

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

Reserved on: 28.06.2022
Pronounced on: 08.07.2022

WP(C) No.1123/2022
CM No.2794/2022

WASEEM QURESHI ... PETITIONER(S)

Through: - Mr. Salih Pirzada, Advocate.

V/s

UNION TERRITORY OF J&K AND ORS. ...RESPONDENT(S)

Through: - Mr. D. C. Raina, Advocate General,
with Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of instant petition, the petitioner has sought certain reliefs which are reproduced as under:

- I* **By a writ of Certiorari:**
The impugned notification issued by Respondent no. 3 vide No.GS-MC/Retirement/RA/2021/12599-2604 dated 20.12.2021 may be quashed.
- II.* **By a writ of Mandamus:**
- a) *The respondents be directed to forebear from acting upon the impugned notification No.GS-MC/Retirement/RA/2021/2599-2604 dated 20.12.2021.*
- b) *The Respondent no. 1 be directed to issue an executive order for re-designation of the posts of the Medical Superintendents (Medical Education Department), re-designating them as Medical Superintendent Grade-I/Professor in accordance with the concurrence already conveyed by the Finance Department and approval granted by the Competent Authority on the same analogy*

of the recently established Government Medical Colleges Udhampur and Kupwara, where redesignated posts of Medical Superintendents to Professor/Medical Superintendent have been created vide Government Order No.307-JK(HME) of 2022 Dated 18.05.2022 issued by respondent No.01.

- c) The Respondent no. 2 may be directed to inform this Hon'ble Court about the action taken by the respondent no.2 on the memorandum submitted by respondent no.1 vide File No.ME-Gztd/203/2021 e-office Dated 16/11/2021 and what prompted Government not to issue the formal orders for establishment of Department of Hospital Administration in Government Medical College, Srinagar and Jammu as has been done in respect of newly commissioned Government Medical Colleges of Udhampur and Kupwara vide Government Order No.307-JK(HME) of 2022 Dated 18.05.2022 issued by respondent No.01.*

2) Without going into the details, the case of the petitioner, who is presently working as Registrar Academics, Government Medical College, Srinagar, is that a proposal for re-designation of the posts of Medical Superintendents (Medical Education Department) as Medical Superintendents Grade-I/Professor submitted by respondent No.1, that has been cleared by Finance Department on 09.02.2021, is awaiting approval by the competent authority. It is the further case of the petitioner that once these posts are created/re-designated, the petitioner, being eligible to be promoted/appointed to the said posts, would retire at the age of 62 years in terms of SRO 266 of 2014 dated 30th August, 2014. Accordingly, the petitioner has sought a direction upon respondent No.1 to issue an executive order for re-designation of posts of Medical Superintendents (Medical Education Department) as Medical Superintendent Grade-I/Professor. A further direction has

been sought by the petitioner that notification No.GS-MC/Retirement/RA/2021/2599-2604 dated 20.12.2021, whereby 30th June, 2022, has been notified as the date of his superannuation, be no acted upon.

3) The respondents have raised a preliminary objection with regard to maintainability of the writ petition on the ground that the subject matter of the writ petition comes within the definition of “service matters” as defined in Section 3(q) of the Administrative Tribunals Act, 1985 (*hereinafter referred to as ‘the Act of 1985’*), as such, the High Court has no jurisdiction to entertain the writ petition.

4) In view of the preliminary objection raised by the respondents, it would be appropriate to deal with this objection before coming to the merits of the writ petition.

5) I have heard learned counsel for the parties and perused the material on record.

6) Learned Advocate General, appearing on behalf of the respondents, has vehemently argued that the subject matter of the writ petition is ancillary to the service conditions of the petitioner and, as such, the same is cognizable by Central Administrative Tribunal (*hereinafter referred to as “the Tribunal”*) that has been established in the Union Territory of Jammu and Kashmir after coming into effect of the Jammu and Kashmir Reorganization Act, 2019. It is contended that the petitioner is seeking a writ of mandamus in respect of the

notification of superannuation which definitely is a matter within the definition of “service matters” and even the prayer regarding re-designation of posts is also a matter incidental to service conditions.

