

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

WP(C) 2993/2024
CM(8136/2024)

PARVAIZ AHMAD GANIE AND ORS

...Appellant(s)/Petitioner(s)

Through: Mr. Syed Sajad Geelani, Advocate

Vs.

UT of JK and others

...Respondent(s)

Through: Mr. Illyas Laway, GA

CORAM:

HON'BLE MR. JUSTICE MOUL CHATTERJI KOUL-JUDGE



In response to the notice issued, Mr. Illyas Laway, GA, has appeared for the respondents.

The petitioners in this case are seeking issuance of writ in the nature of mandamus directing the respondents to fix the pay of the petitioners in the pay scale of 3050-4590 as paid to other Khilafwarzi Assistants/Supervisors as per J&K Urban Local Body Institutions (Management) Services Recruitment Rules, 2008, and other Government Departments etc., retrospectively, from the date they are holding the said post and also in view of the Judgment passed and also direct them to consider petitioners' representation and fix their seniority as well as give them age relaxation for appearing in future employment. The petitioners are claiming these reliefs precisely on the following grounds:

- a) Petitioners form a class/group vis-a-vis other Khilafwarzi Assistants / Supervisors of Petitioners' department/Institution who have been placed in higher pay scale whereas petitioners being the members of the same class are placed in the lower grade thus in the way are accorded hostile treatment and are denied the equal treatment,

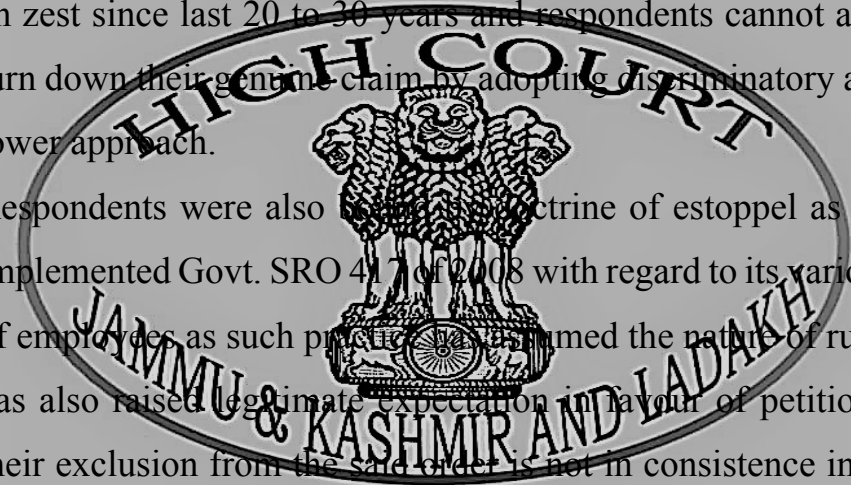
therefore the right guaranteed to petitioners under Article 14, 16(1) and 39(d) of the Constitution is violated.

- b) Since petitioners are similarly and identically placed and perform same job, duties, have identical responsibilities to discharge which is discharged by other Khilafwarzi Assistants and cannot be ignored and denied the similar treatment and benefit of same or up gradation of pay scale which as a matter of policy has been adopted in the department, but even after the recommendations made in this behalf by respondent the benefit to the petitioners therefore, the treatment accorded to the petitioners is discriminatory and adverse to constitutional scheme and guarantees. The decision of the respondents needs to be struck down.
- c) Respondent institution (Jammu & Kashmir) has an indifferent treatment and different set of rules and procedure towards its employees as the employees who are also serving in the respondent department similarly like petitioners and they were brought under the ambit of SRO 417 of 2008 and grade was released in their favour however case of petitioners are not treated on same terms and are excluded arbitrarily and denied from the benefit of SRO-417, their exclusion in the said grade being violative of Article 14 and 16 of the Constitution and principles of natural justice.
- d) Non-consideration of the case of petitioners for the up gradation of their grade and pay scale at par with other similarly situated employees of state is violative of the Fundamental right of promotion of petitioners as envisaged by Hon'ble Apex court in the case Major General H. M. Singh VSM Versus Union of India and Anr. ,(2014) and violation of the principle of equal pay for equal work as enshrined in the constitution of India in terms of article 39 the same doctrine was briefly explained by the Apex Court in Surinder Singh versus Engineer in Chief CPWD. Where it was held, that all organs of state were committed to the directive of equal pay

for equal work as enshrined in article 39 was not an abstract doctrine, but was to be a vital and vigorous doctrine accepted

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throughout the world, particularly by all socialist countries. So in light of said constitutional provisions and apex court directions respondent institute is bound to consider the case of petitioners for the upgradation of their grade and pay scale at par with other lab technicians serving in other department of state as petitioner have chosen to serve the respondent institution and are working with zeal and zest since last 20 to 30 years and respondents cannot arbitrarily turn down their genuine claim by adopting discriminatory and ivory tower approach.

