

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU:

LPASW no. 145/2011

Date of Order: 15.12. 2011

Ravinder Kumar Kapoor and Others
Vs.
State of J&K and others

Coram:

Hon'ble Mr. Justice F. M. Ibrahim Kalifulla, Chief Justice.
Hon'ble Mr. Justice Virender Singh, Judge

Appearing Counsel:

For Appellant(s)	Mr. S. K. Shukla, Advocate.
For Respondent (s)	Mr. Abhinav Sharma, Advocate.

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| i) | Whether to be reported in
Press, Journal/Media | : | Yes |
| ii/ | Whether to be reported in
Digest/Journal | : | Yes |
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Per- Ibrahim Kalifulla-CJ

1. The writ petitioners are the appellants. The challenge is to the order of the learned Single Judge dated 03.06.2011 passed in SWP no. 88/2011.

2. The State Cabinet in its decision no. 453 dated 30.12.1983 decided to create a cadre of Rehbar-i-Zirat with strength of 300 on a consolidated salary of Rs. 400/- per month. Pursuant to the said decision, by Government Order no. 72-Agri of 1984 dated 01.02.1984 sanction was accorded by the Governor for creation of said 300 posts of Rehbar-i-Zirat in different Districts in the State of Jammu and Kashmir on a

consolidated salary of Rs. 400/- per month. The Government Order stipulated that the expenditure on that account would be debitable to the plan out lay of the Agriculture Sector. The nature of job to be performed by Rehbar-i-Zirat was to offer technical support to the programmes of intensive agricultural development in various parts of the State, in that they were to keep very close liaison with the Department of Agriculture and Horticulture and the crop programmes formulated at the State level for different parts of the State. They were to fully involve in guiding the farmers with regard to the prescribed packages of practice, arrangement of inputs including arrangement of crop loans and other loans required for intensification of agricultural production. The appointment to the cadre was to be made on the recommendation of Special Divisional/ Section Boards constituted with Director Agriculture Jammu/Srinagar as Chairman and Director Rural Development , Deputy Director Agriculture (Central) and Deputy Director Horticulture as members. The Divisional Board was to invite applications to be received by 15.02.1984 and complete the selection by 25.02.1984. The minimum qualification was fixed as B.Sc. Agriculture.

3. Pursuant to the said Government Order, appointment of candidates as Rehbar-i-Zirat was made by Government Order

No. 305-Agri of 1984 dated 25.05.1984. They were directed to report to Director of Agriculture Kashmir/Jammu and they all joined duties.

4. Subsequently by Government Order no. 607-Agri of 1984 dated 18.10.1984, by way of implementation of the National Agricultural Extension Project (Trainings and Visits Programme) in Jammu and Kashmir at a total cost of Rs. 1657.42 lakhs over a period of five years with effect from the current financial year, sanction was also accorded for creation of different posts, including the post called as Village Extension Workers at Circle level. As per the said Government Order, 1000 posts of Village Extension Workers in the pay scale of Rs. 825-1240 were created. The qualification was prescribed as B.Sc. Agriculture degree. In the annexure to the Government Order in which the posts were specified, it was specifically noted that “ 300 posts by corresponding reduction of the Rehbar-i-Zirat Cadre which will be added to this level”. The above prescription was made whereby out of 1000 Village Extension Worker posts created, 300 posts of Rehbar-i-Zirat was to be adjusted leaving only 700 posts to be filled up based on the said Government Order.

5. As a sequel to Government Order No. 607 dated 18.10.1984, Government Order No. 608-Agri of 1984 dated 18.10.1984 was also issued which stated that the Agriculture

graduates appointed as Rehbar-i-Zirat would be thereafter designated as Village Extension Workers under the National Agricultural Extension Project (Trainings and Visits Programme) and placed in the pay scale of Rs. 825-1240 plus usual allowances with immediate effect. Again the expenditure on that account was continued to be debited to the Account Head 305-Agriculture (Plan). The cadre of Rehbar-i-Zirat (300 posts) created vide Government Order no. 72-Agri of 1984 dated 01.02.1984 came to be reduced, meaning thereby the said posts cease to exist thereafter.

