

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

Reserved on: 29.10.2024

Pronounced on: 21.11.2024

LPASW No.33/2019

ABHIJEET JOSHI & ORS

...APPELLANT(S)

Through: - Mr. Z. A. Shah, Sr. Advocate. With
Mr. A. Hanan, Advocate.

Vs.

UNION OF INDIA & OTHERS

...RESPONDENT(S)

Through:- Mr. Tahir Majid Shamsi, DSGI.
Mr. Abdul Rashid Malik, Sr. AAG, with
Mr. Mohammad Younis Hafiz, Assisting Counsel.
Mr. Jahangir Iqbal Ganai, Sr. Adv. with
Ms. Mehnaz Rather, Advocate.
Ms. Insha Shakeel, Advocate, vice Mr. Shah Aamir, Advocate.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Per Sanjeev Kumar 'J'

1) This appeal under Clause 12 of the Letters Patent is filed by the appellants by leave of this Court granted vide order dated 5th April, 2019. The appellants are the members of J&K Forest Gazetted Service constituted by the Jammu and Kashmir Forest Service (Gazetted) Recruitment Rules, 1970 ["State Forest Rules, 1970"]. They are aggrieved and have assailed an order and judgment dated 12th February, 2019 passed by a learned Single Judge of this Court in SWP No.497/2013 titled "Rashid Yahya Naqash & Ors. Vs. Union of India and Ors.", whereby the

Writ Court has, while allowing the writ petition, directed the official respondents to notify “State Forest Service” as required in terms of Rule 2(g)(i) of the Indian Forest (Recruitment) Rules, 1966 read with Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, and to consider the petitioners as members of said Forest Service. The Writ Court has issued further direction to the official respondents to prepare a list of suitable officers for induction into Indian Forest Service by promotion in accordance with Indian Forest Service (Appointment by Promotion) Regulations, 1966 after notification of State Forest Service’. The exercise has been directed to be completed preferably within eight weeks from the date copy of the order is served upon the official respondents.

2) Before we advert to the grounds of challenge to the impugned order and judgment urged by Mr. Z. A. Shah, learned senior counsel appearing for the appellants, we deem it appropriate to give brief resume of the factual antecedents leading to the filing of this appeal.

3) Way back in the year 1970, the Governor of the then State of Jammu and Kashmir, in exercise of powers conferred by Proviso to Section 124 of the Constitution of Jammu and Kashmir, issued SRO 359 dated 24th July,

1970 constituting the Jammu and Kashmir Forest Gazetted Service to be regulated by the State Forest Rules, 1970. As per the Schedule appended to the State Forest Rules, 1970, amongst others, the post of Assistant Wildlife Warden was incorporated as Class-III category 'C' post. Later on, the Schedule was amended/substituted in terms of notification issued vide SRO 431, in terms whereof, the post of Assistant Conservator of Forests and Assistant Wildlife Warden were put in Class-III Category 'B' in the then pay grade of Rs.470-850.

4) In order to implement the provisions of the J&K State Wildlife (Protection) Act, 1978, sanction was accorded to re-designation of the "Directorate of Game Preservation" as "Directorate of Wildlife Protection". This was done by the official respondents vide Government Order No.132-FST of 1979 dated 13.08.1979. Subsequently, vide Government Order No.89-ISM(WL) of 1985 dated 23.07.1985, seven posts of Assistant Conservator of Forests in the Wildlife Protection Department were created. The organizational setup of the Wildlife Protection was undertaken in the year 1991 in terms of Government Order No.128-FST of 1991 dated 18.05.1991.

5) Pursuant to a selection process undertaken by the J&K Public Service Commission and the recommendations

made by it, four of the private respondents were appointed as Assistant Wildlife Warden in the Wildlife Protection Department in the then pay scale of Rs.2125-3600/ vide Government Order No.19-FSR of 1996 dated 11.01.1996. On similar terms and conditions, other private respondents also came to be appointed as Assistant Wildlife Warden in the years 1997/2000. It needs to be taken note of that the J&K Wildlife Gazetted Service was constituted by the J&K Wildlife (Gazetted) Service Recruitment Rules, 1994 notified vide SRO 158 of 1994. The private respondents, having been appointed after the constitution of Wildlife Gazetted Service and being members thereof, are governed by the service conditions laid down in the Wildlife (Gazetted) Service Recruitment Rules, 1994.

