

**Central Administrative Tribunal
Jammu Bench, Jammu**



T.A. No.2779/2021
(SWP No.1951/2018)

Thursday, this the 6th day of May, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Mohd. Shafi Mir
Aged 37 years,
S/o Gh. Nabi Mir,
R/o Nowpora-Shopian.
2. Mudasir Ahmad Zargar
Aged 33 years,
Assadullah Zargar,
R/o Old Barzulla, Srinagar.
3. Shabir Ahmad Bhat
(aged 35 years)
S/o Gh. Mohi-ud-Din Bhat,
R/o Chararisharief, Budgam.
4. Nadeem Ahmad Kotwal
Aged 30 years,
S/o Ghulam Mohi-ud-Din Kotwal,
R/o Rajbagh-Srinagar.
5. Sajad Hussain Hajam
Aged 34 years,
S/o Mohd Akbar Hajam,
R/o Anantnag.
6. Showkat Ahmad Bhat
Aged 33 years,
S/o Ghulam Nabi Bhat,
R/o Girage Ganderbal.



7. Nazir Ahmad Bhat
Aged 34 years,
S/o Ghulam Rasool Bhat,
R/o Budgam.
8. Asifa Gulzar
Aged 36 years,
D/o Gulzar Ahmad Rather
R/o Tengmarg, Baramulla.
9. Nazir Ahmad Sheikh
Aged years
S/o Khawja Habib,
R/o Channapora, Pulwama.

..Applicants

(Mr. Altaf Haqani, Senior Advocate assisted by Mr. Shakir Haqani, Advocate)

VERSUS

1. State of Jammu & Kashmir through
Commissioner/Secretary to Government,
Revenue Department, Civil Sectt.,
Jammu/Srinagar.
2. Financial Commissioner (Revenue),
J&K Government,
Srinagar/Jammu.
3. Deputy Commissioner, Srinagar.
4. Deputy Commissioner, Budgam.
5. Deputy Commissioner, Ganderbal.
6. Deputy Commissioner, Baramulla.
7. Deputy Commissioner, Anantnag.
8. Deputy Commissioner, Pulwama
9. Deputy Commissioner, Shopian.

..Respondents

(Mr. Amit Gupta, Additional Advocate General)



ORDER (ORAL)

Justice L. Narasimha Reddy:

The State of Jammu & Kashmir took a decision to appoint 200 Settlement Assistants in the Revenue Department on contractual basis, on a remuneration of Rs.2000/- per month vide its order dated 27.09.2005. The applicants are some of them. Their remuneration was later on enhanced to Rs.4500/-.

2. The applicants contend that at the initial stage itself, it was decided to impart training of Patwari to the Settlement Assistants appointed on contractual basis and two such Settlement Assistants approached the Hon'ble High Court of Jammu & Kashmir by filing the SWP No.1462/2017, with a prayer to direct the respondents to consider their cases for appointment as Patwaries. The SWP was disposed of on 31.07.2017 with a direction to the respondents to consider the SWP itself as a representation and to take a decision on the same. Through an order dated 30.11.2017, the Deputy Commissioner, LAHDC, Kargil directed that the petitioners in SWP No.1462/2017 shall be taken as Patwaries subject to certain conditions. It was also stated that the Financial Commissioner (Revenue), Srinagar passed an order dated 16.08.2013, stating that the Recruitment Rules for the post of Patwari need to be amended in case the Settlement Assistants are to be appointed to that. With this

background, the applicants filed SWP No.1951/2018 before the Hon'ble High Court with a prayer to direct the respondents to extend them, the same benefits as in the order dated 30.11.2017 passed by the Deputy Commissioner, Kargil.



3. The applicants further contend that they stand on the same footing as the two persons, who were extended the same benefit in the said order. Reference is also made to the judgment of the Hon'ble Jammu & Kashmir High Court in SWP No.2688/2015 (**Mehboob Ahmed Shah & others v. State of Jammu & Kashmir & others**) decided on 10.10.2018.

4. The record discloses that the respondents did not file any counter affidavit.

5. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.2779/2021.

