



IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No. 802/2017
MP No. 01/2017 c/w
RPSW No. 27/2019
CPSW No. 338/2018

Reserved on: 17th of October, 2019.
Pronounced on: 22nd of October, 2019.

Mrs. Rabia Shah

..... Petitioner(s)

Through: -
Mr Zahoor Ahmad Shah, Advocate
Petitioner in person.

V/s

State of JK & Ors.

..... Respondent(s)

Through: -
Ms Asifa Padroo, AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

Whether approved for Reporting in Press/ Media? YES/ NO.

Whether approved for Publication in Digest/ Journal? YES/ NO.

JUDGMENT

Ali Mohammad Magrey; J:

01. By medium of this petition, the petitioner has sought the indulgence of this Court in granting her the following relief(s):

“(A) A writ in the nature of mandamus, be issued in favour of petitioner and against respondents, whereby commanding the respondents to release proper scale including grade pay attached to post i.e. 4800 to petitioner retrospectively and accordingly compute the increments to which petitioner is entitled.

(B) A writ in the nature of mandamus, be issued in favour of petitioner against respondent, whereby commanding the respondents to consider petitioner for promotion to next higher post grade and post.

(C) Any other writ, order or direction which this Hon'ble Court may deem proper be issued in favour of petitioner.”



02. An advertence, though brief, to the factual antecedents leading to the filing of this petition would be advantageous to appreciate the controversy involved in its proper perspective. The petitioner claims to be a Law Graduate (Professional), after practicing as a Lawyer and attainment of sufficient professional experience as well as the legal acumen, joined the respondent Forest Department in the year 1990 and discharged her duties as a Law Officer in the Law Wing of the Department. The petitioner, after performing her duties as such in the respondent Department for a considerable period of time, sought her confirmation and subsequent release of grade attached to the post of Law Officer on the ground that she was performing duties on the said post and that the post was vacant. The request so made by the petitioner was examined and considered at various levels in the Department, but no final decision was taken with regard to the claim of the petitioner, constraining the petitioner to approach this Court through the medium of writ petition bearing SWP No. 2619 of 1991. In the said petition, the petitioner sought regularization against the post of Law Officer held by her in the respondent Department on *ad hoc* basis and subsequent release of pay scale/ grade attached to the said post. The respondents, thereafter, initiated the process on the request/ representation of the petitioner without filing their reply in the writ petition so filed by the petitioner, thereby resulting in the pendency of the said petition till July, 1999. It is submitted that the respondents informed the petitioner that her grievance will be redressed only if the petitioner withdraws the writ petition from this Court and, on the basis of this assurance, the



petitioner was compelled to withdraw the said petition. Thereafter, as stated, vide Government Order No. 250-FST of 1999 dated 23rd of June, 1999, the petitioner was placed as Law Officer in the pay scale of Rs. 6500-10500, whereby she was allowed to hold the post of Law Officer without any interruption. The petitioner, again, represented before the respondents for seeking regularization of her placement as Law Officer in the respondent Department. The Chief Conservator of Forests, in terms of communication No. 55/MS/CCF(K)Adm/2009/3893 dated 8th December, 2009, forwarded the case of the petitioner to the Principal Chief Conservator of Forests with the recommendations that the petitioner may be regularized against an available post of Law Officer in view of her experience and length of service rendered in the Department. Thereafter, on 8th of June, 2011, the case of the petitioner, after proper consideration and with the approval of the Forest Minister, was submitted for approval to confirmation/regularization against the post of Law Officer in the pay scale of Rs. 9300-34000-GP 4800 to Chief Minister through Chief Secretary in Coordination. Since, the respondents failed to regularize the services of the petitioner in pursuance of the aforesaid note submitted by the competent authority, the petitioner was constrained to file SWP No. 624/2012. The said writ petition came to be decided by the Division Bench of this Court vide judgment dated 19th of May, 2015 directing the respondents to issue order of regularization in favour of the petitioner. As the respondents, despite lapse of a considerable period of time, did not issue any regularization order in favour of the petitioner, as directed by this Court, the petitioner filed contempt petition bearing No. 13/2016. Faced with the eventuality of



contempt of Court, the respondents filed the compliance report before this Court annexing therewith Government Order No. 157-FST of 2016 dated 1st of June, 2016 whereby the services of the petitioner were ordered to be regularized in the pay scale of Rs. 6500-10500 (pre revised) and, now, revised as Rs. 9300-34800-4280. Thereafter, the petitioner has filed the instant petition claiming that although the respondents, vide Government Order aforesaid, regularized the services of the petitioner on the post of Law Officer, but they did not release the appropriate grade pay attached to the said post, i.e. Rs.4800, and, instead, placed her in the grade pay of Rs.4280 only.

03. Mr Zahoor Ahmad Shah, the learned counsel for the petitioner, submits that the respondents were under a legal obligation to pay the salary in favour of the petitioner in accordance with the grade pay attached to the post of Law Officer, i.e. grade pay of 4800, however, the respondents, vide Government Order No. 157-FST of 2016 dated 1st of June, 2016, accorded the grade pay of Rs. 4280 in favour of the petitioner, which grade is inferior to the rank and status of the post of Law Officer held by the petitioner in the respondent Department. It is submitted that, admittedly, the services of the petitioner have been regularized against the post of Law Officer, but she has been denied the grade pay attached to the said post. The learned counsel further submits that the respondents, in the process of release of grade pay attached to the post on which the petitioner has been regularized, have violated the right guaranteed to the petitioner in pursuance of Article 39(d) of the Constitution of India. The learned counsel has further proceeded to contend that besides the above



grievance with regard to the inappropriate grade pay accorded to the petitioner, the petitioner has not been considered for further promotion, whereas the other Law Officers working in the respondent Department and discharging identical duties as that of the petitioner have been promoted to the next higher post. It is pleaded that the petitioner, right from the date of her appointment as Law Officer in the respondent Department, has remained stagnated on the said post.

