

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

Case: LPA No. 39/2021
&
LPA No.184/2021

Reserved on 18.10.2022.
Pronounced on 16 .11.2022.

UT of J&K and others
UT of J&K and others

.....Appellant(s)

Through :- Ms. Insha Rashid, G.A for appellants
No.1 and 2.
Sh. Altaf Haqani, Sr. Advocate with
Mr. Shakir Haqani & Ms Malika Rashid
Wani, Advocates for appellants No.3&4.

v/s

All J&K Workers Union SRTC and another
J&K Road Transport Employees Association
and another

.....Respondent(s)

Through :- Mr. Saqib Amin Parray Advocate.
Mr. Sameer Hassan Advocate.
Mr. Moomin Khan Advocate.

CORAM:
HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Sanjeev Kumar,J.

LPA No. 39/2021

1 This intra-Court Appeal by the Union Territory of J&K is directed against the judgment dated 27.01.2021 passed by the learned Single Judge [‘the Writ Court’] in SWP No.1148/2016 titled ‘All J&K Workers Union SRTC vs. State of J&K and others’.

2 Before we advert to the grounds of challenge urged by Mr. A Haqani learned Senior Advocate in support of the appeal, we find it appropriate to give brief resume of the factual antecedents leading to the filing of this appeal.

3 The respondent-Association of Road Transport employees [writ petitioners] filed a writ petition claiming, *inter alia*, a direction in the nature of mandamus to the appellants herein to treat them as Government employees and consequently hold them entitled to all retiral benefits available to the Government employees of the UT of J&K and those extended to the similarly situate employees of erstwhile Government Transport Undertaking [GTU]. The writ petitioners also sought the relief prayed for in the writ petition on the analogy of employees of JK Industries. The case projected by the writ petitioners before the Writ Court was predicated on the following factual matrix.

4 The public transport in the erstwhile State of J&K was earlier managed and run by the GTU which was a limb of the Government of Jammu and Kashmir. The employees serving in the GTU on substantive basis were treated as Government employees for all purposes including post retiral benefits. In the year 1950, the Parliament enacted Central Road Transport Corporation Act 1950 [‘the Act of 1950’] which was extended to the State of Jammu and Kashmir w.e.f 01.09.1976. The extension of the Act of 1950 paved way for establishment of a Road Transport Corporation in the State of Jammu and Kashmir. Accordingly, the J&K State Road Transport Corporation [‘Corporation’] came to be incorporated vide Notification No. SO 263 (E) dated 01.04.1976. This was followed by the issuance of Government Order No. 25-TR of 1979 dated 27.03.1979, which, *inter alia*, provided that the employees of erstwhile GTU, which had been converted into a Corporation, would be treated as on deputation to the Corporation. The relevant extract of the Government Order (*supra*) reads thus:

“(i) the Government servant placed at the disposal of RTC was to exercise option whether to continue in the services of the Corporation or not;

(ii) A government servant exercising option not to continue in the services of the Corporation was to further opt for any of the following consequences:

- (a) seek for retirement from the Government service if he is permanent in service or has more than five years quasi permanent services and receive the pensionary benefits as admissible under Rules.
- (b) Seek for discharge from service, if he is a temporary Government servant or has less than five years quasi permanent services (not contributing to CP Fund) and receive the terminal gratuity benefits as admissible under rules;
- (c) Seek for termination from service if he is temporary, contributing to CP Fund and receive the entire CP Fund contributions along with interest.

(iii) A government servant exercising his option for rendering his services in RTC was also to opt:

- (a) To retain his pensionary benefits available under the Government Rules or be governed by the rules of RTC in so far as the same relates to benefits consequent upon retirement in such eventuality such government employees would receive his pension under the Pension Rules as may be in force to the Government at the time of his retirement.
- (b) Such Government servant retaining his pensionary benefits under the Government will not be allowed employees Contribution on Provident Fund on the date of his retirement and his services rendered by him in the Corporation after option would qualify for pension.
- (c) In the event of death of such Government servants while in service of the Corporation, family pension/death-cum-retirement gratuity will be admissible in terms of Government Rules”.

5 As per the Government Order (supra), the Government servants earlier serving in the GTU and whose services were placed at the disposal of the Corporation were called upon to exercise their option, whether to continue in the services of the Corporation or not. The Government order also provided the consequences that would ensue to a government servant exercising option not to

continue in the services of the Corporation. Even the Government servants exercising option for rendering services in the Corporation were given further option to either retain their pensionary benefits available under the Government Rules or be governed by the Rules of the Corporation. This Government Order was followed by the Government Order No. 38-GR(TR) of 1986 dated 03.10.1986 giving the benefit of exercising option in terms of Government order dated 27.03.1979 (supra) to even temporary employees of erstwhile GTU.

