

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

SWP No. 878/2006

Reserved on: 12.02.2026
Pronounced on : 20.02.2026
Uploaded on : 20.02.2026
Whether the operative part or full
judgment is pronounced: Full

Madan Lal Parihar

....Petitioners

Through:- Mr. Anuj Dewan Raina, Advocate.

V/s

State of J&K & anr

.....Respondents

Through:- Mr. Vishal Bharti, Dy. AG with
Mr. Vivek Mattoo, Advocate.

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

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged order No. 87 of 2006 dated 03.04.2006 issued by respondent No. 2 whereby his claim for promotion to the next higher post of Field Assistant has been rejected.

02. As per case of the petitioner, he was engaged as a Chowkidar on daily wage basis with respondent-Corporation and he was regularized as such in the year 1996. It has been submitted that the petitioner is having the qualification of B.Sc

but the respondents promoted some of the employees, who were appointed after the appointment of the petitioner, to the post of Field Assistant, therefore, the petitioner and other similarly situated persons approached this Court by filing a writ petition bearing SWP No. 2534/1999, which was disposed of by this Court vide order dated 25.05.2000 with a direction to the respondents to examine the whole case and take a decision within a period of four months of the receipt of the copy of the said order.

03. It has been contended that the respondents instead of considering the case of the petitioner in its proper perspective on the analogy of persons named in the writ petition, who though were engaged against class-IV posts in the respondent-Corporation on later dates, but were allowed the benefit of promotion to the next higher post of Field Assistant, rejected the claim of the petitioner vide SFC Order No. 95/J of 2000 dated 15.12.2000. The stand taken by the respondents was that because the petitioner was regularized as Chowkidar in respondent-Corporation in terms of SRO 64, as such he could not claim parity with persons who, though junior to him, have been promoted to the next higher post of Field Assistant prior to issuance of SRO 64 of 1994.

04. The petitioner along with similarly situated persons is stated to have filed another writ petition bearing SWP No. 2601/2000, challenging the aforesaid consideration order. The said writ petition was again disposed of by this Court in

terms of order dated 13.03.2003 directing the respondents to consider the case of the petitioner for their promotion as Junior Assistant and Field Assistant on their eligibility and taking note of their experience, qualification and by giving them same treatment as has been given to respondents No. 4 to 14.

05. During the pendency of the contempt proceedings, arising out of the aforesaid order, the respondents passed the impugned consideration order thereby rejecting the claim of the petitioner.

06. The petitioner has challenged the impugned consideration order on the ground that the same is a glaring example of discrimination and arbitrariness on the part of the respondents. It has been contended that the respondents have adopted different yardsticks in implementing the court orders inasmuch as while implementing the consideration order in SWP No. 415/1999, the petitioners therein have been allowed the benefit of promotion but while implementing the judgment of the Court in the case of the petitioner, a different stand has been taken by the respondents. It has been contended that the respondents cannot grant promotion to the persons, who were engaged after the engagement of the petitioner on daily rated basis, as such, the impugned order is liable to be set aside.

07. The respondents have contested the writ petition by filing reply to the writ petition. In their reply, it has been

submitted that prior to the enforcement of SRO 64 of 1994, the respondent-Corporation was appointing daily wagers against the post of Field Assistant/Junior Assistant and Class-IV employees but the inter se seniority of daily wagers was not a criteria being followed at that point of time as no consolidated seniority of the daily wagers was being maintained in the Corporation. It has been submitted that because a daily wager's service is not a service against any civil post so seniority is not to be maintained.

08. It has been further submitted that during the year 1993 the respondent-Corporation, keeping in view of the availability of the posts, appointed some daily wagers as Field Assistants/Junior Assistants and Class-IV employees. It has also been submitted that respondent-Corporation had various divisions throughout the State and the vacancies, prior to coming into operation of SRO 64 of 1994, were distributed all over the divisions whereafter eligible daily wagers working in the divisions against such posts were adjusted. It has been submitted that senior most daily wagers in their respective divisions thus got the benefit of the aforesaid policy of the Corporation and their adjustment was made against the posts of Field Assistant/Junior Assistant in the year 1993.

09. It has been submitted that after coming into operation of SRO 64 of 1994, the conditions laid down in the said SRO were to be strictly adhered to. Accordingly, the services of the petitioner as Class-IV employee were regularized

after completion of seven years as daily wager. It has been contended that no person junior to the petitioner has been adjusted/promoted after the enforcement of SRO 64 of 1994. It has been further submitted that in terms of SRO 64 of 1994, there is no provision of regularizing the daily wagers on higher posts on the basis of higher qualification other than Class –IV posts and prior to enforcement of SRO 64 of 1994, there was no prescribed method/consistent policy for regularization of service of daily wagers in the respondent –Corporation. It has been submitted that the petitioner is seeking seniority over and above certain other employees who were promoted before the enforcement of SRO 64 of 1994 in their respective divisions and as such case of the petitioner is not similar to the case of such employees.

10. The respondents have submitted that case of the petitioner for his promotion to the post of Field Assistant shall be considered as per the seniority maintained by the respondents. It has been further contended that the petitioner has not challenged the regularization or engagement of employees as Field Assistant appointed prior to 1994 and he is estopped from doing so at this stage.

11. During the pendency of the writ petition, the petitioner filed a supplementary affidavit on 08.02.2011 in which he has submitted that Sh. Ram Dayal, Sh. Hem Raj and Smt. Radha Krishan were appointed on daily wage basis after his appointment as Daily Wager and all these persons have

been promoted as Field Assistants pursuant to order No. 42 of 1999 dated 13.08.1999 in terms of direction dated 18.07.1995 passed by this Court in SWP No. 415/1994. It has been submitted that in the said writ petition, Smt. Meera Devi, Sh. Rajan Kotwal and Sh. Majid Rashid were impleaded as private respondents and they have also been promoted as Field Assistants. Besides this, one Ms. Vijay Laxmi who was engaged on 09.04.1999 in the Corporation has also been promoted and placed in the pay scale of Rs. 3050-4820 vide SFC Order No. 67 of 2002 dated 08.03.2002. The petitioner further contends that Sh. Arjun Singh and Sh. Surinder Singh who were engaged as Daily Wagers after him, have been promoted as Field Assistants on 15.04.1994.

