JAMMU AND KASHMIR ACCOUNTABILITY COMMISSION,
JAMMU.

Complaint No J- 01 / 2012

Date of order: 17-02-2012

Wali Mohd Rather Vs Khem Lata Wakhloo

Coram:
HON'BLE MR. JUSTICE Y.P.NARGOTRA, CHAIRPERSON.
HON'BLE MR. JUSTICE HAKIM IMTIYAZ HUSSAIN, MEMBER.

Appearing counsel:

For Petitioner(s)/appellants:

For the respondents:

i) Whether to be reported in Press/Journal/Media: YES/NO

This is a complaint against Smt Khem Lata Wakhloo, Chairperson, J&K Social Welfare Board in which the principal allegation made is that she is enjoying the salary, perks and other amenities admissible to a Minister of State without being legally entitled thereto.
In order to examine her such entitlement and with a view to keep her identity confidential, during preliminary verification, relevant information in general terms regarding the conferment of status of Cabinet Minister or Minister of State upon persons who were not actually the members of the Council of Ministers was sought from the Chief Secretary of the State Government.

Accordingly the General Administration Department has submitted information sought for alongwith copies of the supportive record of the Government.

We have perused the said information/record from which it has been revealed that as per the desire of the Chief Minister the State Government appointed Mr. Mubark Gul (sitting MLA) as Advisor to the Chief Minister, with the rank and status of a Cabinet Minister, vide Govt order No. 904-GAD of 2009 dated 14-7-2009 providing initially that “he shall not draw any salary/ remuneration for the said assignment”.

Like-wise Mr. Devinder Singh Rana was also appointed by the Government as Political Advisor to the Chief Minister, with the rank and status of a Minister of State, vide Govt order No. 32-GAD of 2009 dated 9-1-2009, providing that he “will enjoy all the benefits as are entitled to a Minister of State. However, he shall not draw any salary/ remuneration for the said assignment”.

From the record, it is also revealed that the Government has appointed Shri Mushtaq Ahmad Shah (Bukhari), Vice Chairman, J&K State Advisory Board for Dev of Pahari Speaking People; Ch. Bashir

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Ahmad Naz, Vice Chairman, J&K State Advisory Board for Development of Gujjars and Bakerwals; Shri Rachpal Singh, Vice Chairman, J&K State Advisory Board for Development of Kissans; Shri Kuldeep Raj Verma, Vice Chairman, J&K State Advisory Board for the Welfare and Development of Other Backward Classes; Smt Swarn Lata, Vice Chairperson, J&K State Advisory Board for Development of Scheduled Castes; and Mtr Shamima Firdous, Chairperson, J&K State Commission for Women vide various Govt. orders.

Thereafter, the Government by Govt order No. 950-GAD of 2010 dated 19-08-2010 ordered as follows:-

"It is hereby ordered that Advisor to HCM enjoying the status of a Cabinet Minister and Political Advisor to HCM, Chairperson, J&K State Commission for women, Vice Chairman, Advisory Board for the Development of Scheduled Castes; Vice Chairman, Advisory Board for the Development of Gujjars and Bakerwals, Vice Chairman, Advisory Board for the Development of Pahari Speaking People, Vice Chairman, Advisory Board for the Development of Kissans, Vice Chairman, Advisory Board for the Welfare and Development of OBCs and enjoying the status of a Minister of State shall be entitled to amenities which are available to a Cabinet Minister and the Minister of State respectively."
On the strength of the above quoted order the said Advisors to the Chief Minister and Chairpersons/ Vice Chairpersons of the said Commissions/ Boards un-disputedly are enjoying the benefits of salary, perks and other amenities including the discretionary grants admissible to a Cabinet Minister/ Minister of the State duly appointed and sworn in by the Governor, in accordance with the provisions of the Constitution.

