

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

SWP 667/2018  
SWP 369/2018  
SWP 477/2019  
SWP 750/2019  
SWP 878/2019

Reserved on: 05.12.2022  
Date of Decision: 14.02.2023

**Ms. Syeda Nazir**

.....Petitioner

Through: Mr. M. Y. Bhat, Sr. Adv. Mr. Anees ul Islam, Advocate  
Mr. Momin Khan, Adv. Mr. M. Ashraf Wani, Advocate,  
Mr. Sheikh Manzoor, Advocate, Mr. Gulzar Ahmad Bhat, Adv.,  
Mr. M. S. Reshi, Advocate

**Versus**

**State of Jammu and Kashmir & another**

Through: Mr. Jahangir Iqbal Ganai, Sr. Adv. with Ms. Maha Majeed, Adv.  
Mr. T. H. Khawaja, Advocate, Mr. Sheikh Feroz, DAG  
Mr. Azhar ul Amin, Advocate

.....Respondent(s)

**CORAM:**

**Hon'ble Mr. Justice Javed Iqbal Wani, Judge.**

**J U D G E M E N T**

1. The focal point in these bunch of clubbed petitions is Clause-1 of Government order no. 76-SW of 2019 dated 28.2.2019 (hereinafter referred to as "impugned Clause") issued by respondent 1 relating to the selection of Anganwari Workers as Supervisors which reads as under:

(1). "The seniority of the Anganwari Workers, who have acquired higher qualification (Graduation) during service shall be taken from the date of acquiring the higher qualification instead of the date of their initial appointment."

In some of the petitions the validity of the impugned Clause is questioned and it is being claimed that the seniority of the Graduate Anganwari Workers is to be reckoned from the date of their initial appointment as provided under **Rule 24 of the J&K Civil Service (Classification, Control and Appeal) Rules of 1956** [hereinafter referred to as CCA Rules] irrespective of the date of acquiring qualification of Graduation.

In some of the petitions the prayer made by the petitioners is that the respondents be directed to fix the seniority of Graduate Anganwari Workers who did not possess the said Graduation qualification at the time of their engagement but acquired subsequently, from the date they acquired said qualification in conformity with the impugned Clause on the premises that Rule 24 of the CCA Rules has no application in the matter as the “Anganwari Worker” is not a civil post.

In some cases, it is the case set up by the petitioners that the Government order dated 28.2.2019 *supra* shall have only prospective effect and shall not be applied for changing already fixed seniority having been relied upon for their selection/promotion to the post of Supervisors though on *ad hoc* basis which should not be affected.

2. The moot question and the core issue that is required to be determined in these petitions thus is as to whether the seniority of a Graduate Anganwari Worker who acquires qualification of Graduation after engagement as Anganwari Worker is required to be fixed according to the date of initial engagement/appointment as Anganwari Worker as envisaged under Rule 24 of CCA Rules or from the date such Anganwari Worker acquires qualification of Graduation as is provided by the impugned Clause.
3. It is significant to note that the seniority of Graduate Anganwari Workers assumed importance as 50% posts of the Supervisors are required to be filled up from Anganwari Workers. It is further significant to note that **“J&K Social Welfare Subordinate Recruitment Rules, 2009 (for short Rules of 2009)”** provide that 25% of the posts of Supervisors shall be filled up from amongst the Graduate Anganwari Workers having rendered 5 years of service, and 25% of the posts of Supervisors are to be filled up from amongst the Matriculate Anganwari Workers having 10 years of service.
4. What is revealed is that the Anganwari Workers who did not possess the Graduate qualification at the time of their initial engagement have subsequently improved their qualification and acquired the qualification of Graduation in order to become eligible for promotion to the post of Supervisors after 5 years of service only instead of 10 years of service as is required for

Matriculate Anganwari Workers. Such Anganwari Workers claim that their seniority is to be counted from the date of their initial engagement irrespective of their having acquired Graduate qualification subsequently. Those Anganwari Workers who were possessed of the Graduate qualification at the time of engagement as Anganwari Workers or have acquired Graduate qualification much earlier than most of others, claim that their seniority should be fixed on the basis of their engagement or the date of acquisition of Graduate qualification whichever is later.

5. It is pertinent to note here that previously the service conditions of the Non-Gazetted employees of the Social Welfare Department were regulated by **“J&K Social Welfare (Non-gazetted) Service Recruitment Rules of 1991.”** The said Rules provide for the constitution of J&K Social Welfare (Non-gazetted) Service besides providing for other conditions of service of its members including the method of recruitment, promotion, fixation of seniority and other allied matters. In the said Rules, the Supervisors as well as Anganwari Workers were provided in Schedule-VI and identified as Clause 2<sup>nd</sup> and Clause 3<sup>rd</sup> posts respectively. The said Rules of 1991 insofar as and so long they occupy the field, the service conditions of Supervisors and Anganwari Workers were required to be regulated under and in terms thereof in particular made in Rule 9 of the Rules of 1991 *supra*, which provide that the seniority of members of service shall be regulated under **CCA Rules of**

1956 meaning thereby that the seniority of Anganwari Workers is to be determined in accordance with the said CCA Rules of 1956.

