

Mir Ghulam Hussain & Ors vs Union Of India & Ors on 27 February, 1973

Equivalent citations: AIR 1973 SUPREME COURT 1138, 1973 4 SCC 135, 1973 LAB. I. C. 795, 1973 (1) LABLJ 417, (1973) 1 SERV L R 953

Bench: A.N. Ray, D.G. Palekar, S.N. Dwivedi

CASE NO.:

Writ Petition (civil) 73 of 1969

PETITIONER:

MIR GHULAM HUSSAIN & ORS.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 27/02/1973

BENCH:

S.M. SIKRI (CJ) & A.N. RAY & D.G. PALEKAR & S.N. DWIVEDI & B.K. MUKHERJEA

JUDGMENT:

JUDGMENT 1973 AIR 1138 = 1973 (4) SCC 135 The Judgment was delivered by MUKHERJEA, J Per Mukherjea, JT Twenty-six officers belonging to the Senior Scale of the State Service of the State of Jammu & Kashmir have made this petition challenging, in substance, (a) the promotion of respondents Nos. 8 to 32 to the State Cadre of the Indian Administrative Service; (b) the promotion of respondent No. 33 to the State Cadre of the All India Services; (c) appointment of respondents Nos. 34 to 37 to the State Cadre of the Indian Administrative Service in officiating capacity; and (d) the appointment of respondents Nos. 38 to 41 to a special grade of Rs. 900-1800. The material facts are in a short compass and may be briefly stated as follows :

2. Some time in 1965 the State of Jammu & Kashmir reorganised the State Civil Service and framed certain rules to govern that service. The rules are called Jammu & Kashmir Administrative Service Rules, 1965. Under these rules a Jammu and Kashmir Administration Service was set up consisting of officers classified in three grades : (i) Selection Grade, (ii) Senior Scale, and (iii) Junior Scale. By a Notification, being SRO No. 189 of 3rd June, 1965, the State Government published a list of the officers who were selected for the Senior and Junior Scales at the time of the initial constitution of the Jammu & Kashmir Administrative Service on 1st June, 1965. By a notification dated 19th October, 1968 the Government of India promoted under cl. 9 of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955, 25 State Civil Officers in the Senior Scale of, Jammu & Kashmir. Consequent upon these 25 appointment by the Government of India and, immediately thereafter, on 28

October, 1968 the Government of Jammu & Kashmir passed an order, being order No. 74-GR of 1968, by which, the Government made, among other things, certain "postings, adjustments and transfers" with regard to the 25 officers concerned. The said order of 26th October, 1968 also gave sanction to the officiating appointment of four select list of officers to the senior scale of the Indian Administrative Service against certain ex-cadre posts indicated against their names. Apart from this, four ex-cadre posts were declared as equivalent in status and responsibilities to certain other cadre posts shown against each of them respectively. Sanction was also given to the creation of four posts in the scale of Rs. 900-50-1000-60-1600-50-1800 with effect from 19th October, 1968 and four select list officers were appointed to those posts.

3. The petitioners have challenged all the promotions and appointments made by the order of 28th October, 1968 on various grounds. To understand the complaints of the petitioners it is necessary to refer to some of the provisions of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 which we shall hereinafter refer to briefly as "the Regulation".

4. Under the Regulation a committee is usually set up for each of the States to select officers of the State Civil Service for appointment to the corresponding State Cadre of the Indian Administrative Service. The committee consists of the Chairman of the Union Public Service Commission or, where the Chairman is unable to attend, any member of the other members indicated in the schedule to the Regulation Regulation 3(1). So far as the State of Jammu and Kashmir is concerned the other members are the Chief Secretary to the Government of Jammu & Kashmir, two other officers of the Indian Administrative Service holding posts either in the super time-scale or posts generally recognised in other States as super time-scale or posts, and a nominee of the Government of India not below the rank of a Joint Secretary [Schedule to the regulation]. This committee has to meet at intervals ordinarily not exceeding one year and consider the cases of all substantive members of the States Civil Service who on the first day of January of that year had completed not less than eight years of continuous service in a post of Deputy Collector or any other post or posts declared equivalent thereto by the Government [Regulation (4)]. The committee has to prepare a list of such members of the State Civil Service who satisfy the conditions of eligibility for promotion to the Service [Regulation 5(1)].

