

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

Reserved on: 08.09.2021  
Pronounced on: 14.09.2021

WP(C) No.245/2021  
CM No.883/2021

RAJESHWAR SINGH & ORS. ...PETITIONER(S)

Through: Mr. Altaf Mehraj, Advocate.

Vs.

UNION OF INDIA & ORS. ....RESPONDENT(S)

Through: Mr. T. M. Shamsi, ASGI.

Mr. Usman Gani, GA.

Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) The petitioners in this petition have sought following reliefs:

- a) Issue a Writ of Mandamus commanding the respondents to make appointments against the quota of jobs exclusively provided for Kashmiri Non-Migrant Pandits under the Prime Minister's Package and to specify the quota of the posts out of 1997 posts advertised by the respondents vide aforementioned Advertisement Notification dated 01.12.2020, for Kashmiri Non Migrant Pandits.
- b) Issue a Writ of Mandamus, commanding the respondents to accept the candidature of the petitioners against the posts applied for by the

petitioners and allow the petitioners to participate in the selection process.

- c) Any other writ, order or direction which this Hon'ble Court may deem fit and proper also be issued in favour of the petitioners and against the respondents.

2) The case projected by the petitioners is that in the year 2009, Government of India issued Prime Minister's Package for return and rehabilitation to Kashmiri migrants in Kashmir Valley. The PM's package aforesaid was executed and implemented by the then State Government by promulgating SRO 412 dated 30.12.2009. Subsequently on the basis of a survey conducted with respect to plight of Kashmiri Hindus who stayed within Valley and did not migrate in the wake of law and order situation created due to onslaught of militancy in early 1990s. It was on the basis of aforesaid survey conducted with respect to the living conditions of non-migrant Hindu community of Kashmir, SRO 412 of 2009 was amended by SRO 425 of 2017 and the people belonging to Hindu community who had stayed back in the Valley and did not migrate in 1990, were also extended the benefits of special recruitment drive which was a part of PM's package for Kashmiri migrants.

3) It is contended that on 1<sup>st</sup> December, 2020, the respondents issued an advertisement for filling up 1997 posts while carrying recruitment drive in accordance with SRO 412 of 2009 as amended vide SRO 425 of 2017. The advertisement was also open for the

persons who had not migrated. They were, however, required to produce *bona fide* certificates to be issued by the concerned Deputy Commissioners to certify that such candidates had not migrated and were, accordingly, not registered with the Commissioner (Relief). The Deputy Commissioners were also to certify that the candidates, seeking benefit of special recruitment drive carried pursuant to Prime Minister's package, belonged to the community described as "Kashmiri Pandits". The Deputy Commissioners, without any justification, chose not to grant such certificates in respect of a group of non-migrant Kashmiri Hindus, who according to them did not belong to the community of "Kashmiri Pandits".

4) Having been denied the bonafide certificates by the Deputy Commissioners, the petitioners filed the instant petition and sought, by way of interim measure, their participation in the selection process without submitting the *bonafide* certificates from the Deputy Commissioners. This Court vide order dated 1<sup>st</sup> of March, 2021, allowed the petitioners to participate in the selection process for the posts advertised by the respondents vide Advertisement Notice bearing No.03 of 2020 dated 1<sup>st</sup> of December, 2020. It is submitted that the selection process has been almost concluded and selection list framed. The respondents have, however, withheld the selection of the petitioners on the ground that they do not meet the requirement of production of "Kashmiri Pandit" certificate issued by the competent authority.

5) The petitioners claim the benefit of SRO 425 of 2017 on the ground that said SRO is an outcome of census carried by the Government of India with regard to the living conditions of Hindus in the Valley who despite adversity had opted not to migrate from the valley during turmoil in the year 1990 and, therefore, the benefit of Prime Minister's Package cannot be restricted to only one community i.e. "Kashmiri Pandits" and ignoring other Hindu castes, communities and clans who have similarly suffered. All Hindus, it is submitted, who are residing in the Valley and have not migrated, constitute one class and their further classification on the basis of their identities is not permissible in law. There is an allegation made by the petitioners that even SRO 425 of 2017, as is understood by the respondents, is not being followed in letter and spirit, in that, the respondents have in many cases issued *bonafide* certificates of "Kashmiri Pandits" in favour of candidates who are similarly situated with the petitioners and carry the surname of "Singh". This, in nutshell, is the factual matrix and the legal submissions made by the petitioners.