A reference hereunder to Rule 24 of CCA Rules also becomes imperative which reads as under:

**Rule 24:** “The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.”

This issue even stands adjudicated upon by a Division Bench of this court in case titled as **Ridwana Parveen vs. State of J&K reported in 2014 (3) JKJ(HC) 330** wherein at Para 14 following has been provided:

“It follows that while determining seniority of an Anganwari Worker to consider her promotion as Supervisor, reference is to be made to Jammu and Kashmir Social Welfare (Non-Gazetted) Service Recruitment Rules 1991, as also Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956.”

6. Presently, conditions of service including the seniority of Non-Gazetted employees of Social Welfare Department are being regulated by Rules of 2009 *supra* which Rules provide for constitution of service known to be J&K Social Welfare (Subordinate Service) besides providing for conditions of service of its members including method of recruitment, promotion, fixation of seniority and allied matters. Interestingly, however, it is seen that while the post of Supervisor is included in Schedule-1 appended to the Rules of 2009 which concerns the initial

constitution of the service, there is no mention of Anganwari Workers in the said Schedule. Thus the only inference that can be drawn by necessary implication is that the service conditions of Anganwari Anganwari will continue to be governed and regulated by the Rules of 1991 and the Rules of 1991 shall be deemed to have repealed vis-à-vis those posts only for which corresponding Rules of 2009 have been made and not for such post or posts for which no corresponding Rule has been framed in 2009, as such the necessary corollary and the fallout would be that the seniority of an Anganwari Worker has to be determined according to the Rules of 1991 read with CCA Rules of 1956 as held by the Division Bench in Ridwana Parveen case *supra*.

7. Furthermore, in terms of Rules of 1991, the post of Anganwari Workers is identified as one class under Clause-III and do not make any distinction on the basis of educational qualification as such. It being so, a common seniority list of all Anganwari Workers, notwithstanding any disparity of qualification, is required to be maintained on the basis of the initial engagement and irrespective of the date on which any Anganwari Worker acquires Graduate qualification, and therefore undertaking any process of maintaining a separate seniority for both Graduates and Matriculate Anganwari Workers on the basis of acquiring higher qualification would be contrary to the Rules as otherwise also **the**

**law is well settled that formulation of principles for fixation of seniority, promotion and determination of seniority are matters of policy which may find expression either in statutory rules or administrative orders including executive instructions. It is also equally settled that when a particular field is occupied by statutory rules then the administrative orders/executive instructions cannot be issued to nullify the effect or impact of the statutory rules. Similarly, it is also well settled that if there is a conflict between a statutory rule and an administrator order, the rule has to prevail and the administrative order/executive instruction has to give way to the statutory rule if both occupy the same field.**

8. Reverting back to the case/s in hand it is evident as has been noticed in the preceding paras that the statutory rules of 1991 occupy the field insofar as determination and fixation of seniority of Anganwari Workers is concerned and in presence of said rules, the impugned Clause under challenge pales into insignificance and the same cannot therefore sustain as being contrary to the mandate of said rules. It is pertinent and significant to note here that the respondents while issuing the order dated 28.2.2019 incorporated with the impugned Clause have laid basis for its issuance upon a judgment/order of a Single Bench of this court passed on 6.8.2015 in SWPs 164/2014, 269/2014, 249/2014, 396/2014 and 390/2014 titled as “Kounsar Jabeen and others vs. State and others, Naima Qureshi and others vs. State and others, Rubina Gul and another

vs. State and others, Jyoti Kumari and another vs. State and others and Hafiza Bano and others vs. State and others”. Relevant portion of the judgment *supra* is extracted and reproduced hereunder being relevant and germane herein:

“In terms of notification SRO 16 dated 28.1.2004, the post of Supervisor in Social Welfare Department is to be filled up 50% by direct recruitment through Service Selection Recruitment Board, 25% selection through Departmental Selection Committee from amongst Graduate Anganwari Workers, who have rendered 5 years of service and 25% by way of selection through Departmental Selection Committee from amongst Matriculate Anganwari Workers with 10 years of service.”

In terms of aforesaid SRO 16 *supra*, the Graduate Anganwari Workers and Matriculate Anganwari Workers constituted two feeding categories for the post of Supervisor. The Matriculate Anganwari Workers who during the service had secured qualification of Graduation yet figured in the seniority of Graduate Anganwari Workers from that date and their seniority to be reckoned as Graduate Anganwari Workers only from the date such candidates obtained Graduation degree, thus having created two classes of Anganwari Workers viz. Graduate Anganwari Workers and Matriculate Anganwari Workers having ruled that the seniority of a Matriculate Anganwari Worker will not revert back to the date of engagement as Matriculate Anganwari Workers after obtaining the degree of Graduation.

