

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
SWP No.2264/2001
Hon'ble Mr Justice Nirmal Singh

**Shafiq Begum
Versus
State of J&K and ors**

Dated:07-11-2006.

Ms Anshuja Sharma, Advocate for the Petitioner.
Mr. AH .Qazi, AAG for the Respondents.

JUDGEMENT

1. The case of the petitioner is that she was appointed as a Sweeper in the year 1977 vide order dt. 10th of Feb'77 passed by the Divisional Forest Officer, National Highway, Forest Division, Batote. It is stated that the petitioner was thereafter adjusted against a newly created post of Sweeper on monthly salary of Rs. 150/. Thereafter the pay of the petitioner was fixed in the regular grade of Rs. 345-460 in terms of SRO No. 91 of 1982. It is further stated that in the year 1991, the petitioner was given the benefit of revised pay scale of Rs. 750-940/- and the arrears of the salary were also released in favour of the petitioner. It is stated that the petitioner is now drawing her salary in the grade of Rs. 2550-3200/-. The petitioner earlier filed a writ petition bearing SWP No. 536/97, which was disposed of with a direction that respondents would treat the same as a notice of demand and after considering the case of the petitioner shall take a decision within a period of three months. In pursuance of the aforesaid order passed by this court, the claim of the petitioner was considered and the same has been rejected vide order dt. 3rd of Sept'01, passed by respondent No.2, on the ground that the petitioner is a part time sweeper and the post against which she is working is on consolidated basis and not a regular one. It is this order which is being impugned in the present writ petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir and the petitioner has made the following substantive prayers:-

- “i)that the writ in the nature of Certiorari be issued for quashing order dated 3.9.2001 as passed by respondent No.2 whereunder claims put forth by the petitioner have been rejected.
- ii)and that issuing writ in the nature of Mandamus commanding respondents to treat the petitioner as a regularized class IV employee with effect from 1.1.82 and pay her all consequential benefits of annual increments.”

2. On notice, respondents have filed objections in which it is stated that the petitioner was engaged as a part time sweeper vide order dt. 10th of Feb'77 at the rate of Rs.40/- per month. The petitioner was then adjusted against a sanctioned post of Sweeper in Forest Division, Batote on consolidated pay of Rs.150/- per month and the petitioner performed the duties from 8 a.m. to 10 a.m. only. It is further pleaded that due to inadvertence and some misunderstanding the then Divisional Forest Officer, Batote had released the minimum basic grade in her favour in total violation of the Government Order and that mis-understanding does not vest any right with the petitioner to claim regularization or to claim that the petitioner stands regularized

3. I have heard the learned counsel for the parties and perused the record

4. The question which arises for consideration in this petition is whether the petitioner was holding regular appointment in the service of the State government. Admittedly, the petitioner was initially appointed on part time basis but subsequently, she was placed in the regular grade by the Conservator of Forest, Chenab Circle, Jammu, by passing following order:-

*"OFFICE OF THE CONSERVATOR OF FORESTS CHENAB
CIRCLE JAMMU*

DFO/Batote

No.552

Dt.7.2.85

Subject: Monthly salary to Safai wala.

Ref. Your No. 3873-74 dt. 15.1.1985.

Please refer to SRO No. 91 of 1982 and SRO No. 350 dt. 21.8.1982 and take action accordingly. The pay is to be regularized in the grade of 345-460.

Sd/-

*Conservator of Forests
Chenab Circle, Jammu"*

5. Petitioner was placed in the revised scale of Rs.750-940 and in terms of the 5th Pay Commission Report, she was placed in the grade of Rs.2550-3200/-.