04. Counter Affidavit stands filed on behalf of the respondents resisting and controverting the averments made by the petitioner in her petition. It is stated that the petitioner was initially engaged as a Daily Wager in the Law Section of the office of the Principal Chief Conservator of Forests, J&K, for pursuing litigation cases, as reported by the Principal Chief Conservator of Forests, J&K, vide communication dated 6th of January, 2016. Subsequently, as stated, the Department, in terms of Government Order No. 250-FST of 1999 dated 23rd of June, 1999 placed the petitioner, working in the Legal Section of the Department, in the pay scale of Rs. 6500-10500 for a period of six months or till the post is filled up by the Competent Authority under rules and her pay was ordered to be drawn against the post of Law Officer in the Department. The Department, thereafter, vide U.O No. FST/ Ser/27/2010 dated 18th of October, 2010, claims to have taken up the matter with the Department of Law, Justice and Parliamentary Affairs for their advice as regards the regularization of the services of the petitioner. Thereafter, the respondents plead that the services of the petitioner were, vide Government Order No. 157-



Fst of 2016 dated 1st of June, 2016, regularized in pursuance of the judgment dated 19th of May, 2015 passed by the Division Bench of this Court in SWP No. 624/2014 read with order passed in contempt petition No. 13/2016, in the pay scale of Rs. 6500-10500 (pre-revised) and, now, revised to Rs. 9300-34800+GP 4280. The respondents, thus, argue that petition of the petitioner, being devoid of any merit, deserves to be dismissed.

05. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

06. Admittedly, the petitioner was working in the Legal Section of the respondent Department against the post of Law Officer on *ad hoc* basis and was drawing the salary attached to the said post as well. Thereafter, in compliance of the directions passed by the Division Bench of this Court, the respondents, in terms of Government Order dated 1st of June, 2016, regularized the services of the petitioner on the post of Law Officer in the pay scale of Rs.6500-10500 (pre revised) and, now, revised to Rs. 9300-34800-4280. The grievance projected by the petitioner, in this petition, is that even though the respondents regularized her services in the Department on the post of Law Officer, but she was denied the grade attached to the said post without any rhyme or reason. Once the respondents have, in terms of a valid Government order, regularized the services of the petitioner on the post of Law Officer, there shall be no difficulty for them to release the appropriate pay scale as well as the grade attached to the said post. Furthermore, the note dated 8th of June, 2011, submitted by the Department to the then Chief



Minister through Chief Secretary in Coordination, clearly envisages that the services of the petitioner had to be regularized on the post of Law Officer in the pay scale of Rs. 9300-34000 with Grade pay of Rs.4800.

07. Perusal of the pleadings on record makes it axiomatic that the respondents have pursued the matter before all possible forums, including Hon'ble the Supreme Court, in order to get the decision of this Court declaring the petitioner eligible for regularization on the post of Law Officer overturned, but the respondents have failed to do so and, now, at this stage, the respondents cannot turn around to say that the petitioner was not eligible to be regularized on the post of Law Officer. If such a course is allowed, same will amount to re-opening those issues which stand already settled by the Division Bench of this Court. In this backdrop, the respondents are obliged under law to release the pay scale as well as the grade attached to the post of Law Officer in favour of the petitioner without any demur. The action of the respondents in not releasing the pay scale as well as the grade attached to the post of Law Officer in favour of the petitioner has not only subjected the petitioner to hostile discrimination, but has also violated the judgment passed by the Division Bench of this Court in SWP No.624/2014 filed by the petitioner in the earlier round of litigation.

08. It is well settled legal position that the action of the respondents, being the State functionaries, has to be transparent. The State cannot discriminate between similarly circumstanced persons. Ours is a welfare State which aims at the goal where everyone is/has to be, as far as possible, looked after. Since,



the petitioner is discharging her duties in the respondent Department on the post of Law Officer pursuant to a valid Government Order, therefore, the petitioner has to be paid the same pay scale as well as the grade attached to the post of Law Officer as is being paid to other similarly situated Law Officers working in various other Departments of the Government. The respondents have treated the case of the petitioner as a '*sui generis*' case and have invidiously discriminated her.

09. Justice is not only law and its administration, but is, in most cases, above law and is done to save the individual from whatever he/ she seeks protection. Our country, in particular, aims at the goal of achieving the welfare State where everyone is/ has to be, as far as possible, looked after. There can be no discrimination between two individuals who are equally placed.

10. For all that has been discussed hereinabove, this petition is ***allowed*** and the respondents, by a '*Writ of Mandamus*', are directed to release the pay scale attached to the post of Law Officer, i.e. 9300-34000 with grade pay 4800, in favour of the petitioner without any further delay. The respondents shall, also, consider the petitioner for promotion to the next higher post alongwith other eligible Law Officers in the Department, of course, in accordance with the law and the rules governing the field.

11. Writ petition ***disposed*** of as above, alongwith all connected MP(s).

12. In view of the final judgment passed in the main petition hereinabove, the connected contempt petition (CPSW No. 338/2018) as well as the review



petition (RPSW No. 27/2019) have turned infructuous and, therefore, same shall stand ***disposed*** of as such.

13. Registry to place a copy of this judgment on each of the connected files.

(Ali Mohammad Magrey)
Judge

SRINAGAR

October 22nd, 2019

"TAHIR"

