CASE NO.:
Appeal (civil) 3079 of 2000

PETITIONER:
JAWAHAR LAL SAZAWAL & ORS.

Vs.

RESPONDENT:
STATE OF J & K & ORS.

DATE OF JUDGMENT: 27/02/2002

BENCH:
S. Rajendra Babu & Ruma Pal

JUDGMENT:

RUMA PAL, J.

The appellants in this appeal have sought to assert their status as employees of the State Government of Jammu and Kashmir with the same rights, privileges and benefits available to other State employees. The High Court has denied the appellants' claims on the ground that they had voluntarily surrendered their status as Government servants in 1963 under Article 207 of the Jammu and Kashmir Civil Service Regulations, 1956 (referred to hereafter as the Regulations) and that in any event their claim was barred by delay and laches.

It is not in dispute that each of the appellants had been appointed prior to 1963 as permanent Government servants under the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 (hereafter referred to as 'the Rules') and were serving in different capacities in industrial units which were being run by the Department of Commerce and Industries of the State Government.

In 1963, the State Government formed a Board of Directors for the administration of these industrial units by its order No. 189/C of 1963 dated 10th August 1963. The Board of Directors was constituted by-

i) Prime Minister - Chairman
ii) Sh.Karnail Singh, Hon. Advisory to Govt. for Planning and Industries - Vice-Chairman
iii) Sh.S.M.Agha,IAS - Managing Director
iv) Sh. Amar Singh, IAS Member (Ex-officio) Director of Industries
v) Sh.S.A.S. Qadir,IAS - do-
Registrar Cooperatives

vi) Sh. Ghulam Ahmad - do-
Financial Controller

The order also provided for the the re-designation of the officers Incharge of the industrial concerns as Managers in the respective concerns. All Managers were placed under the overall control of the Managing Director and the Board of Directors.

On 3rd October 1963, the Jammu and Kashmir Industries Ltd., the respondent No. 2 herein (hereinafter referred to as the company) was incorporated as a private limited company under the provisions of the Companies Act, 1977. The main object of the company as mentioned in Clause III (a) of its Memorandum of Association was :

"To run, manage, administer the State Industrial Undertakings as may be notified by the Governor in a manner as would ensure their economic working" .

On 8th October 1963, the Governor issued instructions by which some industrial undertakings of the State Government including the three in which the appellants had been appointed were "notified to be entrusted to the company in pursuance of clause III (a) of the Memorandum of Association of the Company". The effect of this 'entrustment' of the Industrial undertakings to the Company will be discussed after completing the narration of facts. It only needs to be noted at this stage that even after this "entrustment" the appellants continued working in the industrial undertakings in which they were initially appointed and continued to enjoy the same benefits of service with regard to emoluments, leave and pension as other Government employees.

In 1966, a notification was issued by the Governor introducing Note 6 which amended Rule 52 of the Rules and sought to provide that thenceforward the employees of the erstwhile Sericulture Department who were entitled to pensionary and other benefits as government servants were to be treated as employees of the Company.

This was challenged in 1968 by some of the employees of the Sericulture Department who had, like the appellants herein, been permanently appointed to industrial units under the State Government before formation of the Company. The main submission of the petitioners in that case was that their services had only been entrusted to the Company and that they continued to enjoy the same status as other Government servants. The challenge was upheld by a Division Bench of the High Court of Jammu and Kashmir in Sheik Ghulam Quadir & Ors. v. State of Jammu & Kashmir & Others . It was held that "the conditions of service of a Government servant could not be terminated altogether except under and in accordance with Article 126 of the Jammu and Kashmir Constitution nor could the nature of his service be converted from one form to another resulting in a complete transformation of the character of the service. It was said:

" In the instant case if the petitioners are to be treated as employees of the

company the character and nature of their service is completely changed and they would cease to enjoy the immunity and protection given to them by S.126 of the State Constitution; and if a Government servant who is entitled to protection under section 126 is suddenly deprived of this protection without any notice then such an action cannot but be held to be either as a termination of his service or a reduction in rank."