6. Petitioner was also permitted to subscribe to the General Provident Fund. Under the Rules of General Provident Fund, only permanent/regular employee(s) can subscribe to the GPF as it is clear from the Rules regulating the General Provident Fund Appendix-XVI of K.S.R Volume II. For facility of reference it is reproduced below:-

"I. (i) Admission to the General Provident Fund is compulsory for Government Servants of the following categories , namely:-

(a) Whole-time civil officers, superior or inferior, holding permanent and pensionable posts or on probation drawing pay from the Consolidated Fund of the State;

(b) Whole-time temporary Superior Government Servants with one year's continuous service in the State, including civilian employees of the Jammu and Kashmir Militia and those in Commercial concerns and Institutions under the Government administration if such an employee is not otherwise a member of the C.P.Fund."

7. In the Divisional office, Forest Division, Batote, one post of Sweeper was sanctioned which is clear from the letter of Divisional Forest Officer, Forest Division, Batote-Annexure 'K', which is the statement showing the strength of the staff of Batote Forest Division.

8. Petitioner was also allowed earned leave. Earned leave is only earned by regular/permanent employee(s). Petitioner has earned EL during her service. The said leave was also sanctioned. One of such order regarding the sanction of 15 days Earned Leave in her favour with effect from 6.9.97 to 23.9.97 alongwith two gazetted holidays falling on 7th and 8th of Sept.97, passed by the Divisional Forest Officer, Batote has been placed on the record as Annexure-'L'. This leave was sanctioned in connection with marriage ceremony of her son.

9. At this stage it would be appropriate to notice the relevant provision of the General conditions of leave under the Jammu and Kashmir Civil Service Regulations Vol.I. Rule 111-B which is relevant and is reproduced below:-

"111-B: Unless in any case it be otherwise expressly provided by or under these rules, leave is earned by a Government servant under this Chapter if he holds a lien on a permanent post in Civil employ or would hold a lien on such a post had his lien not been suspended."

10. A perusal of the said rule shows that only a Government servant who is holding a permanent lien against a post would be entitled to earned leave. An employee who is appointed on part time basis or work charge or on contractual basis is not entitled to avail the said benefit. The petitioner, as noticed above was granted earned leave, and therefore, she would be deemed to have a permanent lien against the post of Sweeper against which she worked.

11. As noticed above, the pay of the petitioner was fixed in the pay scale of Rs. 345-460/- and it was revised from time to time in the pay scale of Rs. 750-940 and then to Rs. 2550-3200/-. In terms of Rules called the Jammu and Kashmir Civil Services (Revised Pay) Rules, 1998, a Government servant is entitled to draw his/her pay in the revised pay scale. As per Sub Rule 2 of Rule 3 of the aforesaid Rules, the following categories of posts or persons who are employed by the Government have been excluded:-

- “(a) Members of All India Services;
- (b) Persons to whom the Jammu and Kashmir Civil Services Government Degree Colleges (UGC Pay) Rules, 1991 apply;
- © Persons not in whole time employment;

(d) Persons paid otherwise than on monthly basis including those paid on piece rate basis;

(e) Persons whose services are obtained on deputation;

(f) Persons employed on contract basis, except where contract provides otherwise; and

(g) Posts which carry consolidated rate of pay “

12. In the present case, the petitioner was given the benefit of revised pay scales from time to time, and therefore, she cannot be treated to be an employee on contract basis or an employee which was being paid on consolidated rate.

13. Respondents have admitted that the petitioner was allowed to subscribe to the General Provident Fund and was also earning earned leave. Under the rules only a regular employee is entitled to earned leave and also to subscribe to the General Provident Fund. An employee who is working on daily wage basis or work charge or on contract basis is not entitled to the said benefit. From the documents placed on the record, it establishes that the petitioner's employment was not contractual in nature but was governed by the rules which are applicable to a regular Government employee who is holding a substantive post.

14. For the reasons mentioned above, this petition is accepted with costs of Rs.5000/- Order impugned dt. 3rd of Sept'01 is quashed. The petitioner will be deemed to be a regular employee and shall be entitled to all consequential benefits. During the pendency of the petition, the petitioner stands retired from service w.e.f. 30th of June'06, therefore, respondents will also release the pensionary benefits in favour of the petitioner. The whole exercise would be done within a period of three months from the date of receipt of a copy of this order by respondents.

Disposed of accordingly.