6. After the issuance of Government Order no. 607 dated 18.10.1984 the remaining 700 Village Extension Worker Posts were stated to have been filled up by way of regular selection process.

7. Be that as it may, in the Agriculture Wing there was no rule governing the non-gazetted service. The only rule which was prevailing was the Jammu and Kashmir Agriculture (Gazetted) Service Recruitment Rules, 1978 notified vide SRO 134 of 1978 dated 02.03.1978. It is also relevant to state that neither the post of Rehbar-i-Zirat nor the post of Village Extension Worker was a gazetted post and, therefore, the same were not governed by the said 1978 Rules. Subsequently the Jammu and Kashmir Agriculture (Gazetted) Service

Recruitment Rules, 1988 came to be notified vide SRO 179 of 1988 dated 02.06.1988. Both under the 1978 Rules as well as 1988 Rules the post of Agriculture Assistant was included and as many as 12 posts equivalent to the post of Agriculture Assistant as Class VI posts in 1978 Rules and 22 equivalent posts of Agriculture Assistant as Class VII posts in the 1988 Rules. In the 1978 Rules, for the post of Agriculture Assistant and other equivalent posts, the method of appointment was only by way of direct recruitment and the qualification prescribed was B.Sc. Agriculture. In the 1988 Rules the qualification was prescribed as B.Sc. Agriculture from a recognized Institute/University. As far as method of recruitment was concerned, it stipulated that 50% by direct recruitment, preferably M.Sc. Agriculture and 50% by promotion from Village Extension Workers possessing B.Sc. Agriculture degree, having minimum of four years experience in that class.

8. As far as the appellants are concerned, since they commenced their service for the training project from 18.10.1984 in the post of Village Extension Workers, their aspiration to get promoted to the post of Agriculture Assistant commenced only after emergence of 1988 Rules.

9. One other factor to be noted which created the scope for this litigation was the seniority list of the Village Extension

Workers, as it stood as on 18.10.1984, published vide Government Order No. 313-Agri of 2010 dated 27.12.2010. The names of the appellants figured in serial nos. 9, 164 and 104 respectively in the said list. The said list only related to the Rehbar-i-Zirat candidates who were later designated as Village Extension Workers from 18.10.1984. Even amongst those 300 persons, 10 came to be eliminated as they left the department before their designation as Village Extension Workers in the regular scale on and from 18.10.1984. Four others were also deleted since after joining as Rehbar-i-Zirat they left before 18.10.1984. Therefore, the list was pertaining to only 286 persons.

10. The present writ petition came to be filed by the appellants challenging the above final seniority list dated 27.12.2010 on the ground that the said seniority list was prepared keeping the date of their induction into service as Village Extension Workers as from 18.10.1984 whereas their induction as Rehbar-i-Zirat with effect from 25.05.1984 ought to have been taken as the first date of entry into service of Village Extension Workers. The appellants prayed for the following reliefs:-

“ i) Writ, order or direction in the nature of Writ of Certiorari quashing Government Order No. 313-Agri of 2010 dated 27th December, 2010 (Annexure-H) whereby the final seniority list of Village Extension

Workers as it stood on 18th October, 1984 has been issued by the Respondent No:1;

