Syed T.A. Naqshbandi & Ors vs State Of Jammu & Kashmir & Ors on 9 May, 2003

Equivalent citations: AIRONLINE 2003 SC 375

Author: D. Raju

Bench: Doraiswamy Raju, D.M. Dharmadhikari

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           CASE NO.:
Writ Petition (civil)  354 of 2002

PETITIONER:
Syed T.A. Naqshbandi & Ors.

RESPONDENT:
State of Jammu & Kashmir & Ors.

DATE OF JUDGMENT: 09/05/2003

BENCH:
Doraiswamy Raju & D.M. Dharmadhikari.

JUDGMENT:
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J U D G M E N T D. RAJU, J.

The above Writ Petition has been filed under Article 32 of the Constitution of India seeking for a writ in the nature of Certiorari to quash the order bearing No.283 dated 4.7.2002 and order Nos.142-143 dated 27.4.2002 and also to quash the grant of selection grade and super-time scale to the third respondent herein, including the recommendations said to have been made for consideration of the name of R-3 for further elevation. In addition thereto, relief of Certiorari was sought even to quash the grant of selection grade to respondents 4 to 8 on the ground that the criteria on which it was accorded to them was wholly arbitrary, illegal and unconstitutional and violative of Article 16 of the Constitution of India. As a consequence to the above, relief in the nature of Mandamus was also sought to direct the second respondent to grant selection grade to the petitioners 1 to 3 with effect from 28.6.2001and further grant to the petitioners 1 to 3 super-time scale with effect from 27.4.2002, the date on which it was said to have been given to R-3, in addition to seeking for such relief for Mandamus to give selection grade to petitioners 4 and 5 with effect from 27.4.2002, the date from which it was given to respondents 4 to 8, with all consequential benefits including the seniority and arrears of pay. Certain other reliefs, a detailed reference to which is wholly unnecessary, have also been claimed.

The petitioners and respondents 3 and 7 were said to have been selected as Munsiffs after passing the Kashmir Civil Services (Judicial) Examination on 28.8.1974 and respondents 4 to 6 and 8 were

selected for appointment during the period between 1978 and 1982. The first petitioner was said to have been promoted on 30.8.1995, whereas petitioners 2 to 4 and respondent 3 promoted as District & Sessions Judges in November 1995. Petitioners 1 to 4 and respondent 3 were confirmed as District & Sessions Judges on 22.1.1998 with effect from 1997 while the other private parties-respondents are said to be continued as temporary/officiating District & Sessions Judges. In the Gradation List published by the High Court on 1.1.2001, petitioners 1 to 4 were said to have been shown at Serial Nos.15, 16, 17 and 19, whereas respondents 3 to 8 were shown at Serial Nos.18, 31, 32, 36, 23 and 37 respectively. On 4.7.2001, the third respondent was placed in the selection grade w.e.f. 28.6.2001, according to the writ petitioners, over the head of six District Judges senior to him. The grievance of the petitioners, among other things, is that the third respondent had never worked as District and Sessions Judge for any period and he was not even entitled to be considered for according such selection grade. On coming to know of the same, the petitioners 1 and 3 sought for copies of the proceedings and as soon as they were given in September 2001, the petitioners 1 to 3 also seem to have made Representations/Review Petitions against the order No.283 dated 4.7.2001. The second petitioner was said to have been granted selection grade by order No.810 dated 24.12.2001 w.e.f. 22.12.2001 without restoring his original seniority, while at the same time bypassing the claims of petitioner No.1. On 16.4.2002, the petitioners 1 and 2 seem to have made representations to the President of India.