6 From a reading of both the Government Orders (supra), it clearly transpires that the choice of making option, either to retain their status as Government employees or to become the employees of the Corporation was given only to those employees who had been employed by the erstwhile GTU.

7 The writ petitioners are the employees directly recruited by the Corporation in accordance with the Jammu and Kashmir State Road Transport Corporation Service Condition Rules and Regulations, 1979 [‘the the Rules and Regulations of 1979’]. The writ petitioners in their writ petition specifically contended that though, they were all appointed in the Corporation after 1976 and were the employees of the Corporation, yet they were all along treated on a par with those employees of erstwhile GTU who had opted for the services of the Corporation and were given all the benefits available to the Government employees. The writ petitioners claim to have been appointed in the Corporation between 1976 to 1986. Claiming parity with the employees of erstwhile GTU for the purpose of service benefits including post retiral benefits, the petitioners approached the Government for extending the similar treatment and treating them on par with the employees of erstwhile GTU, who, upon exercise of option, had also become the employees of the Corporation forming same class with the petitioners. They also sought the benefit of judgment rendered by this

Court in SWP No. 1250/2002 in the case of Employees Association of JK Industries.

8 The writ petition was resisted by the appellants before the Writ Court primarily on the ground that the writ petitioners were the employees appointed in the Corporation by the Corporation and, therefore, were not, in any manner, similarly situated with the employees of erstwhile GTU. It was submitted that the two did not form the same class and, therefore, the allegation of the writ petitioners that they had been given discriminatory treatment, was without any substance. The writ petitioners also filed a rejoinder affidavit before the Writ Court and placed on record a communication of the Corporation dated 17.02.2020. On the basis of the said communication, the writ petitioners pleaded that even the Board of Directors of the Corporation had, at one point of time, considered the matter and resolved to take up the matter with regard to grant of pensionary benefits in favour of the employees of the Corporation with the Finance Department through the Administrative Department.,

9 The Writ Court, after considering the rival contentions and having gone through the record, found substance in the case set up by the writ petitioners and vide judgment impugned, allowed the writ petition and held the writ petitioners entitled to all retiral benefits on a par with and on the analogy of section of employees of Corporation who were earlier the employees of erstwhile GTU and had opted for the services of the Corporation. The Writ Court also drew analogy from the similarly situated employees of JK Industries who too had been held entitled to pensionary benefits by this Court. The Writ Court, however, issued a mandamus to the Government of Jammu and Kashmir to consider the request of the Corporation made through its Managing Director vide his communication No. JKRTC/MD/PS/J/GMA/870 dated 15.06.2020

within a period of four months from the date copy of the judgment was served upon the Government. The writ petitioners were also held entitled to arrears of necessary dues as might be payable to them from the date of their retirement. It is this judgment of the Writ Court which is called in question before us in this appeal.

10 Having heard learned counsel for the parties and perused the material on record, we find that the impugned judgment is founded primarily on two grounds:

- (i). That the Board of Directors of the Corporation being the Apex Body has taken a decision in its 81st meeting held on 05.03.2020 to take up the matter for grant of pensionary benefits to the Corporation borne employees with the Finance Department through Administrative Department and therefore, it is obligatory for the Finance Department to consider the request of the Corporation conveyed by the Managing Director of the Corporation vide his communication dated 15.06.2020;
- (ii) that the writ petitioners are entitled to all retiral benefits including the pension, gratuity etc., on a par with and on the analogy of the section of employees of the Corporation who were earlier the employees of the erstwhile GTU and had opted for the services of the Corporation and also on the analogy of their counterparts in JK Industries and other Corporations and that the pension was not an ex-gratia payment but was in the nature of compensation for the past service rendered and, therefore, it was incumbent upon a social welfare State to provide such post retiral benefits.

11 We have carefully analyzed the impugned judgment rendered by the Writ Court and given our anxious consideration to the rival contentions. We, however, regret our inability to approve the view of the Writ Court. The direction issued by the Writ Court to the appellants herein to grant pensionary benefits to the writ petitioners on the analogy of the employees of erstwhile GTU who, later on opted to serve the Corporation as also on the analogy of the employees of other Corporations is not supported by any reasons or any material

on record. It is not understandable as to how the two i.e the employees of erstwhile GTU who later opted the services of the Corporation and the petitioners, who were directly recruited to the Corporation, could be treated as one class.