It is a matter of fact that posts of Advisor and Political Advisor to the Chief Minister have not been shown to be the creation of any statute or the constitution of Jammu and Kashmir. It is being claimed by the Government that posts were created and filled up by the Government in exercise of its administrative/ executive discretion.

Under the Scheme of the Constitution, however, the executive power of the State is vested in the Governor to be exercised by him directly or through a person or authority as he may direct. No order issued by the Governor delegating any such power in favour of the Government or any authority has been brought to our notice as yet. However, assuming that the Government has been delegated with the power of creation of such posts for smooth running of the affairs of the State, still the power to regulate the recruitments and conditions of service of persons appointed to public services and posts in connection with the affairs of the State under the Constitution lies with the legislature, who may by law regulate the same and in case legislature has not made any such law, then the power lies with the Governor to regulate the same either directly or through a person he may direct. In
the present case neither any statute of the legislature nor any order of the Governor whereby the Government has been specifically vested with the authority to appoint Advisors to the Chief Minister and confer upon them the constitutional status of a Cabinet Minister/Minister of State for dealing with the affairs of the State and enjoying the amenities attached thereto, has been brought to our notice by the Government while furnishing the information.

No person unless appointed in accordance with law under the State can legally be entitled to deal with the affairs of the State and the payment of any remuneration therefor. Any appointment made and any remuneration paid without authority of law by the Government would be nothing but a political favour at the cost of public exchequer.

Prima-facie in the present case the appointment of Mr. Mubark Gul and Mr. Devinder Singh Rana as Advisor and Political Advisor respectively to the Chief Minister with the status of a Cabinet Minister and Minister of State and their entitlement to the amenities attached to the office of a Cabinet Minister/Minister of State appear to be without any authority of law.

As regards the Chairpersons and Vice Chairpersons, named above upon whom the status of Minister of State has been conferred and made entitled to all the amenities available to a Minister of State the action of the Government for the identical reasons appears to be without the authority of law.

The posts which are statutory in nature can carry the salary, perks and amenities which are determined in the manner prescribed by
the statute itself whereas the non-statutory posts carry the salary, perks and amenities as may be determined by the Governor of the State or by the authority to whom such power has been delegated by him.

It may also be noticed here that the post of a Chairperson, J&K State Commission for Women held by Mtr Shamima Firdous is the creation of the statute i.e. the Jammu and Kashmir Commission for Women Act 1999. Sub-Section (5) of Section 4 of the said Act provides as follows:-

“(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.”

The expression ‘prescribed’ used in the above provision has been defined by clause (d) of Section 2 of the said Act as follows:-

“(d) ‘prescribed’ means prescribed by rules made under this Act.”

Section 17 of the Act specifically empowers the Government to make rules by Notification in the Government Gazette for carrying out the provisions of the Act, which include rule for providing salaries and allowances payable to and other terms and conditions of the Chairperson and Members under sub-section (5) of Section 4 and of officers and other employees under sub-section (2) of Section 5.

The Government instead of acting as per the mandate of the afore-said Act and making rules for fixing the salary, allowances and other conditions of service of the Chairperson has ordered for the
conferment of the status of a Minister of State upon the Chairperson and accordingly the Chairperson, J&K Commission for Women is enjoying the perks and other amenities admissible to a Minister of State which prima facie is in gross violation of law.

Now coming to the case of the respondent Smt Khem Lata Wakhloo, she was appointed as Chairperson of the J&K State Social Welfare Advisory Board by Govt order no. 1245-GAD of 2010 dated 28-10-2010. Neither in the said order or by any subsequent order the Government has fixed her salary, allowances and other conditions of service nor the status of Minister of State has been conferred upon her by the Government. In her comments she has averred in para 8 as follows:-

"X X X X. The Government has provided me the status of Minister of State and as such, I have been provided with the salary that is payable to the Minister of State.