7) Mr. Salih Pirzada, learned counsel appearing for the petitioner, has contended that the petitioner through the medium of instant petition has not only challenged the notification of his superannuation but has also sought relief of re-designation/creation of posts which relief, according to learned counsel, cannot be granted by the Tribunal. He has submitted that creation or re-designation of posts is not a matter which falls within the definition of “service matters” as contained in section 3(q) of the Act of 1985. He has further contended that the expression “any other matter whatsoever” contained in Clause (v) of Section 3(q) of the Act of 1985, which defines ‘service matters’, has to be given a restricted meaning by applying the principle of “*ejusdem generis*” and if that is done, the relief relating to creation/re-designation of posts would not come within the definition of “service matters”

8) In order to test the merits of the rival contentions raised by learned counsel for the parties, it would be apt to have a look at the provisions contained in Section 3(q) of the Act of 1985. It reads as under:

3. Definitions.—*In this Act, unless the context otherwise requires,—*

xxx xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx xxx

(q) “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection

with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation 6 [or society] owned or controlled by the Government, as respects— (i) remuneration (including allowances), pension and other retirement benefits; (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation; (iii) leave of any kind; (iv) disciplinary matters; or (v) any other matter whatsoever;

9) From a perusal of the aforesaid provision, it is clear that the matters relating to retirement or superannuation have been specifically included in the definition of “service matters” and, therefore, there cannot be any dispute to the fact that the relief for directing the respondents not to act upon the notification of superannuation would fall within the definition of “service matters”. However, difficulty arises in determining the question as to whether the relief relating to re-designation/creation of posts would fall within the definition of “service matters” because creation/re-designation of posts has not been specifically mention in Section 3(q) of the Act of 1985. Clause (v) of the said provision provides that service matters would include “any other matter whatsoever”. So, the answer to the aforesaid question hinges on the interpretation of Clause (v) of Section 3(q) of the Act of 1985.

10) According to learned counsel for the petitioner, “any other matter whatsoever” has to be interpreted by applying the rule of ‘*ejusdem generis*’, meaning thereby that this expression has to take colour from other clauses of the aforesaid provision. In order to test

the merit of the aforesaid contention of the petitioner, it would be apt to refer to the case law on the subject.

11) The aforesaid question fell for consideration before Allahabad High Court in the case of *Chote Lal and Ors. Vs. The Life Insurance Corporation*, decided on 8th January, 2008. It was a case where the petitioners had challenged the action of Railways, whereby it had decided not to make deduction of LIC premium from the monthly salary of its employees and its further payment to the LIC. The Court, while interpreting the provisions contained in Clause (V) of Section 3(q) of the Act of 1985 and deliberating upon the question whether rule of “*ejusdem generis*” should be applied in the matter of its interpretation, observed as under:

26. A conjoint reading of Section 14 and 3(q) of the Tribunals Act reveals that the words used are "all service matters" and "any other matter whatsoever" both these terms are of widest amplitude used independently and does not qualify the terms used earlier in the provision. "Any other matter whatsoever" used in the 3(q)(v) refers to all "service matters" used in Section 14 of the act and not only in connection with the conditions of service, remuneration, pension, retirement benefits, tenure, confirmation, seniority, promotion, reversion, pre-mature retirement, superannuation, leave are disciplinary matters. The word "whatsoever", also has its own significance and has not been used superfluously. Therefore, Rule 3 (q) (v) of the Tribunals Act cannot be said to be of a general nature qualifying the service conditions of service enumerated earlier in the provision. It is in itself an independent rule and is not dependant on the first four rules enumerated in Section 3(q) of the Tribunals Act and is wide enough to cover every aspect of the service. Therefore, the phrase "any other matter whatsoever" though of general nature but has been used independent of the terms used in Section 3(q) (i) to (iv) of the Act.

27. Besides, the rule of "ejusdem generis" is merely a rule of construction and not a substantive law and is hardly applicable where general words such as "any other matter whatsoever" does not intend to take colour from the specific words used earlier. The intention of establishing Central Administrative Tribunal is also to cover all service matters arising from the employer and employees relationship and therefore it would not be apt to give any restricted meaning to the phrase "any other matter whatsoever" and to confine the application of the Act only to recruitment and conditions of service.

28. Therefore, it would not be proper to apply the rule of "ejusdem generis" in the interpretation of the 'service matter' in context with the jurisdiction of the Central Administrative Tribunals.

12) The Supreme Court in the case of *Lila Vati Bai v. State of Bombay*, explained the rule of "ejusdem generis" in the context of Section 6 of the Bombay Land Requisition Act, 1948 (BLR Act). It was held by the Court that the words "or otherwise" used in the Explanation (a) to Section 6 of BLR Act intended to cover other cases which may not come within the meaning of the preceding clauses and that the legislative intent was to cover all possible cases of vacancy occurring due to any reason whatsoever. It was further observed that the legislature used these words in an all inclusive sense and that rule of "ejusdem generis" should not be applied to whittle down the scope and ambit of the provisions of a statute where the legislative intent was to the contrary. The Court further observed as under:

"The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words

of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and mischief of the enactment there is no room for the application of the rule of ejusdem generis. Hence it follows that the vacancy as declared by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise".