6) With the creation of Wildlife Gazetted Service and taking out the posts of Assistant Wildlife Warden from the State Forest Gazetted Rules, 1970, the private respondents, who were denied the right of consideration for induction into IFS and were otherwise deprived of avenues of promotion, filed SWP No.497/2013 seeking, *inter alia*, a Writ of Mandamus to declare the J&K Wildlife (Gazetted) Service Recruitment Rules, 1994, as ultravires the Constitution and also for a Writ of Mandamus to command the official respondents to notify 'State Forest Service' as

mandated in terms of Rule 2(g)(i) of the Indian Forest Service (Recruitment) Rules, 1966 read with Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulations, 1966 and include the private respondents as members of 'State Forest Service'.

7) As can be seen, during the consideration of the matter, Mr. Jahangir Iqbal Ganai, learned senior counsel appearing for the private respondents, gave up the first prayer with regard to constitutional validity of the Jammu and Kashmir Wildlife (Gazetted) Service Recruitment Rules, 1994, and restricted the petition to the issuance of Writ of Mandamus to the official respondents to notify the State Forest Service and include the private respondents for the purpose of their induction into Indian Forest Service under Indian Forest Service (Appointment by Promotion) Regulations, 1966.

8) The writ petition was contested by the official respondents, who, in their reply affidavit filed by the then Principal Secretary to Government, Forest, Environment and Ecology Department, submitted that the Department of Wildlife Protection was created in the year 1982, which was re-organized in the year 1991. The Government vide order dated 23.07.1985, created seven posts Assistant Conservator of Forest in the then pay scale of Rs.1000-

1560. The Recruitment Rules for the Wildlife Services were notified in the year 1994 along with the Schedule of posts which, inter alia, included 13 posts of Assistant Wildlife Warden. It is submitted that right at the time of acceptance of appointment as Assistant Wildlife Wardens in the year 1996, 1997 and 2000, the private respondents were aware that there were no promotional avenues for the Assistant Wildlife Wardens, yet they accepted the appointments with their eyes wide open and, therefore, cannot be allowed to turn around and raise their grievance against non-availability of promotional avenues. It was clarified by the official respondents that prior to the promulgation of Wildlife Gazetted Service Recruitment Rules, the post of Assistant Wildlife Warden, which was born on the Forest Gazetted Service, was in the feeding category for the post of Deputy Conservator of Forests. However, after the issuance of Wildlife (Gazetted) Service Recruitment Rules, 1994, the post of Assistant Wildlife Warden was included in the said service which does not provide avenues for promotion. With regard to notification in terms of Rule 2(g) of the Indian Forest Service (Recruitment) Rules, 1996, read with Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, it is the stand taken by the official respondents that till date, the Department has been

preparing the panel of the officers born on the J&K Forest Gazetted Service for induction into IFS and the officers of the rank of the Assistant Conservator of Forests and above fulfilling the eligibility criteria are being inducted into IFS in consultation with the Union Public Service Commission. The J&K Wildlife Gazetted Service for the time being is not the feeding service for IFS nor any such decision has been taken so far.

9) The Writ Court, having regard to the arguments addressed at Bar by the learned counsel appearing for the parties with reference to the rule position, came to the conclusion that constitution of 'State Forest Service', as mandated by Rule 2(g)(i) of the Indian Forest Service (Recruitment) Rules, 1966, is a condition precedent for recommending eligible candidates for their appointment by promotion to the Indian Forest Service under IFS Regulations, 1966 and, accordingly, issued the directions, which we have already alluded to hereinabove.

10) The appellants before us are aggrieved and have challenged the impugned judgment, primarily, on the ground that no Mandamus lies to direct the State to frame the statutory service/recruitment rules, which is legislative function of the State. It is argued that direction to constitute State Forest Service would, in turn, mean a

direction to the State to frame the statutory Recruitment Rules, for, the framing of statutory Recruitment Rules is *sine qua non* for constitution of a service. The impugned judgment is also challenged on the ground that the Writ Court has not appreciated that cadre management, determination of officers and class of officers who are eligible for induction into IFS, is sole prerogative of the Government and the Courts have no role in such policy decisions. Whether or not the Wildlife Gazetted Service should be got approved from the Central Government by the Government of Union Territory in terms of Rule 2(g)(i) of Indian Forest (Recruitment) Rules, 1966 should be best left to be determined by the official respondents.