Thus, Smt Khem Lata Wakhloo is not disputing that she is drawing the salary and enjoying the other amenities which are admissible to a Minister of State. She seeks to rely, for showing her entitlement on Govt order No. 1092-GAD of 2009 dated 12-8-2009, but the bare perusal of the said order indicates that it can have no application to her case when the said order only provides for the staff strength in personal section of the Ministers.

Withdrawal of a pay/salary without valid authority of law amounts to mis-appropriation of the Government money. The bare fact
that the Government is aware of all this and has released some amount
towards discretionary grant in her favour and provided her a bungalow
and staff cannot by itself prima facie go to show that status of a
Minister of State has been conferred upon her so as to make her
entitled to the enjoyment of the amenities admissible to a Minister of
State.

From the inaction of the Government, prima facie it also
appears to be a case of political favouritism.

For the aforesaid reasons the complaint against the respondent
Smt Khem Lata Wakhloo, deserves regular inquiry in terms of Section
13 of the Jammu and Kashmir Accountability Commission Act. The
office shall therefore, register the complaint for regular inquiry in
terms of Section 13 of the Act and issue notice to the respondent for
appearance in person or through duly authorized agent or counsel
and for filing the statement of defence, if any, before the Commission
on 05-03-2012. The respondent shall also show cause as to why
interim recommendation in terms of Section 16 of the Act be not
made against her. The complainant shall also be notified in terms of
Rule 9.

As regards the action of the Government regarding the
conferment of the status of Cabinet Minister upon Mr. Mubark Gul,
Advisor to the Chief Minister and of Minister of State upon Mr.
Devinder Singh Rana, Political Advisor to the Chief Minister; Mr.
Mushtaq Ahmad Shah (Bukhari), Vice Chairman, J&K State Advisory
Board for Dev of Pahari Speaking People; Ch. Bashir Ahmad Naz, Vice
Chairman, J&K State Advisory Board for Development of Gujjars and Bakerwals; Mr. Rachpal Singh, Vice Chairman, J&K State Advisory Board for Development of Kissans; Mr. Kuldeep Raj Verma, Vice Chairman, J&K State Advisory Board for the Welfare and Development of Other Backward Classes; Smt Swarn Lata, Vice Chairperson, J&K State Advisory Board for Development of Scheduled Castes; and Mtr Shamima Firdous, Chairperson, J&K State Commission for Women, the same also deserves cognizance and regular inquiry. Therefore, the office is directed to register a separate complaint for regular inquiry and issue notices to-

1. Mr. Omar Abdullah, the Chief Minister of J&K State;
2. Mr. Mubark Gul, Advisor to the Chief Minister;
3. Mr. Devinder Singh Rana, Political Advisor to the Chief Minister;
4. Mr. Mushtaq Ahmad Shah (Bukhari), Vice Chairman, J&K State Advisory Board for Dev of Pahari Speaking People;
5. Ch. Bashir Ahmad Naz, Vice Chairman, J&K State Advisory Board for Development of Gujjars and Bakerwals;
6. Mr. Rachpal Singh, Vice Chairman, J&K State Advisory Board for Development of Kissans;
7. Mr. Kuldeep Raj Verma, Vice Chairman, J&K State Advisory Board for the Welfare and Development of Other Backward Classes;
8. Smt Swarn Lata, Vice Chairperson, J&K State Advisory Board for Development of Scheduled Castes; and
9. Mtr Shamima Firdous, Chairperson, J&K State Commission for Women-for appearance in person or through duly authorized agent or counsel and for filing statement of defence, if any before the Commission on 05-03-2012. They shall also show cause as to why interim recommendation in terms of Section 16 of the Act be not
made. Along with the notices copies of this order be also supplied to them. It is further directed to keep authenticated copy of this order on the file.

It is further ordered that copy of this order shall also be sent to the Competent Authority, the Governor of the State as per the requirement of Section 13 of the Act.

(Justice Hakim Imtiyaz Hussain)
Member

(Justice Y.P. Nargotra)
Chairperson

JAMMU
FEBRUARY 17, 2012.