The Court also rejected the arguments of the respondents based on Article 207 of the Regulations that consequent upon the formation of the Company the Sericulture Department was abolished and that the services of the Government employees had been transferred to the Company. The Court found that there was nothing on record to show that the petitioners had in fact been discharged from Government service nor was any notice given to them in this regard nor were they given any option to take compensation or to opt to be appointed under the Company. The procedure under Article 207 of the Regulations not having been followed, the impugned notification could not be sustained. The amending note was accordingly struck down and a writ of mandamus was issued directing the respondents to place the petitioners in the same position as they were before the impugned amendment was made. The decision of the High Court was rendered in 1969.

On 24th July 1972, a second writ petition filed by some other employees of the Government Silk Weaving Factory: Ghulam Mohamad & Ors. v. State of J & K & Ors. (W.P 107/1967) seeking a declaration that the petitioners continued as Government servants was disposed of without any reference to the earlier decision in Ghulam Quadir's case in the following terms:

" It is now well settled that a writ for a mere declaration does not lie. It is also well established that unless there is a demand and refusal a petition for issue of a writ is not maintainable.

In the present case there is no allegation that any demand for grant of a right which is available to the petitioner has been denied by the State.

The petitioner not having retired and the occasion for State refusing to treat the petitioner as a Government employee not having arisen, the present petition is, in our opinion premature. It is accordingly dismissed.

This will not, however, preclude the petitioner from seeking appropriate remedy in case the right claimed by him is denied by the Government at a later stage."

In the meanwhile the Company framed its own service rules which were entitled ' J&K Industries Service

Regulations' (hereinafter referred to as the Industries Regulations). Nevertheless the appellants along with other similarly situated employees continued to be given benefits of revision of grades and dearness allowance which were paid to the other Government servants of the State. Thus, when the revision of pay scales of Government employees was made on the basis of the 1973 Chatterjee Wage Committee Report, the appellant's salaries were also revised. An attempt to deny the appellants dearness allowance on par with the civil servants was aborted when instructions were issued in 1974 granting them the dearness allowance at the same rates as other Government servants. This state of affairs continued till 1979.

In 1979 the State Government set up another Committee to examine the wage structure of employees of Public Sector Corporations. The Committee which came to be known as the Rajan Committee, submitted its final report in 1980. The report was accepted by a decision of the Cabinet on 22nd April, 1980. On the basis of this Cabinet decision the Governor issued an order on 26th April, 1980 pursuant to which the Company issued two orders both dated 8th May, 1980 one relating to the cost of living allowance and the second relating to fixation of wages. A third order was issued by the company on 10th November,1980 seeking to lay down that the leave of regular employees of the Company would be allowed "as per the Factories Act and not as per Leave Rules of the Corporation which were applicable to them in the past". All three orders in effect denied the employees like the appellants parity of service conditions with Government employees.

In 1981 the appellants challenged the orders dated 8th May, 1980 and 10th November, 1980 under Article 32 of the Constitution before this Court. According to the appellants when the matter was heard on 22nd March, 1982, this Court was of the view that the appellants should approach the High Court first. As such the appellants withdrew the writ petition under Article 32 and immediately filed a writ petition under Article 226 before the High Court (SWP 236/82) challenging the order of the Governor dated 26.4.1980 as well as the orders dated 8.5.80 and 10.11.80 and asking for a direction on the respondents:

".to treat the petitioners as Government employees and deem the petitioners and their co-employees governed by Service Rules and Regulations which are applicable to the State employees and the petitioners be held entitled to the same salary, emoluments D.As, leave etc. as would be available to the government servants under the State Government".

Some other employees, who are not appellants before us, filed a similar writ petition before the High Court (SWP No. 287/82). Yet a third group of employees filed a writ petition : Waryam Chand vs. State of J & K - (SWP No. 549/83) raising the same issues.

Waryam Chand's (SWP 549/83) case came to be

listed separately and was dismissed by a Single Judge on 29.6.88. The other two writ petitions (SWP 236/82 and SWP 287/82) were placed before another Learned Judge who referred the issue for consideration by a larger bench. In 1998, the Division Bench dismissed both the writ petitions by the order impugned before us.

The impugned decision directly conflicts with the earlier decision of the same High Court in Ghulam Quadir's case (supra) on the issue as to the status of Government employees like the appellants. The decision in Ghulam Quadir has remained unchallenged by the State respondents till today and was binding on the Court. In the absence of some distinguishing feature it should have been followed. It was not even referred to. We could have allowed the appeal before us on this short ground, but since the issue raised affects a large number of employees, it is necessary to decide the issue on merits.