11) *Per contra*, stand of the private respondents is that the mandate for notifying the State Forest Service in terms of Rule 2(g)(i) of the Indian Forest (Recruitment) Rules, 1966, is mandatory in nature and in case the official respondents fail to perform their statutory duty cast upon them by Rule 2(g)(i), this Court can always, in the exercise of jurisdiction under Article 226 of the Constitution of India, direct the official respondents to fulfill the mandate of Rule 2(g)(i) and constitute State Forest Service and this is exactly what has been done by the Writ Court in terms of the order and judgment impugned.

12) Both sides have relied upon several judgments on the points canvassed by them during the course of arguments.

13) Having heard learned counsel for the parties and perused the material on record, a short question that begs determination in this appeal is as under:

“Whether the High Court, in the exercise of its extraordinary writ jurisdiction vested in it under Article 226 of the Constitution of India, can direct the State to notify ‘State Forest Service’ as defined under Rule 2(g)(i) of the Indian Forest Service (Recruitment) Rules, 1966 [“the Rules of 1966”], which is, indisputably, *sine qua non* for making appointment by promotion in Indian Forest Service in terms of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 [“the Regulations of 1966”]?”

14) The Indian Forest Service is constituted under the Rules of 1966. Rule 8 of the Rules of 1966 lays down the mode and manner in which recruitment to the service by promotion is required to be made. Rule 8 reads thus:

“8. Recruitment by promotion.- (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service, persons by promotion from amongst the substantive members of the State Forest Service.

(2) Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule, the vacancy shall be filled by promotion of a member of the State Forest Service.

(3) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this

rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Forest Service of any of the State constituting the group.”

15) From the reading of Rule 8(supra), it clearly transpires that the competent authority to make appointment by promotion to the Indian Forest Service is the Central Government and the mode of recruitment, as laid down in Clause (1) of Rule 8, is that the Central government may, on the recommendations of the State Government concerned and in consultation with the Union Public Service Commission, make recruitment to the service by promotion from amongst the substantive members of the State Forest Service. For our purpose, it is sufficient to say that it is only a member of the State Forest Service, who, as per the Rules of 1966, is eligible to be appointed by promotion to Indian Forest Service. The procedure for making appointment by promotion to Indian Forest Service is to be regulated by the Regulations, as may be framed by the Central Government after consultation with the State Government and Union Public Service Commission. The ‘State Forest Service’ is defined under Rule 2(g)(i) of the Rules of 1966, which reads as under:-

“2(g) "State Forest Service" means:-

(i) any such service in a State, being a service connected with forestry and the members thereof having gazetted status, as the Central Government may, in consultation with the State Government, approve for the purpose of these rules.”

16) From a plain reading of the definition of 'State Forest Service' reproduced hereinabove, it is crystal clear that the 'State Forest Service' for the purpose of appointment by promotion in terms of Rule 8 of the Rules of 1966, would mean any such service in a State which is connected with forestry and the members thereof have gazetted status. Such service in a State would become 'State Forest Service' for the purposes of Rules of 1966 only if the Central Government in consultation with the State Government approves it. For the sake of clarity, we would like to split the definition of 'State Forest Service' as defined in Rule 2(g)(i) in the following manner:

A service in a State will be 'State Forest Service' within the meaning of Rule 2(g)(i), if it fulfills the following conditions:

- (i) It should be a service in a State connected with forestry;
- (ii) The members of such service should have gazetted status;
- (iii) The Central Government must approve it in consultation with the State Government to be such service for the purposes of Rules of 1966.

17) Admittedly, in the instant case, no formal 'State Forest Service' for the State of Jammu and Kashmir (now the Union Territory of Jammu and Kashmir and Union Territory of Ladakh) has been constituted in the manner aforesaid. The stand of the State Government is that it is

only by way of a long-standing convention, the Government has been recommending the officers having gazetted status who are born on the J&K Forest Gazetted Service constituted under the State Forest Rules of 1970.