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- The seal of the Jammu & Kashmir High Court is circular. It features a central emblem with a lion standing on a base, flanked by two smaller figures. The words "HIGH COURT" are written in an arc above the emblem, and "JAMMU & KASHMIR AND LADAKH" are written in an arc below it.
- e) Respondents were also bound by doctrine of estoppel as they had implemented Govt. SRO 417 of 2008 with regard to its various cadre of employees as such principle has assumed the nature of rule which has also raised legitimate expectation in favour of petitioners and their exclusion from the said order is not in consistence in law and constitutional guarantee of equal treatment under article 14 and 16 and doctrine of estoppels and legitimate expectation.
- f) Respondents are resorting to pick and choose, therefore, in view of above orders it was not justified for respondents to resort to pick and choose procedure and deny the benefit of equal treatment to petitioners and treat them discriminately; by resorting to the said procedure the respondents have broken down the concept of equal pay for equal work. The petitioners are entitled to claim the parity of pay scale with other Khilafwarzi Assistants/ Supervisors who are also doing same nature of work under higher pay scale.
- g) It is also settled principle of law that in order to create efficiency and smooth running of the department, the department should create promotional avenue for its employees. Even the Hon'ble Supreme Court of India has time and again laid stress that the promotional opportunity should be available for every walk of public service which generate efficiency in service and foster appropriate aptitude to grow for achieving excellence in service. In the present case

though several posts are available in the department and even the representations filed by the petitioners are kept pending. The in

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action on the part of the respondents is therefore, against the object and purpose of providing the promotional avenue. Such course should not be allowed.

- h) Payment of lower grade to the petitioners as compared to the Khilafwarzi Assistants/Supervisors of the same and other departments is discriminatory and hostile and offends the guarantee of Article 14 and 16(1) of Constitution and negates the command of Article 39(d) of Constitution.
- i) Petitioners have filed several representations to the respondents wherein have prayed the respondents to be promoted. They have prayed for removal of grade difference, but they are kept waiting even after 20 to 30 years of service. It was so done by the respondents in violation of their legitimate rights. That the act of respondents is arbitrary, capricious and discriminatory in nature besides being violative of the provisions governing the seniority and promotion of the employees, but without any reason and rhyme the rights of the petitioners are being slashed on no fault of them which does not lie in the mouth of the respondents to act otherwise in accordance with the rule of law as petitioners have got every right to be promoted. It is therefore, held in AIR 1967 S.C, 1458 titled State of A.P v/s Raj Reddy, that official arbitrariness is more subversive of doctrine of equality than statutory discrimination so the only interpretation consistent with the mandate of law in Art. 14 and 16 of the Constitution which guarantees equality before law and equal opportunity in the matter of employment which in alternative would mean to recognize and honor the rights of the petitioners so the respondents are under legal obligation to act fairly, honestly, reasonably and in a rationale manner.
- j) Respondents have willfully allowed the breakdown of rules which course is not permissible under constitution and service jurisprudence. The respondents have to follow the rules and treat all

employees equally, which would result in the equal pay for the equal work.

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Mr. Illyas Laway, GA appearing for the respondents, submits that petitioners case can be considered as per the rules and law applicable. He submits that in case petitioners make a representation for fixing their pay scale and seniority etc. they would be heard and their case considered strictly in accordance with the law applicable to them.

Petitioners’ counsel submits that there are Judgments passed which apply to petitioners and respondents are required to take into account those judgments as well.

Therefore, in view of the submissions made by learned counsel for the respondents as well as by counsel for petitioners, this petition shall stand disposed of at this stage, by providing that in case petitioners make a representation before the respondents for fixing their pay scale as well as for fixing their seniority, they shall take into consideration their representation as well as the Judgments which petitioners may rely upon and thereafter, pass order(s) within a period of four months from the date such representation is made by petitioners. Before disposal they shall hear the petitioners.

Disposed of along with connected CM(s).

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
02.05.2025
“Imtiyaz”