It may be stated at this stage that the High Court of Jammu and Kashmir held a Full Court Meeting on 27.4.2002 to consider the issue relating to the grant of super-time scale/selection grade in Higher Judicial Services and the Full Court formulated the criteria/guidelines for grant of super-time scale and selection grade for members of the Higher Judicial Services. The said guidelines were also impugned as being irrational and inconsistent with what is known as recommendations of Justice K. Jagannatha Shetty Commission accepted, subject to certain modifications, by this Court in the decision reported in All India Judges Association Vs. Union of India [(2002) 4 SCC 247]. On the same day by yet another proceedings on 27.4.2002 in order No. 142, the third respondent was placed in the super-time scale applying the norms formulated by the High Court, which are also the subject matter of challenge in these proceedings. The third respondent was said to have been given the super-time scale superseding eight District Judges senior to him. A grievance is also made that respondents 4 to 6 and 8 were not even confirmed District & Sessions Judges putting hardly three years of service and as such they were not eligible for consideration for the grant of selection grade. The said orders are also challenged as being in violation of the Justice K. Jagannatha Shetty Commission's report. The further grievance of the writ petitioners is that the High Court did not consider the representations made by petitioners 1 to 3 against the grant of selection grade to the third respondent by giving detailed reasons and instead rejected the same by disposing it in the light of the decision taken by the Full Court to accord super-time scale to the third respondent rendering thereby the representations made infructuous.

Heard Shri L.Nageswara Rao, learned Senior Advocate for the petitioners, Shri H.N. Salve, Learned Senior Advocate for the official respondents, and Shri B. Dutta, learned Senior counsel for the non-official respondents.

The grievance on behalf of the petitioners is that the criteria fixed for according the selection grade and super-time scale are not valid in view of the recommendations of Justice Jagannatha Shetty Commission as modified and accepted by this Court in the decision reported in All India Judges' Association & Others vs. Union of India & Others (Supra). The further grievance espoused is on the ground that the ACRs prepared or taken into consideration are not reliable and consequently the selections made, which are under challenge, stood vitiated. Apart from highlighting certain alleged infirmities assumed by the petitioners to vitiate the ACRs considered, grievance is also made against the comparative overall assessment made in the ACRs and particularly the one accorded to R-3 alone as 'Outstanding' throughout, who, according to the petitioners, had no experience as District Judge in the field. It is further contended that no uniform principles or norms were adopted in adjudging the claims of those whose ACRs were not available for one or more period. The ACRs prepared by the Justice A.M. Mir Committee was said to have been rejected without justification. The further grievance was about the rejection of the representations without giving or disclosing reasons.

Per contra, the stand on behalf of the respondents, particularly the official respondents, which has been adopted by the non-official respondents too, is that the alleged infirmities or illegalities as to the manner and method of preparation of ACRs, the overall assessment made by the High Court and their reliance for according from time to time the various respondents either selection grade or super-time scale are quite in accordance with law and the grievance espoused on behalf of the petitioners are merely borne out of assumptions of facts which had no basis and purely based upon surmises and incorrect assertions, having no merit whatsoever either in law or on facts, as disclosed from the records. The reliance sought to be placed upon the recommendations of Justice Jagannatha Shetty Commission is said to be inappropriate and misconceived and till the recommendations are actually implemented by appropriate amendments carried out in the relevant Service Rules, it is only the subsisting Service Rules that govern the matter relating to service conditions and that the existing rules cannot be thrown to winds. Very strong exception is taken to some of the baseless, unwarranted, incorrect as well as insinuating and indecorous accusations, as they are stated to be against constitutional functionaries and superiors in the hierarchy of administration by persons holding responsible judicial offices unmindful of official discipline and restraint obliged to be adhered to or the bad taste inherent in such attempts and it has been specifically prayed that they should be expunged from record. The learned senior counsel for the petitioners, in his usual fairness and apparently on instructions too, stated at the hearing that not only it was not intended to offend anyone but the petitioners also withdraw them. According to the learned senior counsel for the respondents, the correct provisions of law governing the matter relating to according of selection grade/super-time scale have been assiduously observed, meticulously followed and the norms fixed to regulate the exercise thereof are neither arbitrary nor irrational and illegal or unconstitutional and no exception could be legitimately taken to the exercise undertaken by the High Court or the final orders passed thereon, on the indisputable facts on record, so as to warrant any interference in these proceedings under Article 32 of the Constitution of India. Learned senior counsel on either side invited our attentions to the relevant rules, the ACRs, assessment records and resolutions passed in the matter in their endeavour to justify their respective claims.