6) Respondent No.6 has opposed the writ petition and has in its objections submitted that various posts were created by Government of India under Prime Minister's Special Package for Kashmiri migrants. These posts have been created on supernumerary basis across various departments and in terms of Rule 2 of the Jammu & Kashmir Migrants (Special Drive) Recruitment Rules, 2009, notified vide SRO 412 of 2009 dated 30.12.2009 read with amendments

carried vide SRO 425 of 2017 dated 10.10.2017, following category of persons are entitled to apply against these posts:

- i. A person who has migrated from Kashmir Valley after 1<sup>st</sup> of November, 1989 and is registered as such with the Relief Commissioner;
- ii. A person who has migrated from Kashmir Valley after 1<sup>st</sup> of November, 1989, but has not been so registered with the Relief Commissioner on the ground of his being in service of Government in any moving officer or having left the Valley or any other part of the State in pursuit of occupation or vocation or otherwise and is possessed of immovable property at the place from where he has migrated but is unable to ordinarily reside there due to the disturbed conditions;
- iii. An internally displaced person who has migrated within Valley from his original place of residence in Kashmir Valley for security reasons and is registered as such with the Relief and Rehabilitation Commissioner, Migrants;
- iv. A person who belongs to the Kashmiri Pandit Family and has not migrated from Kashmir Valley after 1<sup>st</sup> of November 1989 and is presently residing in the Kashmir Valley;

7) It is further submitted that category of persons mentioned at (i), (ii) and (iii) above, the Relief and Rehabilitation Commissioner for Migrants is the designated authority for authentication of migrant status of the applicants. It is his duty to ensure that the applicant is a

*bonafide* migrant while as for the category of persons mentioned at (iv) above, the Deputy Commissioner concerned is the designated authority for authentication of status of the applicant as also to issue the *bonafide* certificate to the candidate to the effect that he/she belongs to a Kashmiri Pandit family and has not migrated from the Valley and that he/she is presently residing in the concerned district. There is, however, no separate quota within the quota available for any migrant or non-migrant community in respect of these posts. It is, thus, submitted that in the absence of challenge to the Recruitment Rules of 2009, as amended vide SRO 425 of 2017, by the petitioners, the full effect to the rules is required to be given. The petitioners who are neither migrants falling in category (i), (ii) and (iii) nor do they belong to Kashmiri Pandit family are not eligible to participate in the selection process. The Deputy Commissioners have rightly declined to grant them bonafide certificates in this regard.

8) Another set of objections has been filed by respondent No.4 and 5 which are also on similar lines. It is, however, submitted by respondent No.4 and 5 that the Government of India, Ministry of Home Affairs, vide communication No.12013/6/2014-K-V dated 04.12.2015, sanctioned additional 3000 Government jobs for Kashmiri migrants. The communication aforesaid provided as under:

“It has been decided that the Government of India would fund the additional 3000 State Government jobs, which were to be funded by the State Government in the Prime Minister’s Package-2008 for the return and rehabilitation

of the Kashmiri Migrants. The Kashmiri Pandit families who did not leave the Kashmir Valley during the terrorist violence, that began in the State in the early 1990, and who are still residing in the Kashmir Valley, will also be eligible for these jobs and preferably formula of one job per family is to be adopted. The Government of India will bear the cost towards salary and other expenditure in respect of these 3000 jobs/posts for 10 years or till these posts are absorbed against regular posts in the State Government.”

9) In the objections, it is further submitted that Kashmiri Pandits in the Valley under the umbrella of Kashmiri Sangarsh Samiti filed OWP No.1956/2016, which was disposed of by this Court vide judgment dated 31.05.2016 with a direction to the respondents to consider the claim of the petitioners in accordance with rules within a period of six weeks from the date of receipt of the order. A contempt petition was, thereafter, filed seeking implementation of the aforesaid judgment dated 31<sup>st</sup> May, 2016. The matter was considered and it was found that with a view to confer benefit upon non-migrant Kashmir Pandit families, it was necessary to amend the Rules of 2009. Accordingly, vide SRO 425 dated 10.10.2017, the Rules of 2009 were amended to include non-migrant Kashmiri Pandits also for the purposes of benefit of Prime Minister’s Special Package for return and rehabilitation and, accordingly, 500 posts of different categories were earmarked for “non-migrant Kashmiri Pandit” families who were still residing in the Kashmir Valley and were not registered with the Relief Organization (Migrants), Jammu, as internally displaced persons. It is