13) Again, in *Association of Radio and Television Engineering Employees and ors. Vs. Union of India and ors.* (WP(C) No.6981/2011 decided on 27th September, 2011), the High Court of Delhi observed that Administrative Tribunals Act has been enacted with reference to Article 323A of the Constitution and it is plain that the legislative intent is that all service matters concerning conditions of service of employees of either the Central or the State government should, in the first instance, be taken before the Administrative Tribunals for adjudication. The Court went on to hold that in this context, the language of Section 3(q) is such that a broad meaning has to be given to the expression "service matters". After noticing the provisions of Section 3(q) of the Act of 1985, the Court went on to observe as under:

"16. The phrase "all matters relating to the condition of his service" appearing in the substantive part of Section 3(q) ATA is very significant. It is indicative of the kinds of disputes that can be taken before the Administrative Tribunals for adjudication. The words as respects have also to be read in the context of all matters. If so read, along with clauses (i) to (v) which follows the words as respects, it is clear that the

matters are not limited to those specified in Clauses (i) to (iv) of Section 3(q) ATA. Also, addition of the word whatsoever to the words any other matters in Clause (v) of Section 3(q) ATA is significant. When the word whatsoever is read with the words "all matters relating to the condition of his service", it is clear that the words "service matters" have to be given the broadest possible meaning and would encompass all matters relating to conditions of service of an employee."

14) The law explained by different Courts of the Country in the above decisions clearly shows that the doctrine of "*ejusdem generis*" cannot be made automatically applicable to restrict the words used in a statute if otherwise intention of the legislature is clear. It is only in cases where intention of the legislature is clear that the general terms shall not be given broader meaning than required, the aforesaid doctrine will have applicability. Thus, the expression "any other matter whatsoever" contained in Clause (v) of Section 3(q) of the Act of 1985 has to be given widest possible interpretation. The word "whatsoever" is of great significance which clearly shows that the term "service matters" includes not only the conditions of service but also other incidental and ancillary matters.

15) Having held that the "service matters" as defined in Section 3(q) of the Act would include even the matters ancillary to the service conditions of an employee, let us now consider the subject matter of the instant petition to examine as to whether the same would constitute ancillary matters relating to service conditions of the petitioner.

16) As already noted, the petitioner is seeking re-designation/creation of certain posts so that he is promoted/appointed to the said posts thereby entitling him to extended age of superannuation. This is clearly a matter ancillary and incidental to the service conditions of the petitioner. The contention of learned counsel for the petitioner that such a relief cannot be considered by the Tribunal is without any merit. The question whether such a relief can at all be granted by a Court or a Tribunal is not required to be gone into while considering the maintainability of the petition but it can safely be stated that the prayer of re-designation/creation of posts for the purpose of enabling the petitioner to get promoted/appointed to the said post(s) or to get extension in his age of superannuation is a matter ancillary and incidental to the service conditions of the petitioner. This clearly falls within the ambit of expression “any other matter whatsoever” contained in Clause (v) of Section 3(q) of the Act of 1985.

17) Once it has been held that the subject matter of the writ petition falls within the definition of “service matters”, the provisions contained in Section 14 of the Act would come into play which provides that in respect of service matters concerning a person appointed to any civil service of the Union, the jurisdiction is vested with the Central Administrative Tribunal.

18) The Supreme Court in the case of **L. Chandra Kumar (AIR 1997 SC 1125)** has held that a service dispute must be taken to the Central Administrative Tribunal as a Court of first instance and

thereafter decision of the Tribunal can be subject to judicial review by the Division Bench of the High Court in exercise of its powers under Article 226 and 227 of the Constitution of India. In the instant case, the petitioner could approach this Court only after having exhausted the remedy of approaching the Central Administrative Tribunal, which he has not done.

19) In view of the above, the writ petition before this Court is not maintainable. Accordingly, the same, in terms of Section 29 of the Act of 1985, is transferred to the Central Administrative Tribunal, Srinagar, where the parties are directed to appear on 25.07.2022.

Srinagar
08.07.2022
"Bhat Altaf, PS"

(Sanjay Dhar)
Judge

Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No