The selection for inclusion in this list is to be based on merit and suitability in all respects with due regard to seniority [Regulation 5(2)]. The name of the officers included in the list are arranged in order of seniority in the State Civil Service : Provided that any junior officer who in the opinion of the committee is of on exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him [Regulation 5(2)]. The list prepared by the selection committee is reviewed and revised every year and if in the process of selection, review or decision it is proposed to supersede any member of the State Civil Service the committee has to record its reasons for the proposed supersession [Regulation 5(4) and 5(5)]. After the list is prepared it is forwarded to the

Public Service Commission by the State Government along with (i) the records of all members of the State Civil Service included in the list : (ii) the records of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list :

(iii) the reasons as recorded by the committee for the proposed supersession of any member of the State Civil Service; and (iv) observations of the State Government on the recommendations of the committee [Regulation (6)]. The select list is considered by the Public Service Commission along with all other documents received from the State Government and unless the Commission considers any change necessary, the list is approved. If any change has to be made the Commission informs the State Government of the changes proposed and after considering the comments, if any, of the State Government, may approve the list finally with such modifications if any as may in its opinion be just and proper [Regulations 7(1) and 7(2)]. This list as finally approved by the Commission as aforesaid forms what is called the "select list of the members of the State Civil Service" [Regulation 7(3)]. Appointments of members of the State Civil Service to the Indian Administrative Service are made by the Central Government on the recommendations of the State Government in the order in which the names of members of the State Civil Service appear in the select list for the time being in force [Regulation 8].

5. We now proceed to consider, one by one, the various objections raised on behalf of the petitioners against the promotions and appointments made by Order 74/GR of 1968 referred to hereinafter as the "said order".

6. The first ground of challenge made out is that the selection committee which prepared the select list from which various officers were appointed under the said order did not consider the merits of the candidates before preparing the list. The complaint is that the respondent No. 3, i.e., the Chairman of the Union Public Service Commission who was the ex-officio Chairman of the selection committee, reached Srinagar on 13th September, 1968 and left Srinagar for Delhi on 14th September, 1968, so that he could not possibly have considered the records of nearly 150 eligible persons within the short time at the disposal. Shri Damely, the Chairman of the Union Public Service Commission has himself rebutted this allegation in an affidavit in which he stated that he reached Srinagar actually on 12th September, 1968 and that the selection committee had two sessions on 13th September, 1968. Shri Damely states that the total number of eligible officers was not 150 but 81. The Government of Jammu and Kashmir had furnished a list of 86 officers of which 5 were not found to be eligible for selection at all. He points out that it is not correct to say that the service records of 43 out of 81 eligible officers had been sent in advance by the Government of Jammu and Kashmir to the Public Service Commission on 26th July, 1968. These records had been received by the Union Public Service Commission on 9th August, 1968 and placed before Shri Damley for his perusal on 10th September, 1968. The records of the remaining 38 officers were made available to him when he reached Srinagar on 12th September, 1968. In view of this affidavit of Shri Damley the petitioners' complaint must be rejected. There was some feeble attempt on the part of the counsel appearing for the petitioners to make out a case but even if the Chairman had perused all the records it was not possible for all the members of the committee to have perused them during the

two sittings held at Srinagar on 13th September, 1968. This is a new case not to be found in the petition and, besides, the Chairman himself has stated in clear and categorical language that the rival claims of all the eligible officers had been duly considered by the entire selection committee. We have no manner of hesitation in accepting this statement of Shri Damley, The second ground of attack is rather vague and unintelligible. The petitioners complain that the merits of some officers had been "passed over in groups." Our attention was drawn to a list of names annexed to the petition as annexure 'F' in which the names of the persons who have not been selected are marked with a cross. In that list it appears that the names of some of the officers who have not been selected appear in groups. First, we do not know the basis on which the list in annexure 'F' has been prepared. But even assuming that the list has been prepared strictly according to seniority, the mere fact that the names of some of the officers who have been rejected appear on that list consecutively is no indication that they have been rejected in an arbitrary manner. In the counter-affidavit of Shri Bansilal Kaul, Under Secretary to the Government of Jammu and Kashmir, it has been stated clearly that the records of all the eligible officers were examined by the selection committee to determine their merit and suitability for inclusion in the select list. The selection committee consisted, among others, of the Chief Secretary of the State Government and two other super-time scale officers of the Indian Administrative Service of the State Cadre. All these three members of the State Government had, we are told, first-hand knowledge of the suitability and performance of the officers whose cases were considered by the committee. Besides, the performance of the officers was judged on the basis of the service records which, it is contended, furnish a better guide for evaluation of the quality of an officer than a personal interview for a short duration could possibly have furnished. Shri Bansilal Kaul further states in paragraph 21 of his affidavit that officers at serial Nos. 1, 77, 78, 79, 80, 81, 82, 83, 84, and 85 of annexure 'B' were not eligible for being considered by the selection committee as they had not completed eight years' service in a post of a Deputy Collector or any post declared equivalent thereto on 1st January, 1968. Certain other officers, viz., officers at serial Nos. 26, 30, 34, 41, 43, 56, 59, 64, 72, 75 and 86 of annexure 'F' had already crossed the age of 52 years and could not ordinarily be considered for inclusion under Regulation 4(2) of the regulations. When officers are excluded on such grounds it is not surprising that their names appear often in a bunch in that list. We accept this explanation of Shri Bansilal Kaul and are not prepared to entertain the counsel's suggestion that the exclusion of a number of officers in consecutive order indicates an exercise of arbitrary and unguided powers.