18) *Per contra*, Mr. Shah, learned senior counsel, submits that the stand of the State if taken to be correct on the face of it, is clearly indicative of the fact that the 'State Forest Service' for the purposes of Rules of 1966 shall be deemed to have been created of the Gazetted Officers consisting of State Forest Gazetted Service only.

19) We have our strong doubts as to whether 'State Forest Service' in terms of Rule 2(g)(i) can be constituted otherwise than in accordance with the pre-requisites laid down in Rule 2(g)(i). At this point, we are reminded of a well settled legal position that if a statute prescribes a particular mode and manner for doing a thing, such thing should be done in the prescribed manner or shall not be done at all. The Hon'ble Supreme Court was confronted with somewhat similar situation, though in a different context, in the case of **Gopal Singh vs. State Cadre Forest Officers Association and others**, (2007) 9 SCC 369. One of the questions that arose for consideration in **Gopal Singh's** case was whether the words "may approve" is directory and the 'State Forest Service' can come into existence even if

there is no approval of the Central Government as mandated by Rule 2(g)(i). We would like to clarify that in **Gopal Singh's** case, the Hon'ble Supreme Court was interpreting Rule 2(g)(ii), which now stands deleted vide GSR 731(E) with effect from 31st December, 1997. For the purpose of discussion, Rule 2(g)(ii) was *pari-materia* with Rule 2(g)(i) and Rule 4(1) of the Rules of 1966 as also the Regulations of 1966. The Hon'ble Supreme Court concluded thus:

“For this the learned counsel relies on the decision of this Court in Land Acquisition Officer & Mandal Revenue Officer vs. V. Narasaiah, wherein in para 14 it has been held that "may be" means "may" or "may not be". In our opinion the argument is clearly incorrect and would violate the language. The language is plain and simple to mean that for any service to be included in the State Forest Service would be firstly required to be connected with forestry and secondly it has to be approved by the Central Government for the purposes of these Rules. If we give the meaning as is canvassed by the learned counsel, then there would be no necessity of the words "as may be approved by the Central Government for the purpose of these Rules". We cannot accept the interpretation. The ruling cited by the learned counsel is in entirely different context. That was the case where the question was as to whether the court could accept in evidence a certified copy of the registered document under Section 51A of the Act. The court simply held that this gave a discretion to the concerned court to accept or not to accept such copies in evidence. In our opinion there is no significance in the present provision, i.e., Rule 2(g)(ii) of the words "as may be approved" as is suggested by the learned counsel. On the other hand the meaning is clearly discernible that there would have to be approval by the Central Government in favour of any service for being included in the State Forest Service. We, therefore, reject the contention raised by the learned counsel.”

20) If we interpret Rule 2(g)(i) in the light of the law laid down in **Gopal Singh's** case, we find that the plain language of Rule 2(g)(i) of the Rules of 1996 clearly suggests that for any service of the State/Union Territory to be

included in the 'State Forest Service', it should be first connected with the forestry and secondly, it must have the approval of the Central Government granted in consultation with the State/Union Territory Government concerned. The approval by the Central Government is, thus, mandatory and in the absence thereof, a State service though connected with forestry cannot claim to be 'State Forest Service' as defined in Rule 2(g)(i) for the purposes of Rule 1966.

21) *Per contra*, the submission of learned counsel for the appellants, Mr. Shah, that the word 'may' used in Rule 2(g)(i) of the Rules of 1966 is directory in nature and it is not incumbent upon the Central Government to necessarily constitute a 'State Forest Service' for a particular State or Union Territory, is an argument which can have relevance if we read Rule 2(g)(i) in different context. While constitution of 'State Forest Service' by the Central Government in consultation with the concerned State or Union Territory, as the case may be, may not be mandatory but for induction into IFS of Gazetted members of any service in the State connected with forestry, such service must have the approval of the Central Government to be granted in consultation with the State Government. There could be no 'State Forest Service' for any State or Union

Territory without the approval of the Central Government. The clear stand of the official respondents is that the State Forest Gazetted Service constituted by the State Forest Rules of 1970 is though a service connected with forestry but does not have any formal approval from the Central Government, as is mandated by Rule 2(g)(i) read with Rule 8 of the Rules of 1966.

