

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 03.10.2024
Pronounced on: 15.10.2024**

SWP No. 28/2016
CM No. 1616/2022
IA No. 1/2016.

**Suraj Parkash, age 58 years
S/O Late Sh. Pritam Lal,
R/O House No. 11, Lane No. 6,
Gopi Nath Ashram Udheywala, Jammu.**

.....Petitioner(s)

Through: Mr. Abhishek Wazir, Advocate and
Mr. Rajat Sudan, Advocate.

Vs

- 1. State of Jammu & Kashmir through
Commissioner/ Secretary to Govt., Finance Department,
Civil Secretariat, Jammu.**
- 2. Commissioner/Secretary, Transport Department,
Civil Secretariat, Jammu.**
- 3. Managing Director,
J&K State Road Transport Corporation, Jammu.**

..... Respondent(s)

Through: None for R-1 and 2.
Mr. R. Koul, Advocate for R-3.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** The petitioner through the medium of this petition has
prayed for the following reliefs:

**“Writ of mandamus commanding the respondents to
grant and place the petitioner in the higher pay grade
of 5500-9000 w.e.f. 01.01.1996 pursuant to the
promotion of the petitioner as Test Driver/Vehicle**

Inspector w.e.f 08.06.1992 and release of pay grade appended to the post pursuant to the SRO 18 dated 19.01.1998 Rule 15 grade appended to the post;

With further direction directing the respondents to grant the grade pre-revised as per SRO 93 dated 15.04.2009 issued by the respondent No. 1 thereby directing all Head of Departments, Managing Directors, Chief Executives of State, PSU, Autonomous bodies to adopt the Pay Revised Rules w.e.f., 01.01.2006;

With further writ of mandamus directing the respondents to promote the petitioner as Assistant Work Manager/Foreman in the Pay Grade of Rs. 9300-34800+Grade Pay of Rs. 4200/-; and

With further writ of mandamus commanding the respondents to release all the consequential monetary and other service benefits in favour of the petitioner.”

- 02.** The petitioner has pleaded in his petition that he was engaged as Class-IV employee in the year 1975 and was subsequently promoted as Washer and regularized vide Order No. RTC/EC-11/1960/8730 dated 01.08.1979; that the petitioner was subsequently also promoted as Vehicle Inspector equivalent to the post of Senior Driver in the pay grade of Rs. 4600-160-7050 on 08.06.1992.
- 03.** The petitioner has further asserted that the Govt. of Jammu and Kashmir vide SRO 18 of 1998 framed **‘Jammu and**

Kashmir Civil Services Revised Pay Rules, 1998' which were made applicable to the Govt. servants and posts in connection with the affairs of the State including those paid from contingencies or charge to work, whose pay was debitable to the consolidated funds of the State, as such the SRO was applicable to the service of the petitioner being the employee of the respondent-Corporation; that as per Rule 15 of the Rules (supra), in service Chauffers, Drivers Grade-I and Drivers Grade-II, existing in all the Corporations were entitled to get pay scale of 5500-9000, whereas the respondent-Corporation who, as per SRO 18, was under legal obligation to release the pay grade of 4600-160-7050, which the senior drivers and the drivers of Grade-I and Grade-II were getting in other Corporations.

- 04.** It is further submitted that in the year 2006 the respondent-Govt. of the Jammu & Kashmir vide SRO 93 of 2006 framed 'Civil Services (Revised Pay Rules), 2009' and as per these Rules, the revised pay scales were made effective w.e.f., 01.01.2006 and the Drivers in all the Corporations were placed in the pay scale of 5200-20200 plus Grade Pay Rs. 2400 and the Senior Drivers were placed in the pay scale of 9300-34800 plus grade pay of Rs. 2800, however in the case of the petitioner he was still getting the pay scale of

5200-20200 plus grade pay of Rs. 2400/- though all the heads of the departments/Managing Directors of autonomous bodies had adopted the revised pay scales.

- 05.** The petitioner alleged that despite making representations time and again to the respondents, to release the higher pay grade in his favour at par with the Senior Drivers of other Corporations or Autonomous Bodies who had adopted the SROs 93 and 18, the petitioner's plea was ignored.
- 06.** It was submitted that the respondent-Corporation after the issuance of SRO 93 by the Govt. of Jammu & Kashmir had adopted the same and released the pay grade appended to the post of Senior Driver w.e.f., 01.01.1996 and that some of the Drivers filed the writ petition before this Court seeking direction for implementation of SRO 14 of 1996 and this Court directed the State Government to grant the higher standard pay scales to the Senior Drivers. The State Financial Corporation, however, challenged the order in an LPA which was, however, dismissed by the Division Bench in case titled **“Jammu and Kashmir State Financial Corporation Vs. Mohd. Akbar Mir”**.
- 07.** It is stated in the petition that the petitioner being senior most Vehicle Inspector was due for further promotion as

Assistant Works Manager/Foreman as he was possessing requisite qualification as envisaged in the Rules, being an ITI Motor Mechanic Diploma Holder besides being Matriculate and having minimum seven years of service as Driver Grade-II since 08.06.1992 but the petitioner was not promoted to the next higher post for the last 25 years.