7. The third ground of attack levelled against the said order by the petitioner's counsel is that in the case of petitioners Nos. 2, 20 and 15, their service records which were the basis of the whole selection contained certain adverse remarks which had not been communicated to them in time. It is argued that under the ordinary rules confidential remarks regarding each officer have to be written at the close of each financial year and are required to be completed before the end of that year and any adverse entry made against an officer has to be communicated to that officer so that the officer concerned can make a representation about such remarks. It is alleged that in the particular year concerned, i.e., 1968, the petitioners had not received any communication from the authorities which indicated that there was anything adverse against them. But after the selection had been completed and after the writ petition had been filed the petitioners Nos. 2, 20 and 25 received communications appertaining to their confidential rolls which showed the existence of certain adverse remarks against them. The suggestion is that the selection committee had

considered in respect of these three officers certain remarks which could not have been finalised as they had not been communicated to the petitioners before September, 1968. This complaint is one which does not appear in the petition. The complaint has been ingeniously constructed by the petitioner's counsel by piecing together an averment made in the petition with certain statement made in subsequent affidavit. In para 26 of the petition there is an averment that there was no adverse remark against the petitioners. The suggestion obviously sought to be made out at that stage was this that since there was nothing adverse against them. The petitioners were entitled to be selected. This claim is, of course, completely misconceived for the simple reason that promotion is not made on the basis of absence of complaint but on the basis of positive merit. Absence of adverse remarks is no criterion of the quality of an officer. In reply to this statement in the petition, however, Shri Bansi Lal Kaul in his affidavit treated the petitioners' averment about non-communication of adverse remarks as a complaint and stated that the adverse remarks in all cases had been communicated to the petitioners who had made representations against the adverse entries and that the State Government thereafter had either rejected the representations or modified the entries. Taking advantage of this reply of the State Government, the petitioners in a rejoinder have given a slight twist to their original stand and come out with a fresh allegation. They point out for the first time that petitioners Nos. 2, 20 and 25 had received communications regarding adverse remarks after the selection had been completed. The learned counsel made an ingenious argument out of this by raising a new contention that at least some adverse remarks which had not been communicated to these three petitioners were considered by the selection committee at the time of making the selection. This complaint, apart from being an afterthought is completely flimsy. The particulars regarding the adverse remarks have not been supplied and no attempt has been made to show that these remarks had been posted on the confidential rolls before the actual selection took place or that these confidential remarks had prejudiced the petitioners concerned.⁸ The fourth ground of complaint was that some officers who could not be considered for promotion to Indian Administrative Service have been selected by the committee. The suggestion is that if eligibility had been correctly determined there would have been some vacancies against which some of the petitioners could have been absorbed. In our opinion if there is any complaint about the appointment or promotion of an officer who is not eligible under the rules to be promoted or appointed, the proper remedy is to make an application for the issue of a writ of quo warranto and since the petitioners have not done so, this particular complaint cannot be entertained in this petition.

9. The last allegation of the petitioners is that the selection has been mala fide. Mala fide is sought to be proved by the fact that State Government had on 12th September, 1968 added certain posts to the existing strength of the Senior Scale of the service and some of the respondents were confirmed in the vacancies created by such additions with effect from 1st August, 1968. The intention behind this addition to the strength of Senior Scale of the Indian Administrative Service was to benefit those respondents who, the petitioners allege, are the favourites of Government. We are not disposed to take this plea of mala fide seriously. After all the Chairman of the Union Public Service Commission was presiding over the deliberation of the committee and there is and can be no allegation of mala fide against him or against the Union Public Service Commission. Under rule 4 of the Kashmir Administrative Service Rules the State Government is competent to revise the cadre from time to time. It is under these rules that the Government revised the cadre strength partly by converting

some temporary posts included in the temporary cadre strength to the permanent cadre strength and partly by adding some ex-cadre posts to the permanent strength of the Kashmir Administrative Service. We have no hesitation in accepting Shri Bansi Lal Kaul's affidavit that these were all done in the exigencies of service. In any case, the revision of the cadre strength did not in any way affect the seniority or other rights of the petitioners and they have no grounds for complaint. It has been further pointed out by Shri Bansi Lal Kaul that it is on the basis of the revised notification that petitioners Nos. 10, 11, 18, 22, 23, 24, 25 and 26 became eligible for being considered by the selection committee for inclusion in the list. Shri Kaul also tells us that the revised notification did not have the effect of omitting from the list of eligible officers any officer who would have otherwise been in that list. In these circumstances this allegation of mala fide is completely misconceived.¹⁰ We have now considered all the complaints of the petitioners. There is no substance in any of these complaints and the petition must, therefore, be dismissed. The rule is discharged, but we make no order as to costs.