

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 02/2006, CMP No.02/2006.

Date of decision: 08.10.2010

Rajan Warikoo and others. v. State of J&K

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

Mr. Rahul Pant, Advocate for the petitioners.

Mr. R.S.Jamwal, Dy.AG for the respondent.

- i/ Whether to be reported in : Yes.
Press, Journal/Media.
 - ii/ Whether to be reported in : Yes.
Digest/Journal.
-

With the consent of learned counsel for the parties, this petition is taken up for final disposal at admission stage.

National Agriculture Extension Production (T&V) Programme financed by the World Bank was implemented at the national level. Vide Govt. Order No.607-Agri of 1984 dated 18.10.1984 sanction was accorded to the implementation of the said scheme in the State of Jammu and Kashmir also. Various posts were created under the said scheme, which included 40 posts of Subject Matter Specialists (Sub Divisional Level). Post graduation in the subject was the eligibility set out for making appointment to the said posts. As a

sequel to this, vide Order No.410-Agri of 1985 dated 26.07.1985, sanction was accorded to the transfer and posting of 23 Agriculture Assistants/Agriculture Extension Officers and Village Extension Workers, who possess M.Sc qualification, as Subject Matter Specialists against the posts so created.

The petitioners who were working as Village Extension Workers in the Agriculture Production Department also came to be adjusted against the posts of Subject Matter Specialists on the basis of their post graduation qualification vide Govt. Order No.410-Agri of 1985 dated 26.07.1985. Charge allowance under Article 87-B of J&K Civil Service Rules was sanctioned in their favour. The date of adjustment in respect of petitioners Nos. 2 and 4 was shown as 26.07.1985 and in respect of petitioners 1 and 3 as 10.10.1985. The initial tenure of adjustment was for a period of six months or till the posts are filled up on permanent basis subject to clearance by the Departmental Promotion Committee/Public Service Commissioner, whichever was earlier. This arrangement continued till 1988 when Government included Subject Matter Specialists in the J&K Agriculture (Gazetted) Service Recruitment Rules, 1988, which rules were notified on 02.06.1988.

Twelve persons who also came to be appointed as Subject Matter Specialists along the petitioners and were initially working as Agriculture Extension Officers, came to be regularized as Subject Matter Specialists at Sub Divisional Level w.e.f. 20.04.1988 and grade attached to the said post was released in their favour w.e.f. 01.02.1988.

The petitioners were not promoted substantively on the said posts, which impelled them to file SWP No. 1116 of 1988 titled "Nana Ji Rayu and others Vs. State of J&K and others". The said writ petition was dismissed by the learned Single Judge vide judgment dated 21.08.1998. Being aggrieved of the judgment of learned Single Judge, Letters Patent Appeal came to be preferred by the petitioners. The Division Bench allowed the appeal and set aside the judgment of the learned Single Judge by issuing the following directions:-

"a/- The appropriate Government shall consider the relaxation of Rules of 1988 in terms of Rule 9, in the light of the opinion given by the learned Advocate General and the observations made by us, in favour of the appellants- writ petitioners. This shall be done within a period of two months from the date of receipt of this order.

b/- In the event, relaxation of rules is not possible in terms of Rule 9 of the Rules, the appellants may be sent back to the Agriculture Department, on a promotion post, which by now have been acquired by their batch mates who were working as Village Extension Workers in 1985.

c/- In the event the appropriate authority resorts to direction (b) above, the appellants-writ petitioners shall not be sent back to the Agriculture Department unless equivalent promotional posts, which have now

been acquired by their batch mates are clearly indicated.

d/- Relaxation of Rules in terms of Rule 9, shall be strictly applicable only to the appellants in view of the peculiar facts and circumstances as recited above and under no circumstances such relaxation would be applicable to others who are not covered with the facts of the present case.”

Direction (a) contained in the aforesaid judgment commanded the respondents to consider relaxation of Rules of 1988, in terms of Rule 9 and in the event relaxation of rules was not possible, the petitioners shall be repatriated to their parent departments on promotional posts which by now have been acquired by their batch-mates who were working as Village Extension Workers in the year 1985.

The respondents without taking recourse to the direction (a) rejected the case of the petitioners for grant of relaxation of rules vide Order dated 14.05.2002 and directed for their promotion in terms of directions issued at (b) by the Division Bench. It is this order which is subject matter of challenge before this court.