22) This takes us to the next argument and rather the star argument raised by Mr. Shah that no Mandamus would lie to compel the State to do something which lies in its discretion. He submits that the constitution of 'State Forest Service' for a particular State or Union Territory should be best left to the official respondents.

23) There could be no quarrel with the proposition canvassed by Mr. Shah. The Writ Court, as we find from the judgment impugned, was aware of this legal position and yet directed the official respondents to notify 'State Forest Service' as is required in terms of Rule 2(g)(i) of the Rules of 1966. This, the Writ Court did by reading Rule 2(g)(i) of the Rules of 1966 along with Regulation 5 of the Regulations of 1966. We are, however, of the opinion that what is more relevant to appreciate in this regard is Section 3(1) of the All India Services Act, 1951, whereunder the Central Government has framed the Indian Forest Service

(Cadre) Rules, 1966. Rule 3 of the said Rules mandates the constitution for each State or group of States an Indian Forest Service cadre. Rule 4 relates to the determination of strength and composition of each cadre constituted under Rule 3 to be determined by the Regulations made by the Central Government. The Central Government has framed Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966. J&K cadre and its strength is indicated in clause (x) of the Schedule appended to Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966. With a view to giving effect to the J&K cadre and the number of posts allocated to it, it is necessary to have the 'State Forest Service' constituted in terms of Rule 2(g)(i). It seems that the official respondents including the Union of India, proceeded on the assumption that 'State Forest Gazetted Service' constituted by the State Forest Rules of 1970, which perhaps during the earlier times was the only service connected with forestry, had the approval of the Central Government in terms of Rule 2(g)(i) of the Rules of 1966, to qualify to be the 'State Forest Service'.

24) Viewed thus, we cannot leave the State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir and Union Territory of Ladakh), without there being any 'State Forest Service', for the constitution of 'State Forest Service'

under Rule 2(g)(i) is *sine qua non* for supplying the vacancies in the J&K cadre as it exists in the Schedule appended to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966. We also cannot permit the status quo to continue which permits the Gazetted Officers born of the J&K Forest Gazetted Service constituted by the State Forest Rules, 1970, only to take the benefit of induction into Indian Forest Service. There could be other services which are also connected with forestry and deserve to be considered for induction along with Gazetted officers of the State Forest Gazetted Service. We are aware that this exercise has to be undertaken by the Union Territory and the ultimate approval is to be granted by the Central Government. There could be no Mandamus to the State to include or exclude any service or a gazetted member thereof into or from the 'State Forest Service' nor do we intend to do so. Suffice it to say that a time has come when the Union Territory must fulfill the mandate of Rule 8 read with Rule 2(g)(i) of the Rules of 1966 and to take requisite steps to constitute 'State Forest Service' consisting of Gazetted Officers of different Gazetted Services connected with forestry. It is only if the service so constituted receives the approval of the Central Government, the members of such service would become

entitled to be appointed by promotion to the Indian Forest Service constituted under the Rules of 1966.

25) Viewed thus, we do not see any reason to find fault with the judgment impugned passed by the Writ Court. We only hasten to add that the requisite steps, as is directed by the Writ Court, are required to be taken on a war footing, else not only the appellants but other Gazetted members serving in different services of Union Territory connected with forestry, who may come within 'State Forest Service' to be constituted in terms of the judgment of the Writ Court, may suffer. We are told that Union Territory has already undertaken requisite exercise for constitution of 'State Forest Service' and Central Government is likely to be approached for approval shortly. We expect the Union Territory Government to be alive to the situation and would proceed in the matter with the requisite promptitude.

26) While we have passingly held that apparently and in view of the material on record as also having regard to the stand of the official respondents, there was no validly constituted 'State Forest Service' in the State of Jammu and Kashmir (now the Union Territory of Jammu and Kashmir and Union Territory of Ladakh), we make it clear that appointments by promotion to Indian Forest Service made so far in the absence of validly constituted 'State

Forest Service' shall remain valid and would not be called in question on that score by anyone and for such purpose, the 'State Forest Service' for the State of Jammu and Kashmir shall be deemed to have been constituted upto the date on which the judgment was delivered by the Writ Court.

27) For the foregoing reasons, the appeal lacks merit and the same is, accordingly, dismissed

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
21.11.2024
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes/No**