12 As noticed above, the Government Transport Services in the erstwhile State of Jammu and Kashmir were being managed and run by the GTU which, admittedly, was a limb/department of the Government. Indisputably, the employees appointed and serving in the GTU were the Government employees, thus, entitled to all service benefits including the post retiral benefits on a par with the Government employees serving in other Departments of the Government. With the incorporation of the Corporation by conversion of GTU on 01.09.1976, all the Government employees serving in the GTU were taken to the Corporation on deputation. With a view to regulate effectively the service conditions of the employees of erstwhile GTU, whose services had been placed at the disposal of Corporation, the Government issued Government Order dated 27.03.1979. The said Government order gave option to these employees of GTU to either opt for the services of the Corporation or seek retirement/discharge from the service or face termination as the case may be. The employees of GTU, who opted for the services of the Corporation, were also given option to retain their status as Government servants and avail the benefits including the retiral benefits available to the Government employees under the Government Rules or be governed by the Rules of the Corporation. Many of the employees of the erstwhile GTU opted to serve the Corporation by retaining their status as Government employees.

13 There is absolutely no dispute with regard to the entitlement of such Government employees to the pensionary benefits on a par with the

Government employees serving in other Government Departments. So far so good, but it appears that due to subsequent developments which are neither elaborated by the appellant, nor these discernible from the record produced before us, the Secretary to the Government. Department of Transport issued Government Order dated 03.10.1986 by virtue of which, all the temporary employees of erstwhile GTU who had earlier opted for temporary services of the Corporation as also those employees of erstwhile GTU, who had opted to serve the Corporation as employees thereof, were given a fresh option for retaining the pensionary benefits which they had already availed of from the Corporation or refund those benefits along with interest and opt to draw the benefits available to permanent Government employees working in the Corporation in lieu thereof. It seems that taking the benefit of the order of 1986, many employees of the erstwhile GTU, who had opted the service benefits available to the Corporation employees, were given fresh option to retain the benefits including post retiral benefits available to the Government employees serving in the Corporation. Three months' period was available to such employees to make the option.

14 From a plain reading of Government order of 1986 (supra), it becomes abundantly clear that the benefits envisaged under Government Order of 1986 were only meant for the employees of erstwhile GTU and not for the benefit of the Corporation borne employees. Needless to say that the Corporation borne employees, like the petitioners and many others are governed by the Rules and Regulations of 1979 and as per Regulation No. 31, the service in the Corporation is declared as non-pensionable. Neither the Writ Court has given any reason or justification, nor have learned counsel appearing for the writ petitioners been able to convince us as to how the two i.e the writ petitioners

and the employees of erstwhile GTU, who were given the right to exercise option in the year 1979 and 1986, form a single class. It is, however, vehemently contended by Mr. Momin Khan, learned counsel representing the writ petitioners that the employees of erstwhile GTU, who had opted to be the employees of the Corporation pursuant to Government order of 1979, form a single class with the petitioners who were directly appointed in the Corporation and, therefore, there could not have been any further classification within class.

15 We have given our anxious consideration to this aspect of the matter also and we find the contention of learned counsel not tenable for more than one reason. First, there is not enough material placed on record by the writ petitioners to show similarity in all respects with the employees of erstwhile GTU who were given option in the year 1986 to opt for the services of the Corporation retaining their status as Government employees. We find clear and subtle distinction between these two classes of employees. Indisputably, the petitioners are the Corporation borne employees i.e the employees recruited to the Corporation and, therefore, cannot by any stretch of reasoning, claim the status of government employees. The employees of erstwhile GTU were admittedly the Government employees and entitled to all service benefits including pensionary benefits available to the Government employees serving in other Government Departments.

16 True it is that they were given option to be the employees of the Corporation and retain their status as Government employees. Many exercised this option, but there was a class of GTU employees who opted for the services of the Corporation along with the service benefits available to the Corporation employees. This happened in the year 1979, but, later on, the Government while extending the benefit of similar option to the temporary employees of erstwhile

GTU also gave another opportunity to the employees of GTU for exercising fresh option. It seems that some of the employees, who had earlier opted for the services of the Corporation with the service benefits available to the Corporation borne employees, changed their option and decided to retain the service benefits of the Government employees. This happened in the year 1986. The petitioners did not agitate the matter in the year 1986, though some of the petitioners claim to be in service at that point of time. Similarly, the writ petitioners all along knew that they are the employees appointed by the Corporation in the Corporation and are governed by the Rules and Regulations of 1979 which unequivocally declare the service of the Corporation as “non-pensionable”, yet did not raise any grievance at any point of time. It is only after they rendered the entire services to the Corporation and retired on superannuation, they decided to rake up the issue and claim benefit of pension which was never available to the Corporation borne employees. They were perhaps embolden to approach this Court when similar writ petitions filed by the retired employees of various other Government owned Corporations, came to be allowed by the Writ Court.