12. The respondents in their reply to the supplementary affidavit have submitted that Smt. Vijay Laxmi was engaged on consolidated wages of Rs. 4000/- per month as Computer Operator on the basis of her qualification as postgraduate diploma in Systems Management. Subsequently, keeping in view her performance, she was adjusted in regular pay scale vide SFC Order No. 67 of 2002 dated 08.03.2002. It has been submitted that because Smt. Vijay Laxmi was appointed on the basis of her computer skills which the petitioner does not possess, as such, his claim is not maintainable.

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

14. The main ground that has been urged by the petitioner for assailing the impugned consideration order is that some of the employees, who were engaged on daily rated basis after his engagement on daily wage basis, have been adjusted/promoted to the higher post of Field Assistant. So far as date of engagement of the petitioner on daily wage basis is concerned, the same is not in dispute and even the date of engagement of the persons as daily rated employees with the respondent-Corporation in respect of whom the petitioner is claiming parity is concerned, the same is also not in dispute. Admittedly, all those persons to whom the petitioner has referred in his supplementary affidavit as also in the writ petition have been engaged on daily rated basis after the engagement of the petitioner as Chowkidar on daily wage basis in the year 1988.

15. The stand taken by the respondent-Corporation is that while the persons who have been adjusted/promoted against the higher post of Field Assistant were engaged on daily rated basis after the engagement of the petitioner yet their services were regularized prior to the coming into operation of SRO 64 of 1994 but the services of the petitioners came to be regularized after coming into force of SRO 64 of 1994 vide SFC Order No. 59 of 1997 dated 10.06.1997 after the petitioner had completed seven years of service as daily rated employee. Therefore, admittedly, the services of the petitioner have been regularized well after the date the services

of those persons with whom the petitioner is claiming parity were regularized.

16. As per method of recruitment/promotion to the post of Field Assistant as contained in the Jammu and Kashmir State Forest Corporation Employees (Condition of Services) Regulations, 1993 (hereinafter to be referred to as **“Regulations of 1993”**) is 80% by direct recruitment and 20% by promotion from Class-M of administrative cadre employees having prescribed minimum qualifications and physical standards. The post of Chowkidar falls in Class-M of the Schedule-II of the aforesaid regulations, therefore, for being eligible to the promotion to the post of Field Assistant, an employee has to hold the post of Chowkidar etc on substantive basis, only then he can be promoted to the post of Field Assistant.

17. The stand of the respondents is that prior to 1994, there were no service regulations in operation and daily rated employees were being adjusted/promoted to the post of Field Assistant/Junior Assistant subject to the availability of vacancies in a particular division. It appears that all the persons with whom the petitioner is claiming parity excepting, Smt. Vijay Laxmi, were either regularized as Class IV employee or adjusted against the post of Field Assistant/Junior Assistant prior to coming into force of Regulations of 1993. None of them has been adjusted/promoted after the coming into force of Regulations of 1993.

18. As per the directions of the writ court passed in earlier writ petition filed by the petitioner and other persons, the respondents were directed to consider the case of the petitioner for their promotion as Junior Assistant and Field Assistant on their eligibility and taking note of their experience, qualification and by giving them same treatment as has been given to respondents No. 4 to 14 to the said writ petition. The said order was made on the concession of learned counsel for the respondents that the respondents would consider the case under the rules and the Court did not render any finding on merits of the claim of the petitioner. As already stated as per the Regulations of 1993, the case of the petitioner had to be considered along with other eligible employees.

19. In the consideration order, it has been clearly indicated that there are at least 308 Chowkidars, who were senior to the petitioner and who are also eligible for promotion to the post of Field Assistant. In the face of the Regulations of 1993, the petitioner cannot claim promotion over and above these 308 Chowkidars. Any action taken by the respondents prior to coming into force of Regulations of 1993 would not give a right to the petitioner to claim parity with those who have been promoted/adjusted/regularized prior to the enforcement of the said Regulations which came into force on 06.01.1994 upon their publication in the Government Gazette.

20. So far as case of Smt. Vijay Laxmi is concerned, it has been explained by the respondents in their affidavit that she was having special skills and was holding post-graduate diploma in Systems Management as a result whereof even though she was appointed on consolidated basis after the regularization of the petitioner, she was granted regular pay scale in terms of the SFC Order No. 67 of 2002 dated 08.03.2002 keeping in view the specialized qualification needed for the post of Computer Operator. The petitioner admittedly does not hold any qualification in operating computers, as such, he cannot claim parity with her.

21. Apart from the above despite the petitioner having been appointed on daily wage basis prior to the persons with whom he is claiming parity, he cannot be given preference in matter of grant of promotion to higher post because his services have been regularized with effect from the year 1996 whereas, those with whom he is claiming parity were regularized/adjusted prior to the year 1994. The crucial date for determining inter se seniority between the petitioner and those with whom he is claiming parity is not the date of their initial engagement as daily wagers but it is the date on which their services were regularized. On this count also, the petitioner cannot claim promotion to higher post from the date when those who were regularized ahead of him, were promoted, particularly when the petitioner has not challenged their regularization or adjustment.

22. For what has been stated hereinbefore, I do not find any merit in this petition. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

JAMMU
20.02.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**
Whether the judgment is reportable: **No**