- ii) Writ, order or direction in the nature of Writ of Mandamus commanding upon the Respondent No:1 to re-draw the final seniority list of Village Extension Workers as it stood on 25th May, 1984 by taking into consideration the services rendered and experience gained by the petitioners w.e.f. 25th May, 1984 when the petitioners were appointed as Renbar-i-Zirats till 18th October, 1984 when the petitioners were designated as Village Extension Workers;
- iii) Writ, order or direction in the nature of Writ of Mandamus declaring the petitioners entitled to count their service rendered and experience gained w.e.f. 25th May, 1984 to 18th October, 1984 as Rehbar-i-Zirat for the purpose of their promotion to the post of Agriculture Assistants and equivalent in terms of J&K Agriculture (Gazetted) Service Recruitment Rules, 1988;
- iv) Writ, order or direction in the nature of Writ of Prohibition restraining the respondents from holding the DPC/PSC for the purposes of making regular promotions from the posts of Village Extension Workers to the posts of Agriculture Assistants and equivalent till the final seniority list of Village Extension Workers as it stood on 25th May, 1984 is re-drawn by taking into consideration the services rendered and experience gained by the petitioners w.e.f. 25th May, 1984 to 18th October, 1984 as aforesaid.”

11. The learned Single Judge, after taking the view that the appellants and other 283 persons, whose seniority was determined in the seniority list dated 27.12.2010 were inducted as Village Extension Workers from only 18.10.1984 and that

their earlier posts as Rehbar-i-Zirat cannot be linked to their service as Village Extension Workers and, therefore, none of the relief prayed for can be granted, dismissed the writ petition. Aggrieved by the same the appellants have come forward with this appeal.

12. We heard Mr. S. K. Shukla for the appellants. We also perused the order of the learned Single Judge and other material papers.

13. Mr. Shukla reiterated his submissions as were raised by the appellants before the learned Single Judge. Much stress was laid by the learned counsel on the Cabinet decision dated 30.12.1983 when it was decided to create a cadre of Rehbar-i-Zirat. While referring to the said decision no. 453 dated 30.12.1983 the learned counsel pointed out that in that meeting the Cabinet took a decision to prescribe the minimum qualification as B.Sc. Agriculture and that in future all recruitments to the level of Agriculture Assistants/ Horticulture Assistants and all similar other posts would be made from out of cadre of Rehbar-i-Zirat by giving due attention to their performance in the field of Agriculture production. The Cabinet is also stated to have taken out a decision to bring out necessary amendment in the recruitment Rules for appointment to the post of Agriculture Assistant and similar other posts in the

Agriculture and Horticulture departments. It was also decided to leave the process of recruitment of Rehbar-i-Zirat to be made by the Agriculture department. The learned counsel, by referring to the sanction order of the Government in Government Order No. 72-Agri of 1984 dated 01.02.1984 and the subsequent appointment of the candidates as Rehbar-i-Zirat in Government Order no. 305-Agri of 1984 dated 25.05.1984, contended that Government Order dated 01.02.1984 specifically stated that Rehbar-i-Zirat will offer technical support to the programmes of intensive agricultural developments in various parts of the State, that they will keep close liaison with the department of Agriculture and Horticulture and the crop programmes formulated at the State level which will be entrusted to the Rehbar-i-Zirat as a primary responsibility and that they would be fully involved with regard to the prescribed packages of practice, arrangement of inputs including arrangement of crop loans and other loans required for intensification of agricultural production. The learned counsel therefore contended that when the initial appointment as Rehbar-i-Zirat came to be made in the above stated background on 25.05.1984, the adjustment of 300 posts of Rehbar-i-Zirat out of 1000 posts of Village Extension Workers created by Government Order No. 607 dated 18.10.1984 and

such adjustment was also given effect to by Government Order No.608 dated 18.10.1984 the appellants were fully justified in their claim for counting their service in the post of Village Extension Worker as from 25.05.1984 when they came to be inducted as Rehbar-i-Zirat and the seniority list should have therefore been drawn by specifying their entry as Village Extension Workers as 25.05.1984.

14. Having heard the learned counsel for the appellants and having bestowed our serious consideration to the final seniority list drawn in Government Order no. 313 dated 27.12.2010, we are not inclined to interfere with the order of the learned Single Judge.