We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the governing position of law and the material facts placed on record. Much of the grievance sought to be vindicated seem to be merely borne out of certain baseless assumptions and incorrect understanding of events, which took place with their own personal perception of the same, carried away also more by the grievance in not being favoured with due recognition of their so-called entitlements. The grievance in this regard is sought to be further justified by adopting one or the other circumstances in a manner to suit their own stand rather than viewing the relevant facts in their proper perspective or on an objective process of understanding. Assumed grievances apart, it must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by court in exercise of its powers of judicial review. As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of the ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court.

Reliance placed upon the recommendations of Justice Jagannatha Shetty Commission or the decision reported in All India Judges' Association & Others vs. Union of India & Others (supra) or even the resolution of the Full Court of the High Court dated 27.4.2002 is not only inappropriate but a misplaced one and the grievances espoused based on this assumption deserve a mere mention only to be rejected. The conditions of service of members of any service for that matter is governed by statutory rules and orders, lawfully made in the absence of rules to cover the area which has not been specifically covered by such rules, and so long they are not replaced or amended in the manner known to law, it would be futile for anyone to claim for those existing rules/orders being ignored yielding place to certain policy decisions taken even to alter, amend or modify them. Alive to this indisputable position of law only, this Court observed at Para 38, that " we are aware that it will become necessary for service and other rules to be amended so as to implement this judgment". Consequently, the High Court could not be found fault with for considering the matters in question in the light of the Jammu and Kashmir Higher Judicial Service Rules, 1983 and the Jammu and Kashmir District and Sessions Judges (Selection Grade Post) Rules, 1968 as well as the criteria formulated by the High Court. Equally, the guidelines laid down by the High Court for the purpose of adjudging the efficiency, merit and integrity of the respective candidates cannot be said to be either arbitrary or irrational or illegal in any manner to warrant the interference of this Court with the same. Even dehors any provision of law specifically enabling the High Courts with such powers in view of Article 235 of the Constitution of India unless the exercise of power in this regard is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before courts. The grievance of the petitioners, in this regard, has no merit of acceptance.

So far as the preparation of ACRs in this case are concerned and the assessment made by the Committee constituted as well as the approval accorded by the Full Court therefor, we see no merit

in the challenge made to the same. The claim that only such a District and Sessions Judge who actively serve and discharge duties holding such office in the field alone can be considered for according selection grade or super-time scale proceed upon not only a total misreading of the relevant rules but is also opposed to the well settled position in law in this regard, besides, if accepted, rendering it completely unworkable, impracticable and opposed to realities. Appointment to the selection grade posts in the service envisaged from amongst the members of the service 'holding the post of District and Sessions Judge' should, in the context, mean only of any person borne on the cadre of District and Sessions Judge and who is a member of the Jammu and Kashmir Higher Judicial Service and it is not necessary that to be one such, he should be only functioning and discharging duties in the districts in the regular Courts doing conventional court work. Such of those District and Sessions Judges who are on deputation to other departments and that too to the High Court in this case to serve as Registrar, etc. cannot by such deputation be considered to suffer any disability or viewed to have lost their right and entitlement in their usual turn to be considered along with others for being granted selection grade or super-time scale according to the relevant guidelines therefor. That apart, much of the grievance in this regard also seem to proceed upon a misconception of the real purport of selection grade/super-time scale and the scheme underlying the grant thereof. As rightly contended for the respondents not only the Jammu and Kashmir Higher Judicial Service consist of posts of District and Sessions Judges and Additional District and Sessions Judges but they consist of a 'Single Cadre' only. There are no specially earmarked or classified posts to be manned only by such District and Sessions Judges, who were accorded with selection grade or super-time scale. Though loosely called selection grade posts, unless any post itself is separately and distinctly created for that purpose and specifically identified to be filled up with such persons only, usually it involves only grant of higher scales of pay in the same category of posts. The same is the position in regard to super-time scale also. It is also not the case of the petitioners that out of the total strength constituting the J & K Higher Judicial Service, anyone or the other of such posts are identified to be exclusively earmarked for one holding a selection grade/super-time scale. Having regard to the rules in force the staff pattern in vogue and the guidelines further formulated by the High Court, it is futile for the petitioners to contend that it should be accorded on the basis of seniority only. In any event, even in this regard the difference in seniority could not be said to be so substantial or vast as to lend room for any legitimate plea that it is so arbitrary or unreasonable as to call for interference. Viewed in the context of the basis or criteria for according selection grade, as envisaged in the Statutory Rules, it involves process of selection and seniority, if at all will be to reckon the zone of consideration or when the merit ranking is equal and not for the grant itself. Therefore, there is no merit in the plea on behalf of the petitioners that the third respondent could not have been even considered for the grant of selection grade/super-time scale, at the relevant and respective points of time.