On the merits we may start by reaffirming the statement of the law laid down by this Court in Roshan Lal Tandon V. Union of India that:

"once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government."

No statute or statutory rules have been drawn to our attention by which the permanent posts held by the appellants were abolished. The High Court held that the appellant's status had been determined under Article 207 of the Regulations . The conclusion is based on an erroneous interpretation of the Article. To start with the High Court ignored Article 1-(a) of the Regulations which clarifies that these

" Regulations are intended to define the conditions under which Salaries, Leave, Pension, Travelling or other allowances are earned by Service in the Civil Departments and in what manner they are calculated. They do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, discipline or the like."

(Emphasis supplied)

Article 207 is contained in Chapter XVII of the Regulations which deals with the conditions of grant of pension. It was, in this context that the Article had been framed. It deals with pension and its computation. It does not purport to determine status at all. It reads:

"207. If an officer is selected for discharge owing to the abolition of his permanent post he shall, unless he is appointed to another post the conditions of which are deemed to be

at least equal to those of his own, have the option

(a) of taking any compensation pension or gratuity to which he may be entitled for the service he has rendered; or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension."

It is clear that the Article does not itself provide for the procedure for abolition of a permanent post nor the mode of appointment to another post nor for the manner in which the employee has to exercise the option. It only provides for the consequences of a permanent post being abolished, the consequence being that the employee shall have the option of accepting another appointment in which event he can count his previous service for the purpose of calculating the qualifying period for pension. Since there was in fact no abolition of the Government posts under Article 207, there was no question of the appellants exercising any option or surrendering their status under that Article at all. The reliance by the High Court on Article 207 to decide the appellants status was, in the circumstances wholly misplaced.

The High Court also proceeded on the erroneous assumption, namely, that as a consequence of the "order dated 8th October 1963 all the Government industrial undertakings stood abolished with the formation of the Company". Firstly what is referred to as an 'order' by the High Court was not an "order" at all but an "instruction" under Article 89 of the Articles of Association of the Company. It had no statutory force. Neither the Government Industrial Undertakings nor the posts of its employees could be abolished by such an instruction. The Governor could not in exercise of powers under the Articles of Association of the Company abolish industrial units belonging to the State Government and then transfer the undertakings to the Company. It would amount to an unilateral taking over of the industrial units by the Company without any instrument of transfer being executed by the State Government either in the form of an agreement or Statute. In fact and in law there was no abolition of the posts held by the appellants and none was intended.

There is nothing in the instructions which could remotely be construed as an order abolishing the posts held by the appellants. Had the appellants been appointed as employees of the Company they should have been issued letters of appointment by the Company. No appointment letter was issued to any of the appellants by the Company. The irresistible conclusion is that the appellants were and continue to be servants of the State Government and as permanent residents of the State of Jammu and Kashmir are entitled under Section 10 of the State Constitution to be treated on par with other Government servants in keeping with Article 14 and 16 of the Constitution of India. By the impugned orders, the State Government has sought to deny the appellants such

equality. The impugned orders cannot, therefore, be constitutionally sustained and must consequently be quashed.

But should the appellants be denied their right to relief because of the finding of delay and laches by the High Court? We think not. The narration of facts clearly show that there was in fact no delay or laches on the part of the appellants. Till 1972 at least, the High Court in Ghulam Mohamad's case (supra) found the State had not denied parity of status and the employees were granted the right to challenge any denial of status if and when it took place. The appellants were in fact treated on par with other Government employees till the impugned orders were issued on the basis of the 1980 Wage Committee Report. These were challenged in 1981 before this Court and in 1982 before the High Court by the appellants. The fact that the High Court took 16 years to dispose of the matter cannot operate against the appellants. The dismissal of the writ petitions on the ground of delay and laches is, in the circumstances, unsustainable.

The decision of the High Court is accordingly set aside and the appeal is allowed by granting relief to the appellants as prayed for in their writ petition. Costs to be paid by the respondent-State to the appellants jointly assessed at Rs.15000/-(Rupees fifteen thousand only).

.J.
(S. Rajendra Babu)

..J.
(Ruma Pal)

February 27, 2002