The order/judgment dated 6.8.2015 *supra* on a plain reading would demonstrate that the same is *per incuriam*, in that, it has



been passed oblivious to the judgment passed by the Division Bench in “**Ridwana Parveen case**” supra, inasmuch as without taking note of the Statutory rules of 1991 as also Rule 24 of CCA Rules, which according to the Division Bench occupied the field. Thus reliance placed on the said judgment/order of the learned Single Bench in order dated 28.2.2019 *supra* is misconceived.

9. It is not out of place to mention here that strong reliance came to be placed by the appearing counsel for the respondents while defending the impugned Clause on the judgment of the Apex court passed in case titled as **K. K. Dixit and others Vs. Rasjasthan Housing Board and another reported in 2015 (1) SCC 474** to contend that since separate quotas are fixed for Graduate Anganwari Workers and Matriculate Anganwari Workers for the selection/promotion to the post of Supervisor, therefore, separate seniority is required to be maintained for such Graduate and Matriculate Anganwari Workers and that such Matriculate Anganwari Workers who acquired Graduation qualification after the engagement as Anganwari Workers is to be reckoned against the Graduate Anganwari Workers from the date they acquired such Graduate qualification and not from the date of the initial appointment. The said contention coupled with an initial reading of the judgment though appeared to be attractive and to be the ratio of the judgment *supra* but a careful and deeper perusal and examination of the judgment would reveal otherwise and contrary.

In the judgment *supra* distinction has been made between an eligibility list and a seniority list and the principle of law that can be said to have been laid down in the judgment is that whereas separate eligibility list can be framed for persons holding different qualification for whom separate quotas have been provided for the purpose of computing the period of experience with that particular qualification, but insofar as seniority is concerned, the same has to be common on the basis of entry in that particular category. It has been also emphatically ruled in the judgment that simply because separate quotas on the basis of qualification have been prescribed for the persons holding same posts does not warrant bifurcation of cadre and maintenance of separate seniority for respective quotas. Reference hereunder in this regard to para 19 of the judgment *supra* becomes necessary:

“19. The High Court has rightly held that the cadre of Project Engineer (Junior) cannot be bifurcated for the purpose of seniority alone, only on the ground that for promotion to the cadre of Project Engineer (Senior) there is provision for 20% quota for degree holders and 30% quota for diploma holders. The practical view of the High Court cannot be faulted that the Board can legitimately prepare separate eligibility lists of Project Engineer (Junior) holding degree and those holding diploma. Such eligibility list could not be mistaken for seniority list which must remain common based upon merit assessed at the time of selection for recruitment. Only if the selection process had been different, there could have been any scope to argue for separate seniority lists. In absence of any legal stipulation for altering the initial seniority, pre-determined on the basis of merit at the time of initial selection and date of regular appointment, the seniority list cannot be altered only because some diploma holder Project Engineers (Junior) acquired the qualification of AMIE equivalent to a degree. The three years’ or seven years’

experience of service will entitle the degree holders and the diploma holders respectively only for inclusion of their names in the eligibility lists for promotion so as to work out satisfactorily the provision for different quota for the degree holders and the diploma holders.”

A similar principle though under a different factual background has also been laid down by the Apex Court earlier in case titled **Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust and others, 2014 (13) SCC 219**, wherein it has been observed that *acquisition of higher qualification at a later date, even when such a higher qualification is the requisite qualification for the higher post, will not be determinative for fixing the seniority.*

10. In the aforesaid backdrop it is evident that impugned Clause incorporated in Government order no. 76-SW of 2019 dated 28.2.2019 is contrary to the Rules of 1991 read with Rule 24 of CCA Rules of 1956, thus not in conformity with law on the principle laid down by the Apex Court in the judgment *supra* that the seniority to a particular class, category or cadre cannot be counted and fixated on the basis of acquiring a higher qualification which may be relevant or beneficial for speedy promotion, but has to be on the basis of date of initial appointment. However for the purpose of computing the experience with a particular qualification, the relevant date would be when relevant qualification has been acquired. Previous experience without particular qualification will have to be ignored.

11. Viewed what has been observed, considered and analyzed hereinabove, the impugned Clause-1 incorporated in Government order no. 76-SW of 2019 dated 28.2.2019 issued by respondent 1 is quashed, as a consequence whereof the respondents are commanded to fix the seniority of Anganwari Workers on the basis of their initial engagement as Anganwari Workers in tune with Rules of 1991 read with Rule 24 of the J&K CCA Rules.

12. Before parting with this judgment, it is worthwhile to mention that valuable assistance in the matter came to be rendered by appearing counsel for the parties in general, and in particular by Mr. M. Y. Bhat, Sr. Advocate, Mr. T. H. Khawaja, Advocate, Momin Khan, Advocate, Anis ul Islam, Advocate, Mr. Azhar ul Amin, Advocate and also Mr. Jahangir Iqbal Ganai, Sr. Advocate.

13. Disposed of.

14. Registry to delink SWP 322/2017, CCP(S) 355/2019, SWP 834/2019 and SWP 2242/2018, and list the same separately on 4.4.2023.

**(Javed Iqbal Wani)**  
**Judge**

**Srinagar**  
14.02.2023  
*N Ahmad*

Whether approved for reporting? Yes