08. The petitioner has alleged that the inaction on the part of the respondents is bad as all the Corporations of the State had adopted SROs 18, 93 and 14 granting higher pay grade appended to the post of Senior Driver and that the respondents being a model employer were required to act fairly giving due regard and respect to the rules framed by it. Finally, the petitioner has prayed for removal of unwarranted stagnation to his service career.

09. Pursuant to notice, the respondent-Corporation filed reply/objections asserting therein that the petitioner as Corporation's employee is not governed by and entitled to the benefits flowing from SRO 18 of 1998 as a bare perusal of the said SRO would reveal that as per Rule 3, it applies to the Govt. employees appointed to civil services and posts in connected with affairs of the State. It is further stated in the objections that the pay/wages of the Corporation's

employees is governed by Corporation Rules and from time to time fixation of slab of COLA subject to availability of requisite and suitable financial strength of PSU.

10. In the objections, the respondent-Corporation has further submitted that in accordance with the directions passed by this Court dated 14.01.2016, the claims of the petitioner were duly considered in the light of the prevalent rules and consideration order dated 24.04.2018 was passed. It is further submitted by the respondent-Corporation that the claims raised by the petitioner in respect of both SROs are bereft of any legal basis and are liable to be rejected. The respondent-Corporation has also placed on record the order dated 24.04.2018 passed with regard to the petitioner rejecting his claims.

11. Mr. Abhishek Wazir, learned counsel appearing for the petitioner submits that the petitioner was initially engaged as Cleaner in Govt. Transport Undertaking (GTU) in the year 1975 and that he was regularized, as such, in the year 1979; that he was promoted as Driver in the year 1984 in Grade-II and was subsequently promoted as Chauffer/Vehicle Inspector in the year 2002 w.e.f., the year 1992 and that the

petitioner after filing this petition in 2016, attained superannuation in the year 2017.

12. Mr. Wazir argued that the petitioner was entitled to the benefits of SROs 18 and 93 issued by the Govt. of Jammu & Kashmir, while implementing 5th and 6th pay commission recommendations respectively, however, the benefits under these SROs were not extended to the petitioner and also that he was denied the next promotion as Works Manager in higher grade being at the same post since the year 1992. He, however, submitted that the petitioner, in view of his superannuation in the year 2017, has not been pressing for the relief of granting promotion and that petitioner has passed instructions to him to restrict his relief with regard to grant of benefits for pay fixation as per SROs 18 of 1998 and 93 of 2009 at the time of implementing 5th and 6th pay commission recommendations.

13. Mr. Wazir also argued that the petitioner has been getting pension vide PPO Number 1120117635 and has also been granted the benefits of 7th pay commission recommendations as such, the respondent-Corporation cannot take two stands; **firstly**, with regard to grant of pension which is entitled to a person holding a civil post and **secondly**, with

regard to grant of benefits of 7th pay commission as such, the petitioner was entitled to be granted the benefits of SROs issued while implementing the 5th and 6th pay commission recommendations.

- 14.** He has finally prayed that the petition be allowed and the respondents be directed to grant the petitioner the benefits of 5th and 6th pay commission recommendations in accordance with SRO 18 dated 19.01.1998 and SRO 93 dated 15.04.2009 issued by the Govt. of Jammu & Kashmir, so that the petitioner's salary is re-fixed so as to enable him to get the pension in accordance with the last drawn salary.
- 15.** Mr. R. Koul, learned counsel for the respondent-Corporation, on the other hand, argued that though the petitioner claimed to have initially engaged and regularized as Cleaner with the Govt. Transport Undertaking (GTU), however, with the creation and constitution of Jammu & Kashmir State Road Transport Corporation, all the employees of the GTU were absorbed in the respondent-Corporation under the Govt. Order and further submits that in view of the Govt. Order, the employees had to give an option as to whether they opt for being subjected to

Corporation Rules or continue to be governed as Govt. employees, as they were earlier.

- 16.** He has further argued that in case the petitioner has opted to be absorbed in the Respondent-Corporation under the rules of the Corporation, he cannot be held to be entitled to the benefits of the recommendations of 5th and 6th pay commission recommendations implemented by the Govt. of Jammu & Kashmir, as the employees of the Corporation were separately governed by the Staff Rules of Corporation and they were used to be paid COLA.
- 17.** On being confronted as to how the petitioner had been granted pensionary benefits and as to how the 7th pay commission recommendations benefits have been extended to him, Mr. Koul produced the service record with regard to the service of the petitioner.
- 18.** On perusal of the service record of the petitioner, as produced by Mr. Koul, it transpires that the Pension Payment Order (PPO) has been issued in favour of the petitioner which shows that the petitioner was considered as a Govt. employee because the Pension Payment Order (PPO) is issued only to the Government employees, with pensionable jobs.

