

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 18.12.2024

Pronounced on: 27.12.2024

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

MOHAMMAD YOUSUF MIR & ORS.

GH. MOHI UD DIN SHEIKH & ORS.

GH. MOHI UD DIN SHAH & ORS.

...PETITIONERS(S)

Through: - Ms. Syed Ruqaya Siddique, Advocate.

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

Through: - Mr. Mubashir Majid Malik, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, the afore titled three writ petitions filed by the former employees/their legal representatives of the Jammu and Kashmir Handicrafts (S&E) Corporation, are proposed to be disposed of.

2) Through the medium of these writ petitions, the petitioners are seeking a direction upon the respondents to grant in their favour the pensionary and retiral benefits on

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

parity with the employees of various units of the Jammu and Kashmir Industries Limited, J&K Handloom Silk Weaving Factory and J&K Handloom Development Corporation in terms of judgment dated 12.03.2009 passed by this Court in SWP No.1250/2002 read with orders passed in SWP No.1468/2004 followed by order dated 16.11.2020 passed in WP(C) No.1951/2020. A further direction has been sought commanding the respondents to extend all the benefits to the petitioners in terms of Government Order No.219-IND of 2002 dated 08.08.2002 read with Government Order No.35-IND of 2018 dated 25.01.2018.

3) The petitioners claim that they were holding the posts of Piece Rated Workers belonging to the Jammu and Kashmir Handicrafts (S&E) Corporation, which was/is under the administrative control of the Industries and Commerce Department of the Government of J&K. It is being claimed that, for all intents and purposes, the petitioners were Government employees and at the time of their retirement, they were given certain payments by their employer, the details whereof have been annexed with the writ petitions.

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

4) It has been claimed that a writ petition bearing SWP No.1468/2004 was filed by the employees of the J&K Handloom Silk Weaving Factory Workers Union, seeking relief for grant of pension and other retiral benefits on the analogy that they belong to the J&K Industries Limited and the posts therein had been declared as civil posts. The said writ petition was allowed by this Court in terms of judgment dated 12.03.2009 and the petitioners therein were held entitled to retiral and pensionary benefits by adopting the J&K Civil Service Regulations. It has been submitted that pursuant to the aforesaid judgment, the Government, in terms of Order No.35-IND of 2018 dated 25.01.2018, accorded sanction to the grant pension in favour of the employees of the J&K Industries Limited as well as J&K Handloom Silk Weaving Factory employees who had been appointed after 03.10.1963. Thus, according to the petitioners, the erstwhile Industrial Units including that of the petitioners were, in fact, Government departments and the posts held by the employees therein were for, all intents and purposes, civil posts, hence the petitioners are entitled to the benefit of pension and other related benefits in the light of the judgment dated 12.03.2009 passed by this court

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

in SWP No.1250/2002. It has been submitted that the petitioners cannot be discriminated against by denying them the same benefit which has been extended to the employees of the J&K Silk Weaving Factory (Handloom Development Corporation) as the same would be violative of Article 14 of the Constitution.

5) It has been submitted that the petitioners had approached the respondents with the request that they may be treated at par with their co-workers who have been granted pensionary benefits but the respondents did not take any action in the matter. The petitioners are stated to have filed a writ petition bearing WP(C) No.1951/2020, wherein an order came to be passed by this Court on 16.11.2020, whereby the respondents were directed to consider the representation of the petitioners in accordance with rules. Another writ petition is stated to have been filed by similarly situated persons like the petitioners bearing WP(C) No.54/2022, in which an interim order came to be passed on 14.01.2022, whereby the respondents were directed to consider the claim of the petitioners therein and accord same and similar benefits as have been granted to other similarly situated employees of the department under

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

rules. In spite of these directions of this Court, the respondents have not taken any action, hence the present writ petitions.

6) The respondents have filed their reply to the writ petitions, in which it has been submitted that the respondent Corporation, while taking over Kashmir Government Arts Emporium from the Jammu and Kashmir Industries (JKI) in the year 1970, also got two production centres at Namchibal and Nowshera Srinagar. The petitioners were workers in these two production centres. It has been submitted that the production activity in the above two centres was being carried on under Piece Rated System of wages i.e. each worker was being paid according to his earning per day as per market rate. It has been submitted that pursuant to the policy of the Government, the workers of these two centres including the petitioners were allowed the benefits like Cost-of-Living Allowance (COLA), medical allowance etc. from 1985-86. It has been further submitted that while reviewing performance of these centres, the Board of Directors in its 98th meeting held on 14.05.1997 observed that these two centres are economically unviable and are proving a drain on resources

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

of the Corporation. Accordingly, the Management was asked to consider disengagement of the workers including the petitioners. After negotiations with the petitioners, 61 workers out of 83 agreed on compensation ranging from Rs.35,000 – Rs.44,000/ per head in addition to normal benefits. The production centres were closed and the production activity was stopped in the year 1997.