17 It may be relevant to point out that the judgment passed in favour of employees of various other Corporations, like J&K State Financial Corporation, JK Industrial Development Corporation etc., was set aside by Division Bench of this Court vide judgment dated 11.11.2021 passed in LPASW No. 10/2019 and other clubbed matters. The employees similarly situated with the petitioners working in the other corporations too have been held not entitled to the pensionary benefits. This Court, while taking note of the delay in filing the writ petitions by the writ petitioners seeking declaration of their entitlement to pension after their retirement, in paragraph 32 of the judgment, held thus:

“32. Delay is equally an important factor which cannot be ignored. The respondents knew full well that Rules and Regulations of the SIDCO did not envisage payment of pension and that they being on non-pensionable establishment, were obliged to subscribe to EPF. They not only made contributions to EPF but at superannuation they also accepted the accumulated sum in their accounts which include matching contribution made by SIDCO, without any protest or demure. Filing petitions in the year 2017, that too after the implementation of judgment in JKI case, is hit by delay and laches. Hon'ble the Supreme Court in [Narayan Singh Solanki v. Union of India](#), (2000) 9 SCC 321, in para 3 held thus:-

"3. Learned Counsel for the Appellant reiterated the argument urged before the Tribunal. His case is that the case of the Appellant is covered by Rule 102 of the Rules. We are not inclined to go into the merits of the matter as we are of the view that the Appellant having resigned from the service and accepted his Provident Fund in the year 1963 and thereafter remained silent for nearly 28 years, and therefore, demand for change in option in the year 1992 did not deserve to have entertained. In fact the Appellant was guilty of laches and, therefore, not entitled to change his option for pension. On this short question we dismiss this appeal."

18 Having found the writ petitioners not similarly situated with the class of employees of the erstwhile GTU who were given fresh opportunity to make option in the year 1986, we are convinced that the view of the Writ Court holding the writ petitioners entitled to pensionary benefits, more particularly when the Rules and Regulations of 1979 applicable to the writ petitioners declare their service 'non-pensionable', is totally erroneous and unsustainable. While we do not dispute the power and competence of the Corporation to modify, amend or cancel the regulations as is provided in Regulation No. 6, but this power has to be exercised within the purview of the Act of 1950 and the rules framed thereunder. We also do not dispute the power of the Corporation to take an informed decision with regard to the service benefits including the post retiral benefits to be given to its employees. This would all depend upon the policy decision in this regard, to be taken by the Corporation, having regard to

several factors including its financial health. This Court cannot issue a mandamus to the Corporation to provide or not to provide a particular service benefit. The 1979 Regulations are elaborate on the subject and the clear position that emerges from reading of the regulations, in particular Regulation No. 31 is that the employees appointed to the Corporation (Corporation borne employees) are not entitled to superannuation pension. They, however, are entitled to certain other post retiral benefits in lieu of pension. The decision of the Board of Directors taken in its 81st meeting and the communication of the Managing Director sent to the Government fall in the realm of only recommendations which are yet to fructify into a concrete decision by the competent authority. The decision of Board of Directors taken in its 81st meeting only accepts, in principle, the plea of the writ petitioners to have pensionary benefits on a par with the Government employees and recommends that the matter be taken up with the Finance Department of UT of Jammu and Kashmir through the Administrative Department of Transport for consideration. The communication issued by the Managing Director only reiterates the decision of the Board of Directors. It is, thus, best left to the Government to take note of the communication of the Corporation and convey its decision as it finds appropriate, provided the same has not already been conveyed. Needless to say that the Corporation is also free if it so chooses to provide any service benefits to its employees including pension by acting strictly within the mandate of the Act of 1950 and rules and regulations framed thereunder by the Corporation. We, however, do not countenance the issuance of writ of mandamus to the official respondents to necessarily concede the request of the Corporation, nor do we uphold the view of the writ Court that the writ petitioners though appointed in the Corporation and by the Corporation are entitled to retiral

benefits like pension and gratuity on a par with the government employees serving in other Government Departments.

19 For the foregoing reasons, we find merit in this appeal. Accordingly, the appeal is allowed and the impugned judgment is set aside. Consequently, the writ petition shall also stand dismissed.

LPA No. 184/2021

In view of the detailed reasons rendered in LPA No. 39/2021, this appeal is also allowed and judgment of the Writ Court set aside. Consequently, writ petition shall also stand dismissed.

(WASIM SADIQ NARGAL)
JUDGE

(SANJEEV KUMAR)
JUDGE

16 .11/2022
Sanjeev

Whether judgment is reportable: Yes

