252(A) of the J&K Municipal Act, as and when he joins back in his parent department.