

Hafiza Begum Vs State

Court: Jammu & Kashmir High Court

Date of Decision: April 3, 1998

Acts Referred: Civil Service (Temporary Service) Rules, 1961 " Rule 3(1A)
Constitution of India, 1950 " Article 19(1)(f), 226

Citation: (1998) KashLJ 727 : (1999) 2 SCT 123 : (1999) 1 SriLJ 140 : (1999) SriLJ 140

Hon'ble Judges: A.Q.Parray, J

Bench: Single Bench

Advocate: M.U.Salaria, H.Rehman , Advocates appearing for the Parties

Judgement

Abdual Qadir Parray, Judge

1. Through the medium of this petition the petitioner, who seems to have been engaged as teacher vide order No: ENG/C/AptAdhoc/89/105

dated 10th October 89 without break in the grade of 9001830 by the District Education Officer, Poonch and seems to have joined the assignment

on 12.10.1989, has prayed for issuance of a writ of Mandamus directing the respondents to comply with the directions of High Court of J and K

passed in Judgment dated 13.08.1990 in SWP No.:369/90 and also to pay to the petitioner her pay dues as a teacher for the duty performed

w.e.f. 12.10.1989 upto date and so long as the petitioner continues to perform her duties as a teacher.

2. It is averred by the petitioner that at the time of her appointment she was asked to report to Tehsil Education Officer Surankot i.e. respondent

No: 7 for duties, it was further directed that respondent no.5 i.e. block Education Officer Bafliaz will draw the pay dues on receipt of monthly

attendance from the office of Tehsil Education Officer Surankot.

3. It is further averred by the petitioner that at one stage she apprehended that her services may be terminated otherwise than in accordance with

law to accommodate other persons to the detriment of the petitioner. The petitioner was constrained to file writ petition No.369/90 in which a

temporary direction was issued by the court on 19.05.1990 directing the respondents that in case the petitioner was continuing as a teacher and if

the final selection had not been made by the Selection Board, she shall not be disturbed. The writ seems to have been finally disposed of in the light

of Judgments which were passed in like matters by the other bench of this court was back on 27th June'90 and writ petition no:369 of 1990 also

from the records seems to have been disposed of on 13th August'90. The operative part of the judgment/disposal of the writ petition speaks:

Identical writ petitions have already been disposed of vide order of this court, passed on June 27,1990.

This petition is also disposed of at this stage as settled on the analogy of the order already passed in similar petitions.

The petitioners were appointed as teacher/Junior Assistants on adhoc basis in Poonch District subject to final selection to be made by the

Recruitment Board. As agreed to by the learned counsel for the parties, the petitioners shall continue in service till final selection is made by the

competent authority which, while making such selections, shall allow the petitioners to participate in the selections, if eligible under rules and also

while making selection the competent authority shall consider various Government Orders passed earlier and the pronouncement of the Hon'ble

Supreme Court.

4. It seems that after this order was passed and the petition was disposed of, so far no selection as agreed by the Respondent has been made by

the Selection Board and the petitioner is performing her duties as teacher. It is admitted case on the basis of a certificate issued, forming Annexure

P8 to the petition, whereby it is clearly proved that the salary has not been paid to the petitioner who is working as a teacher without payment of

her salary and she is being made to run from pillar to post. She being a poor lady and the dilly dally tactics followed by the respondents has

constrained her to approach the court asking for her pay dues which have accrued to her right from 10th October' 89 till date while performing her

duties. The respondents have appointed the petitioner but have not made the payments of pay dues which have accrued to her.

5. In nutshell the petitioner has made the prayer that by allowing this writ petition, the respondents be directed by a writ of mandamus to strictly

comply the order of this court passed in writ petition No: 369/90 dated 19th May'90 and order dated 13th August'90, quoted hereinabove.

6. It is further prayed by the petitioner that a writ of prohibition may kindly be issued restraining the respondents from removing the petitioner from

service otherwise than in accordance with court order dated 19th May'90, and a writ of mandamus directing the respondents to make the payment

of pay dues to the petitioner right from 10th October'89.

7. The respondents were put on notice. They have not chosen to file any counter in the matter nor have made the records available before this

court despite the fact that the person of Sh. HafizulRehman, who was contesting the case, on behalf of the respondents, had assured this court on

19th February'98, when the matter was heard, that he will make the records available within a period of two weeks. I am told by the registry that

till date the records have not been made available by Mr. Rehman, learned counsel for respondents So in that view of the matters the petitioner is

without any rebuttal from the other side,

8. I have perused the documents and shcard the arguments advanced by the learned counsel for the parties.

9. Mr. Salaria, learned counsel for the petitioner, has verbally made a prayer that the petitioner has been working right from October'89 till date

without break and she has acquired the Status of qasipermanent employee under J and K Temporary Civil Services Rules and, as such, the

petitioner be declared to have acquired such status. It may be noted that such a plea has neither been taken by the person of the petitioner or her

counsel in the pleadings of the matter/ case nor that is the prayer asked for by the petitioner, she has asked for the protection of her services and

also has payment of her pay dues which have accrued to her by performing her duties right from 12th October'89.

10. So while allowing the petition in continuity of the order passed in writ petition no: 369/90 on 13th August 1901 direct that the petitioner be

allowed to continue till selection is made and she be paid wages and pay dues which have accrued to her right up from the date she joined the

services and, in case she has been working continuously right from 12th October'89 till date, she has acquired the statutory status of qasi

permanent employee in the Education Department under Section 3(1)A of Civil Services (Temporary Service) Rules, 1961 and case of the

petitioner be examined and considered in that aspect also and the pay dues which have accrued to her, if not already paid, be paid to her without

any further delay.

11. It may be noted that the pay dues of an employee are his/her property and the property in terms of Section 19(i)(f) of the Constitution is a

fundamental right in the state of J and K as because the Constitution Amendment Act(44th) Ammended Act has not been extended to the State of

J and K. So the right to property is a fundamental right and in case the same is denied to an employee, it amounts to denial of fundamental right and

the courts have to see that the fundamental rights of a citizen are not flouted/denied.

12. So the petition is allowed with the above directions. I leave the parties to bear their respective costs.