19. Learned counsel for the petitioner in support of his arguments has relied upon a judgment of this Court titled as **“All J&K Workers Union, State Road Transport Corporation Vs. State of J&K & Ors”** reported in 2013 Legal Eagle (J&K) 334, wherein a Coordinate Bench of this Court has held that the respondents in general and respondents 1 to 3 in particular are directed to take immediately necessary steps to make the offer of exercise of the requisite option to the petitioners. In case any of the members of the petitioner Union has retired, the benefit of option shall also be extended to such retired employee. Needless to mention that the benefit shall be made available and extended to deceased members of the petitioner union as well. Depending upon the option so exercised by the members of the petitioner union, the respondents shall take further steps to settle the matters.
20. It would be apposite to reproduce para 26 of the judgment (supra) for convenience:

“26. This petition is, accordingly, allowed. The impugned Government order dated 11.09.2003 read with the order contained in the impugned communication dated 06.07.2010 addressed by Under Secretary to Government, Finance Department to the petitioner are quashed. Any Government order on the basis of which the contents of the impugned communication dated 06.07.2010 are based shall be treated as declared inconsequential and ineffective. The respondents in

general and respondents 1 to 3 in particular are directed to take immediately necessary steps to make the offer of exercise of the requisite option to the petitioners. In case any of the members of the petitioner Union has retired, the benefit of option shall also be extended to such retired employee. Needless to mention that the benefit shall be made available and extended to deceased members of the petitioner union as well. Depending upon the option so exercised by the members of the petitioner union, the respondents shall take further steps to settle the matters. The needful shall be done within three months from the date a copy of this judgment is served on the respondents.”

- 21.** Another Coordinate Bench of this Court in case titled as **“Abdul Rashid Bhat & Ors Vs. Union Territory of JK & Ors”** [WP(C) No. 3580/2019] decided on 13.12.2021 has followed the judgment of **“All J&K Workers Union, State Road Transport Corporation Vs. State of J&K & Ors”** and observed that once the petitioners have been treated on par with the government employees, there appears no reason or justification to treat them differently for the purpose of giving the benefit of revised/revision on account of pay revision. What has been observed by the Coordinate Bench in paragraph 6 of the said judgment is as under:

“Once the petitioners have been treated on par with the government employees, there appears no reason or justification to treat them differently for the purpose of giving the benefit of revised/revision on account of pay revision accorded vide SRO 193 of 2018. For that reason also, this Court holds the petitioners entitled to the benefit of pay revision/revised pension in terms of SRO 193 of 2018 being the retired government employees and not the employees of any public sector undertaking.”

22. The respondent No. 3 on the basis of the directions given by the Coordinate Bench of this Court in case titled as **“All J&K Workers Union, State Road Transport Corporation Vs. State of J&K & Ors”** had declared the petitioner pensionable and extended the petitioner benefits of 7th pay commission which is evident from a communication attached with the service record.
23. The grievance of the petitioner is that the benefits of 5th pay commission and 6th pay commission have not been extended to the petitioner although the benefits of 7th pay commission had been extended to the petitioner.
24. Viewed thus, in view of treating the petitioner by the respondents as a Govt. employee holding pensionable civil post and also releasing him the benefits of the 7th Pay Commission recommendations, this Court is of the considered opinion that the petitioner is also entitled to the benefits of 5th and 6th Pay Commission recommendations as implemented vide aforesaid SROs.
25. Having regard to the abovementioned discussion and observations made, particularly in view of the earlier

judgments (supra) of this Court, this petition is allowed, with the following directions:-

- (i) The rejection order dated 24.08.2018 repudiating the claims of the petitioner are declared as inconsequential/ineffective.
- (ii) The respondents are directed to pass fresh order, in compliance of this judgment, by placing the petitioner in the relevant revised pay scales, in terms of SRO 18 of 1998 dated 19.01.1998, and SRO 93 of 2009 dated 15.04.2009.
- (iii) The differential arrears be paid to the petitioner, after conducting the whole exercise, within eight weeks, from this date.

- 26.** Record received from the respondent-Corporation is ordered to be returned through their standing counsel Mr. R. Koul, Advocate.
- 27.** Petition is, accordingly, disposed of along with pending application(s), if any, with no order as to costs.

(M A CHOWDHARY)
JUDGE

JAMMU
15.10.2024
NARESH/SECY.

Whether judgment is speaking: **Yes**

Whether judgment is reportable: **Yes**