7) The respondents have contended that in terms of Government Order No.35-IND of 2018, sanction was accorded to grant of pensionary and other benefits to the regular/permanent employees of the Jammu and Kashmir Industries, J&K Handicrafts Corporation and the eligible employees of J&K Handloom silk Weaving Factory who were transferred to the Handloom Development Corporation from JKI. It has been contended that because the petitioners were Piece Rated Workers and not regular/graded employees of the Corporation, therefore, they were never regularized. Thus, the benefit of pension and other amenities in terms of Government Order dated 25.01.2018 (supra) cannot be extended to the petitioners.

8) I have heard learned counsel for the parties and perused record of the case.

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

9) The main plank of argument advanced by learned counsel for the petitioners for claiming the benefit of pension and other related benefits in favour of the petitioners is the judgment dated 12.03.2009 passed by this court in SWP No.1250/2002, which has been implemented by the respondents in terms of Government Order No.35-IND of 2018 dated 25.01.2018. If we have a look at the said judgment, it relates to the regular employees of the JKI and other Industrial Units. Government Order dated 25.01.2018 (supra) also pertains to the employees of J&K Handicrafts Corporation (S&E) and J&K Handloom Silk Weaving Factory transferred from JKI to J&K Handloom Development Corporation.

10) In the instant case, the petitioners were, admittedly, holding the posts of Piece Rated Workers belonging to the J&K Handicrafts (S&E) Corporation. The Piece Rated Workers, as has been explained by the respondents in their reply, are paid their wages according to their earning per day as per the market rate. Therefore, a Piece Rated Worker of the respondent Corporation was not getting any graded/regular scale of pay and, as such, cannot be equated with an employee of the said Corporation who was

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

CCP(S) No.18/2023

on its regular establishment. The petitioners, therefore, cannot claim parity with the employees of the respondent Corporation who were granted pensionary benefits pursuant to the judgment dated 12.03.2009 passed by this Court in SWP No.1250/2002 and Government Order No.35-IND of 2018 dated 25.01.2018. On this ground alone, the case of the petitioners deserves to be dismissed.

11) Learned counsel for the petitioners has placed reliance upon the judgment of this in **Hamidullah Andrabi & others vs. State of J&K and others** decided on 9th October, 2018, to press home her contention that on the basis of the judgment passed by this Court in SWP No.1250/2002, the extension of pensionary benefits has been allowed in favour of the employees of the J&K State Forest Corporation.

12) The aforesaid judgment in **Hamidullah Andrabi's** case has been set aside by a Division Bench of this Court vide judgment dated 11.11.2021 passed in LPASW No.10/2019. Even otherwise, in the said case, the extension of pensionary benefits was granted in favour of regular employees of the J&K State Forest Corporation

WP(C) No.642/2022

c/w

WP(C) No.54/2022

WP(C) No.384/2022

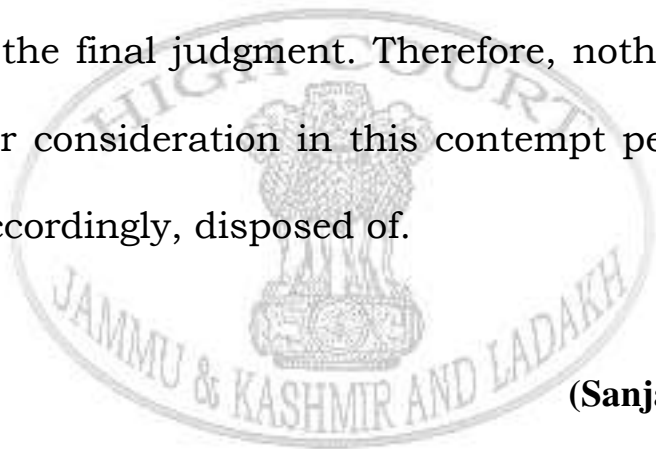
CCP(S) No.18/2023

whereas the petitioners, admittedly, were not the regular employees of the respondent Corporation. Therefore, they cannot claim any benefit from the ratio laid down in the aforesaid judgment.

13) For the foregoing reasons, I do not find any merit these writ petitions. The same are dismissed accordingly.

CCP(S) No.18/2023:

In view of the decision in the writ petitions, the order out of which instant contempt petition has arisen, has merged in the final judgment. Therefore, nothing further survives for consideration in this contempt petition. The same is, accordingly, disposed of.



(Sanjay Dhar)
Judge

Srinagar,
27.12.2024
“Bhat Altaf-Secy”

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No

WP(C) No.642/2022
c/w
WP(C) No.54/2022
WP(C) No.384/2022
CCP(S) No.18/2023