15. As pointed out earlier, the posts of Agriculture Assistant, Agriculture Extension Officer and other equivalent posts were all initially governed by the Jammu and Kashmir Agriculture (Gazetted) Service Recruitment Rules, 1978. Subsequently vide SRO 179 of 1988 dated 02.06.1988 the Jammu and Kashmir Agriculture (Gazetted) Service Recruitment Rules, 1988 were notified. As far as we are concerned, the difference we note in the 1978 Rules and 1988 Rules, is that while in 1978 Rules the post of Agriculture Assistant and other equivalent posts fall in Class VI, in the 1988 Rules the said post fall under Class VII. In the 1978 Rules the method of recruitment was by

way of only one method, namely, direct recruitment, whereas under the 1988 Rules, 50% recruitment was to be made by direct recruitment by giving preference to holders of M. Sc. Agriculture degree and the balance 50% by way of promotion from Village Extension Workers possessing B. Sc. Agriculture degree with a minimum of four years experience in that class. The basic qualification prescribed in both the Rules was B. Sc. Agriculture from recognized institute/University.

16. Mr. Shukla, learned counsel appearing for the appellants, in his submissions, by making special reference to the provisions contained in Schedule II to the 1988 Rules as against Class VII Posts, where under the caption “the method of recruitment” it is stated, “50% by promotion from Village Extension Workers possessing B.Sc. Agriculture degree, having minimum of 4 years experience in that class” submitted that the set of expression, “in that class” would take within its fold not only the experience gained as VEWs i.e. Village Extension Workers but also in the post of Rehbar-i-Zirat which got amalgamated in the post of Village Extension Workers as from 18.10.1984. According to the learned counsel, since Rehbar-i-Zirat and Village Extension Workers were equated when Government Order No. 607 and 608 came to be issued by adjusting 300 posts of Rehbar-i-Zirat in the total number of

1000 posts of Village Extension Workers created under Government Order No. 607 of 1984 dated 18.10.1984, the appellants were justified in claiming counting of their service as Rehbar-i-Zirat for that of Village Extension Workers. The learned counsel further contended that the seniority list, in not counting their services from 25.05.1984 when appellants were initially inducted as Rehbar-i-Zirat, is liable to be set aside and consequential relief should be granted.

17. Though such a contention of the appellants appears to be more logical in the first blush, we do not find any support for such a submission either under Rules or in any of the validly issued proceedings of the State Government to countenance such a claim. When we examine the recruitment Rules of 1988, the provisions relating to method of recruitment for the post of Agriculture Assistant by way of induction from the non-gazetted post, namely, Village Extension Worker, it is specifically provided that the Village Extension Workers with four years experience alone would be eligible for being considered to a Class VII posts, namely, Agriculture Assistant and other equivalent posts. Applying the Maxim "*expressum facit cessare tacitum*" what is expressed makes what is implied to cease. Reference can be had to the decision of the Hon'ble Supreme Court reported in **(1985) 3 SCC 398**, *Union of India and another*

vs. Tulsiram Patel, where in paragraph no. 70 the Hon'ble Supreme Court has applied the Maxim and its principle as under:-

“The Maxim “*expressum facit cessare tacitum*” (“when there is express mention of certain things, then anything not mentioned is excluded”) applies to the case. As pointed out by this Court in *B. Shankara Rao Badami v. State of Mysore*, this well known maxim is a principle of logic and common sense and not merely a technical rule of construction”.

18. When the above said specific Rule relating to method of recruitment is read, the last set of expression “4 years experience in that class” has got to be necessarily read in conjunction with the first set of expression, “50% by promotion from VEWs”. Therefore, the last set of expressions cannot be read in isolation to state that the expression “in that class” will also include any other persons who worked in any other posts other than Village Extension Worker. In other words, reading the Rule as a whole the preceding set of expressions where the post of ‘VEWs’ has been given a specific mention read in conjunction with the last set of expressions “in that class”, can only mean the experience gained by a person in the post of VEW for a period of 4 years and it can never be stretched to

state that all other comparable posts should also be included on par with the post of VEWs. On that basis we hold that whatever experience gained in the post of Rehbar-i-Zirat cannot be counted for calculating the required period of four years experience as VEWs.