6. Today, we heard Mr. Altaf Haqani, Senior Advocate assisted by Mr Shakir Haqani, learned counsel for applicants and Mr. Amit Gupta, Additional Advocate General.

7. Way back in the year 2005, the State of Jammu & Kashmir decided to engage 200 Settlement Assistants in the Revenue Department on contractual basis. Obviously to clear the workload



at that particular time, the step was taken. Having regard to the nature of the work and duties, the training was also imparted to such candidates, as Patwaries. Over the period, some of the Settlement Assistants sought the relief of appointment as Patwari. Dealing with that demand, the Financial Commissioner (Revenue), Srinagar passed an order 16.08.2013, taking the view that the appointments of the Settlement Assistants would become possible, if only the Recruitment Rules are amended.

8. Sometime later, two Settlement Assistants filed SWP No.1462/2017. That was disposed of on 31.07.2017, just by directing the respondents to treat the SWP itself as the representation and to take appropriate steps. By way of abundant precaution, the Hon'ble High Court made it clear that it did not express any view on merits. Stating to be in compliance with the same, the Deputy Commissioner, Kargil passed an order dated 30.11.2017, directing that the two individuals shall be taken as Patwaris, subject to certain verification. No reference is made to any Government order or the rules of recruitment. It is not as if the Hon'ble High Court has issued any specific direction or laid down any criteria.

9. Be that as it may, at a later stage, in another SWP, which was filed a bit earlier, i.e. SWP No.2688/2015, the Hon'ble High Court passed an order dated 10.10.2018, the operative portion of which reads as under:-



“6. In view of the above, these writ petitions are allowed and a direction is issued to the respondents to consider the cases of the petitioners for their regularization / adjustment as Patwaries in the light of the communication issued by the Financial Commissioner vide his No. FC (NG-PTAI) 812-I/2012 dated 16.18.2013 read with Section 5 of the J & K Civil Services (Special Provisions) Act, 2010 within a period of six weeks from the date a certified copy of this order is served upon them. The respondents, while according consideration to the cases of the petitioners, shall also take note of order No. DC-K/SQ-231/III/2013 dated 30.11.2017 passed by the Deputy Commissioner / CEO, LADHC, Kargil, and if it is found that the petitioners are similarly situated with the petitioners of SWP No.1462/2017, who have been appointed as Patwaries substantively vide order dated 30.11.2017, the similar order in favour of the petitioners may also be passed.”

9. Maybe on account of the multifarious claims made before it, the Hon'ble High Court concluded, as in the above paragraph. What, however, becomes relevant is that in case the Jammu & Kashmir Civil Services (Special Provision) Act, 2010 is to be implemented for the Settlement Assistants, the result would be that they would be regularized in that very post. On the other hand, if the benefit similar to the one in the order dated 30.11.2017 passed by the Deputy Commission, Kargil is to be extended, that would result in appointment of Patwari. The third aspect is that the order dated 16.08.2013 is the one which recommend amendment of Rules.

10. Obviously faced with this typical and complex situation, the Government did not take any further steps. It is only for the Hon'ble High Court to decide the nature of actions as and when the proceedings are brought before it for implementation.



11. Be that as it may, the applicants can make a detailed representation in clear and unambiguous terms as to the nature of relief *vis-à-vis* the Government. It can be in the form of regularization of services under the Jammu & Kashmir Civil Services (Special Provision) Act, 2010 or for appointment similar to the one under order dated 30.11.2017. In case such a representation is made, the respondents shall be under obligation to pass appropriate orders, in accordance with the law within the stipulated time.

12. Therefore, we dispose of the T.A.,

- (a) leaving it open to the applicants to make a precise and clear representation, duly enclosing the supporting material, be it in the form of the orders passed by the Department or Hon'ble High Court, to the respondents within four weeks from the date of receipt of a copy of this order.
- (b) as and when such a representation is made, the respondents shall pass appropriate orders in accordance with law, duly taking into account the relevant documents, within two months from the date of receipt of a copy of the representation.

- (c) It is made clear that the Tribunal did not express any view,
as to the legal status in the issue.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 6th, 2021
/sunil/rk/dsn/