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

The case of the petitioners is that appointment as Subject Matter Specialists in pursuance to the scheme implemented by the State Government was based upon the qualification of post graduation. Categorization of the post held by them at that point of time was not relevant

for the purpose of their appointment as Subject Matter Specialists. The rejection of their cases on the ground that they did not satisfy the condition of eligibility set out under Rule 9 would not disentitle them for being considered as Subject Matter Specialists w.e.f. June, 1988 when Rules were not in force. While implementing the judgment of the Court, the respondents did not adhere to the directions of the Division Bench, i.e., first to consider the case of the petitioners for relaxation in terms of Rule 9 before resorting to direction (b) of the judgment.

On the other hand, the stand of the respondents is that the case of the petitioners was considered strictly in consonance with the directions contained in part (b) of the judgment and they have been promoted as Agriculture Extension Officers. As the petitioners are not eligible to be appointed as Subject Matter Specialists in terms of Rule 9, as such, they were not considered for the said posts. This in essence is the case of the respondents.

The question that arises for consideration is as to whether the respondents have the option to implement any of the directions issued by the Division Bench or were first required to implement direction (a) before complying with direction (b) contained in the judgment.

A plain reading of the judgment would indicate that first option given to the respondents was to consider the case of the petitioners for relaxation of rules in terms of Rule 9 before resorting to direction (b) of the judgment. The respondents on their own have construed the directions of the Division Bench giving them option to implement any one of the directions issued thereto. The direction for grant of relaxation in terms of rule 9 was intended for the purpose that the petitioners have been continuing as Subject Matter Specialists for the last more than 20 years and their services are not being regularized on the said posts.

The court on equity found that the petitioners were required to be given the benefit of said appointment, but because of impediment created by Rule of 1988, respondents were to first address themselves to consider relaxation of rules before taking course to repatriate the petitioners to their parent department on promotional posts. No such exercise was conducted by the respondents as a result of which judgment of the Division Bench has been observed in breach rather than in compliance.

The other aspect of the matter is that at the time of initial appointment, qualification prescribed was post graduation irrespective of the fact that whatever post

they were holding at that point of time. There was no rule framed by the Government at that point of time and taking recourse to the executive powers, eligibility set out was the post graduation. The promulgation of rules for the post of Subject Matter Specialists, disentitled the petitioners for being considered for appointment to the said posts.

It be seen that on the date of appointment as Subject Matter Specialists, the petitioners were eligible but the rigor of Rules promulgated in 1988 disentitled them to hold such posts. Rule making power of the State cannot be questioned but its operation has always to be prospective, as such, on the date the rules were framed, the petitioners were already working as Subject Matter Specialists based upon their qualification as prescribed by the respondents by implementing the scheme. Rules can be relaxed if its application works harshly on the person aggrieved. In the instant case, the implementation of rules acted harshly on the petitioners, as such, it was a fit case where relaxation could have been ordered by the respondents, which has not been done.

There is no dispute that no relaxation can be ordered which can go to the root of the appointment which is not the case herein. Rules debarred the

petitioners for holding the post of Subject Matter Specialists because appointment to the post of Subject Matter Specialists can only be made from Agriculture Extension Officer and not from Village Extension Officer which is a lower category in the hierarchy. State has the power to relax the rules, more particularly when the petitioners came to be appointed prior to coming into force the Rules of 1988. Having failed to examine this power of relaxation by the State, the respondents have arbitrarily rejected the case of the petitioners.

It be also noted that 12 officers who were appointed as Subject Matter Specialists along with the petitioners were substantively regularized as Subject Matter Specialists at Sub Division Level and grade was also released in their favour prior to coming into force the said rules. It clearly shows that the petitioners have been discriminated.

I am told at the bar that even as on date the petitioners are continuing as Subject Matter Specialists for the last more than 20 years and getting charge allowance in terms of Rule 87-B of J&K CSR, which fact is not denied by the respondents.

In view of the above, I allow this writ petition and direct the respondents to consider the case of the petitioners for regularization against the post of Subject

Matter Specialists in relaxation of Recruitment Rules issued vide SRO 179 of 1988 dated 02.06.1988 i.e. Jammu and Kashmir Agriculture (Gazetted) Service Recruitment Rules, 1988 by exercising power under Rule 9 of the Rules of 1988, within two months from the date copy of this order is served upon them. It is further directed to regularize the services of the petitioners as Subject Matter Specialists retrospectively, i.e., w.e.f. 20th April, 1988.

Disposed of along with connected CMP(s). Interim direction, if any, is merged in this order.

(Sunil Hali)
Judge

Jammu
08.10.2010.
'Madan'