further submitted that the Sikh community living in Valley also approached this Court by way of OWP No.2048/2017 to throw challenge to SRO 425 on the ground that Sikh community too had similarly suffered like non-migrant Kashmiri Pandits and, therefore, were also entitled to have benefit of Prime Minister's Special Package for return and rehabilitation and, therefore, they should also be considered for 500 posts earmarked for non-migrant Kashmiri Pandits residing in Kashmir Valley. This Court vide its judgment dated 14.02.2019 rejected the contention of petitioner Sikh community that SRO 425 dated 10<sup>th</sup> October, 2017 was ultra vires. However, this Court quashed Government Order No.96-DMRRR of 2017 dated 13<sup>th</sup> November, 2017, being contrary to statutory rules. The respondents were, however, directed to proceed in the matter in accordance with law. The matter, it is submitted, was taken up with the Department of Law, Justice and Parliamentary Affairs who vide its letter dated 9<sup>th</sup> of May, 2019 returned the file with the advice to proceed strictly in accordance with the judgment of this Court by taking a decision in accordance with law. It is, thus, submitted that once this Court, in its judgment dated 14<sup>th</sup> of February, 2019, has not found non-migrant Sikh community, which too had stayed back in the Valley and had not migrated during 1990 like the non-migrant Kashmiri Pandits, similarly situated and on par with non-migrant Kashmiri Pandits, as such, the petition of the petitioners herein, whose claim is virtually identical to the non-migrant Sikhs, cannot be entertained, more so, when the judgment dated 14.02.2019 has attained finality and

implemented by the Government. This is in a nutshell stand of respondent No.4 and 5.

10) Having heard learned counsel for the parties and perused the record, I am of the considered view that the issue primarily raised by the petitioners is no longer *res integra*. Similar issue has been considered by this Court in OWP No.2048/2017 titled Kashmiri Sikh Community and others v. State of J&K and others decided vide judgment dated 14.02.2019. The parity sought by the Sikhs residing in the Valley who had not migrated in the wake of 1990 turmoil, with the non-migrant Kashmiri Pandits for the purposes of implementation of Prime Minister's Special Package of employment and rehabilitation has not been accepted by this Court and the classification made by SRO 425 of 2017 has been held to be valid, there is hardly any scope for the petitioners to raise the similar contention yet again. Paras 25 to 27 of the judgment dated 14.02.2019 (supra) are quoted as under:

25. From careful reading of the Rules of 2009 and amendments carried thereto vide SRO impugned in this petition, it is abundantly clear that a class different from the migrants has been created for conferring the benefit of the Prime Minister's Package for return and rehabilitation of Kashmiri Migrants. The class identified under the impugned SRO is a community of Kashmiri Pandits, who did not migrate in the wake of turmoil in the Valley and stayed back despite adverse conditions perceivably prevailing for their community. This classification has been necessitated pursuant to the several representations received for and on behalf of this community, which was living in a very pitiable and pathetic condition in the Valley. The Government of India also took note of the fact that these handful families had not migrated due to reasons of their poverty, economic conditions, a sense of security

instilled in them by their supporting neighbourhood, etcetera, etcetera. They stayed back and braved the adverse conditions in the Valley, which seriously impacted growth of their families educationally and economically. Taking note of their plight and the persistent pitiable conditions, a policy decision was taken to confer the benefit of the Prime Minister's Package of return and rehabilitation on this community as well. As noted above, this was not a hollow exercise by the Government of India. Not only it collected the relevant empirical data but also appointed a Standing Parliamentary Committee to go into all these aspects and make their recommendations. As is averred by the respondents in their affidavit that as per the records available with the Relief and Rehabilitation Commissioner (Migrant), Jammu, there are 15700 Hindu Relief families and 22062 Hindu Non-Relief families, consisting of 49859 souls and 82740 souls respectively. Besides there are 1336 Relief Sikh families and 353 Non-Relief Sikh families consisting of 5043 souls and 1502 souls respectively registered with the Relief Organization. In the light of the aforesaid data placed on record, the respondents have pleaded that the effect of migration in the wake of turmoil in the Valley was more on the Kashmiri Pandit community than other communities. It is though conceded that handful of Sikh families too migrated from the Valley but majority decided to stay back and has been residing peacefully. It is on the basis of this empirical data and the recommendations of the Parliamentary Standing Committee constituted for the purpose that the Government appears to have taken a policy decision to extend some helping hand to this distressed Kashmiri Pandit community.

26. From the aforesaid discussion and in view of the stand taken by the respondents, it cannot be said that the Sikh Community is similarly placed with the Kashmiri Pandits. There appears to be intelligible differentia, which distinguishes Kashmiri Pandits, who have stayed back in the Valley and did not migrate when lakhs of their community members left their home and hearth in view of the then prevailing security scenario in the Valley. The classification clearly distinguishes Kashmiri Pandit community from Sikh Community living in the Valley, which has been left out of group. This