So far as the actual consideration, the preparation of ACRs, the method and manner adopted therefor and the actual assessment ultimately made by the Committee and the High Court in this case is concerned, much is sought to be made out for the petitioners more on the treatment meted out to the third respondent, than on the merits of their own claims or realities of the situation based on facts. If on an assessment of the materials on record, some one has been adjudged to be more meritorious and preferred to others it could not even be said to be supersession of senior by the junior, unlike in cases relating to promotion to a higher post with higher scales of pay by virtue of

seniority. As for the grievance made on the supersession of report said to have been submitted by the Committee headed by Justice A.M. Mir, least said is better. It is seen that after the constitution of the said Committee, the Committee in its meeting on 1.4.2000 resolved to call for judgments of judicial officers, whose ACRs have not been so far written for such periods and such officers, including petitioners, were said to have been even asked to send copies of judgments. In the meeting on 23.6.2000, the Committee again seems to have resolved to have the judgments received circulated for assessment in different lots and the Committee resolved to meet after four weeks. It seems that even before the judgments could be so circulated, the Private Secretary to Justice A.M. Mir forwarded ACRs of the officers with a cryptic one word assessment without filling up the prescribed format by making any proper assessment as envisaged with a covering letter and, therefore, it is not only necessary but inevitable for the Chief Justice to ignore such unilateral and perfunctory remark which by no means could be called even a report and which cannot, in our view, also be given any credence whatsoever. Therefore, the subsequent steps taken in this regard by the Chief Justice with the newly constituted Committee are well justified and in accordance with law and they do not suffer from any infirmity. The fact that subsequently it was got meticulously prepared by the Committee and the assessment came thereafter to be duly made and further was got unanimously approved by the Full Court will belie the bald and self-serving claims of the petitioners, to the contrary. Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinions is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court. Viewed thus, and considered in the background of the factual details and materials on record, there is absolutely no need or justification for this Court to interfere in the matter, with the impugned proceedings.

It is not anybody's case that the delay, if any, in preparing ACRs of some or the other of the officers for all previous years or during any particular period was deliberate and with any ulterior motive. On the other hand, dehors the plea based upon disturbances in the area it is also highlighted for the respondent that for want of self-assessment also the same could not be prepared and kept ready then and there which necessitated the calling for copies of judgments rendered by such persons for the relevant period. The grievance about alleged lack of uniform principles or criteria in the matter of preparing ACRs for the missing period attempted to be made by citing two instances has been properly explained by the respondents in the Counter as well as at the time of hearing and we could not find any infirmity in the same. That apart merely from the fact that uniformly the third

respondent has been assessed with `outstanding' gradation unlike others, which, according to the petitioners, themselves amount to fluctuating fortunes, it cannot be readily assumed that their claims suffered any vice of arbitrariness or lack of rationality or uniformity. The job requirements of a Registrar or Registrar General of the High Court, the studiousness expected of him and the legal acumen necessary therefor cannot be so said to be of any less importance than that required for a District & Sessions Judge trying regular cases in the conventional courts at Districts. The plea that a new incumbent in the office of Chief Justice or Judge of the High Court, could not be that efficacious for assessing the merit, with reference to their past period under review, of the candidates constituting the members of judicial service proceed upon a wrong perception altogether and do not merit acceptance. The grievance against alleged non-consideration of the claims of the first petitioner merely because it was passed over on earlier occasions, also does not merit our acceptance with reference to the challenge now made in respect of the latest consideration. The further grievance that the impugned proceedings according selection grade/super-time scale do not give specific reasons or the details of what are all the records, which have been perused, is devoid of merit. The expression 'service record' is so comprehensive and has a well-accepted meaning in service law parlance, to leave anything for being guessed or to admit of any doubts about the records that would have been actually considered. The grievance made about the provisions in the guidelines for taking into account even records for some years spread over to the service as Subordinate Judge in a given case pales into insignificance when it is considered in the light of the object of such consideration. The consideration in question was not for purpose of determining the inter se seniority among the members of service in the cadre of District & Sessions Judges, but, on the other hand, for the purpose of adjudging the efficiency, aptitude, capability and general reputation and integrity for according selection grade. This Court, adverting to the relevant provisions contained in the Constitution of India in the decision reported in Shri Kumar Padma Prasad Vs. Union of India & Ors. [(1992) 3 SCC 428), even observed that "judicial office"