19. As stated by us earlier, since the Rule does not provide scope for such an extended meaning to be attributed to the said Rule and also there being no other statutory provision contained in the 1988 Rules or for that matter, not even a government direction or any other supporting statutory document to read the Rule in the way in which the appellants want to read, the contention of the appellants cannot be countenanced.

20. The next contention of the appellants is that at the time when the posts of Rehbar-i-Zirat were created, based on the decision of the Cabinet on 30.12.1983, the Cabinet also took a decision that necessary amendment to the Rule should be incorporated for recruitment to the post of Agriculture Assistant, Horticulture Assistant and similar other posts from out of the cadre of Rehbar-i-Zirat and, therefore, the present 1988 Rules, providing for recruitment from out of Village Extension Workers was in furtherance to the said decision and consequently the experience gained in the post of Rehbar-i-Zirat should also be

counted as experience gained as Village Extension Worker. The said contention cannot be accepted for the simple reason that though a decision might have been taken by the Cabinet in its meeting dated 30.12.1983 to the extent it was said to have been made, when the amended Rules of 1988 came to be made providing for 50% recruitment to the Class VII posts of Agriculture Assistants etc., there was no specific reference made to the post of Rehbar-i-Zirat and such 50% recruitment was restricted to the persons in the post of Village Extension Workers with four years experience. Therefore, what was not specifically provided in the Rules cannot be made conjectura pietatis (A presumption or conclusion arising from natural duty: a conclusion or conjecture that something was done or intended to be done, on account of a natural duty to do it).

21. The other contention of the appellants was that when the posts of Village Extension Workers were created, since the post of Rehbar-i-Zirat in every respect was equivalent to the post of Village Extension Worker, 300 posts of Rehbar-i-Zirat which already existed, were adjusted in the 1000 posts created and the said action of the government should be held in favour of the appellants by holding that their initial appointment as Rehbar-i-Zirat should be counted as service as that of Village Extension Workers.

22. Here again the formidable impediment in accepting the said argument was that Village Extension Worker as a post was created for the first time only by Government Order No. 607-Agri of 1984 dated 18.10.1984. Mere adjustment of person in some other post, without any specific provision to the effect that such other post, namely, Rehbar-i-Zirat, should be construed as Village Extension Worker and such treatment should be noted for all practical purposes in their future service, it is not for the Court to expand such a provision in the Government Order No. 607-Agri of 1984 dated 18.10.1984 or in the annexure to the said Government order. When we examine Government Order No. 608-Agri of 1984 dated 18.10.1984, it merely states that the Agriculture graduates appointed as Rehbar-i-Zirat are designated as Village Extension Workers under the National Agricultural Extension Project (Trainings & Visits Programme) and for the first time they are placed in the pay scale of 825-1240 along with usual allowances with immediate effect. It is also relevant to note that for the first time after the said Government Order dated 18.10.1984 and after designation of appellants as Village Extension Workers, they were put on a scale of pay, since prior to the said date they were only getting an adhoc payment of Rs. 400/- per month. By the said Government Order dated 18.10.1984 the post of Rehbar-i-Zirat

also came to be extinguished. Therefore, the said contention of the learned counsel for the appellants also does not merit acceptance.

23. Having regard to our above conclusions, as we do not find any merit in any of the contentions raised on behalf of the appellants, there is no scope to entertain this appeal in order to interfere with the order of the learned Single Judge. The appeal therefore fails and same is dismissed.

24. No costs.

(Virender Singh)
Judge

(F. M. Ibrahim Kalifulla)
Chief Justice

JAMMU:
15.12.2011
Anil Raina, Secy.