classification based on intelligible differentia has a definite nexus with the object sought to be achieved by the Rules of 2009 as amended vide impugned SRO, and is meant to ameliorate the lot of Kashmiri Pandits who preferred to stay back and did not flee despite unsavoury security conditions in the Valley in the year 1989-90. The target killings of members of their community instilled sense of fear and insecurity in their minds, which made their living in the Valley possible only at the cost of their lives. This sense of insecurity was all pervasive. In the milieu, there were certain families who decided not to migrate either because they were poverty ridden or did not have resources to move out or that they were assured by the community in their neighbourhood not to be afraid of. Whatever be the reasons, they decided to stay back but suffered due to unsavoury and not too good conditions in the Valley for the community. As per 137<sup>th</sup> report of the Standing Parliamentary Committee, their condition continued to worsen. They lacked behind in education and fared very bad on the economic front. Taking into account all these factors and the historical background responsible for *en masse* exodus of the community, the Central Government decided to provide some relief and succour to these families of Kashmiri Pandits. It is in this background that a policy decision was taken by the Government to treat these families of Kashmiri Pandits, staying in the Valley, at par with the migrants for the purposes of providing the employment package. This necessitated the amendment in the Rules of 2009, so as to include Kashmiri Pandits, staying in the Valley, also as beneficiary of the Prime Minister's Package for return and rehabilitation of Kashmiri Migrants, issued from time to time.

Viewed thus, it cannot be said, by any stretch of imagination or reasoning, that the classification made by the impugned SRO is not based on intelligible differentia or that differentia has no nexus with the object sought to be achieved. If the object of the Rules of 2009 is return and rehabilitation of migrants, it would make no sense if the same does not provide for rehabilitation of those who have not fled from the Valley despite adverse conditions and have stayed back.

27. In view of the foregoing discussion, I find that the impugned SRO does not amount to class

legislation but makes a valid classification which is permissible under Article 14 and 16 of the Constitution.

11) Faced with the aforesaid position, learned counsel for the petitioners submitted that having regard to the background which preceded the delivery of Prime Minister's revised package of employment and rehabilitation, there is no escape from the conclusion that the benefit of employment is envisaged for those Hindus who are residing in the Valley and did not migrate during the year 1990. The term "Kashmiri Pandits" used in SRO 425 of 2017 is wide enough to include all non-migrant castes and communities of Hindus residing in the Valley and have similarly suffered as non-migrant Kashmiri Pandits, argues ld. Counsel for petitioners.

12) The argument raised is preposterous and cannot be accepted in the face of clear language of SRO 425 of 2017. It needs to be noticed that the petitioners have not challenged SRO 425 whereby the Rules of 2009 have been amended to provide the category of non-migrant Kashmiri Pandits for admitting them to the benefit of revised package of Prime Minister for employment and rehabilitation. In the absence of such challenge, the only question that remains to be determined in this petition is whether the petitioners, who are, admittedly, not Kashmiri Pandits but belong to different castes of Hindus, can be brought within the definition of "Kashmiri Pandits".

13) It is vehemently contended by Mr. Altaf Mehraj, learned counsel for the petitioners, that in the absence of any definition of

“Kashmiri Pandits” given in the SRO, all Hindus, who are staying in Kashmir Valley and did not migrate like non-migrant Kashmiri Pandits, should be treated as “Kashmiri Pandits”.

14) Despite great amount of persuasion by Mr. Altaf Mehraj, learned counsel for the petitioners, I regret my inability to accept such broad definition of “Kashmiri Pandits”. It is true that neither in SRO 425 nor in the Rules of 2009 as amended vide SRO 425 of 2017, the term “Kashmiri Pandit family” has been defined. What is, however, defined in Rule 2(ca) is the term “Kashmiri Pandit” which means a person belonging to “Kashmiri Pandit Family” who has not migrated from Kashmir Valley after 1<sup>st</sup> of November, 1989 and is presently residing in Kashmir Valley. In the absence of specific definition of the term “Kashmiri Pandit family”, the only way to find out the true meaning of the term is to apply the common parlance principle. There is no denying the fact that in common parlance, Kashmiri Pandit is a community of Kashmiri speaking Brahmins living in the Valley from generations and are distinctly identified by their dress, customs and traditions etc. etc. “Kashmiri Pandits”, is a separately identifiable community distinct from other Hindus residing in the Valley like Rajputs, Brahmins other than Kashmiri Pandits, Scheduled Castes, Scheduled Tribes and many others. It is, thus, difficult to accept the contention of learned counsel for the petitioners that the petitioners, who are mostly Kshatriyas, Rajputs, Scheduled Caste non- Kashmiri Brahmins etc. etc. should be treated as Kashmiri

Pandits and admitted to the benefits of Prime Minister's revised package for return and rehabilitation of Kashmiri migrants given effect to by the Rules of 2009 read with SRO 425 of 2017.

**15)** For the foregoing reasons, I find no merit in the petition and the same is, accordingly, dismissed along with connected application.

(Sanjeev Kumar)  
Judge

Srinagar  
14.09.2021  
"Bhat Altaf, PS"

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*