> would take within its fold even members of the Judiciary other than those belonging to higher Judiciary in the State service and that though normally the High Court Judges are appointed from members of the Bar and from among the persons, who have held judicial posts, there is no impediment in construing the expression "judicial service" as inclusive of wide variety of offices connected with the administration of Justice in one way or the other. Therefore, while looking into the performance of a District & Sessions Judge considering to some extent, when necessitated, even performance in the post of Subordinate Judge cannot be said to be altogether an irrelevant or impermissible consideration or exercise and the guidelines cannot be said to be vitiated on that account alone. The challenge to the grant of super-time scale to the third respondent on the ground that he had put in only about nine months service as selection grade District & Sessions Judge has no merit inasmuch as there is no minimum stipulated period of service required, to accord such super-time scale in the rules in force and as a matter of fact, the conspicuous omission to stipulate any such requirement would go to show that no such criteria is a must and all or any of the selection grade District and Sessions Judges available could become eligible for consideration. The recommendations of Justice K. Jaganatha Shetty Commission having not been duly implemented by any amendment

of rules so far, the same cannot be insisted upon as a binding criteria. That apart, in a given situation, there may be no one satisfying such required service and that insisting upon any such minimum service as selection grade District & Sessions Judge may have counter productive result in that it may even lead to a situation where no one could be given the super-time scale at all dehors their intrinsic merit. The absence of reasons in the order rejecting the representations or the original resolution granting selection grade/super-time scale, in the nature of proceedings themselves cannot be said to be an infirmity. The noting in the files dealing with those aspects would be sufficient record and the proceedings in the form of resolutions cannot be expected to be in the format of a judicial order dealing with each and every claim. As noticed supra, on going through the materials on record and on a careful consideration of the procedure and the mechanism followed by the Committee constituted as well as the Full Court of the High Court, we are unable to persuade ourselves to agree to or sustain the stand of petitioners in respect of their challenge to the impugned proceedings. We specifically desist from making any further observations on the assertions made relating to their entitlement based on the credentials claimed for the petitioners, lest it may affect their future prospects of consideration in one way or the other, when such an exercise is taken up subsequently, also. Suffice it to place on record that the proceedings relating to the grant of selection grade/super-time scale, which are assailed in these proceedings, are not shown to be vitiated in such a manner as to warrant or justify the interference of this Court in these proceedings. The challenge projected on behalf of the petitioners, therefore, fails and shall stand rejected.

As for the grievance made by the learned senior counsel for the official- respondents on some of the unwarranted, unjustified as well as unpleasant remarks, allegations which tend to cast certain aspersions upon some of the constitutional functionaries bordering on insinuations, we are of the view that they could have been well avoided, without even sacrificing in any manner their right to challenge the impugned proceedings. The language used as well as the purport of such allegations seem to be of not good taste, befitting the status of judicial officers even when they are litigants before the Court and may consider to have any real or genuine grievance about anything done or not done by the authorities. Without elaborating on this aspect further, we expunge such unwarranted remarks and observations made in Para 8 and further order deletion of Paras 10, 15 and portions in Para (XII) of the grounds commencing from "Naturally, therefore, respondent No.3.till the end of the said Para", in entirety, from the record. That apart, we find that the petitioners could have equally avoided making allegations of the nature made, in this case, to justify their action to directly approach this Court under Article 32 of the Constitution of India. We make it clear that we intend no damage or injury to the petitioners on the above account, at the same time we feel constrained to and it has been rendered necessary to say that much at least, to avoid repetition of such things in future either by the petitioners or any such persons holding responsible positions in the system of administration of justice, even for vindicating any of their legitimate rights.

For all the reasons stated above, the Writ Petition fails as of no merits and shall stand dismissed without any costs.