

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**SWP No. 2037/2017**

Joginder Singh, Bench Secretary & Ors.

...petitioners

Through :- Petitioner no. 1 is present in person.

v/s

State & Ors

...Respondents

Through :- Mrs. Monika Kohli, Sr. AAG.  
Mr. Aditya Gupta, Advocate  
Mr. Achal Sethi, Law Secretary.

**CORAM: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE  
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

**ORDER**

12.11.2024

**01.** This is a writ petition that has been pending since the year 2017, which however, has undergone a change in texture and character over a period of time and has extended its avenues beyond the specific prayer of the petitioners.

**02.** What started off as a case where employees of the High Court were asking for monetary benefits, has now been expanded to include the enhanced staff requirements of the High Court itself. The order dated 08.02.2023, passed by this Court, records the fact that during the pendency of this petition in view of the various applications filed by the petitioners and interveners, the scope was expanded. The said order also disclosed that the High Court was grappling with the issue of deficient infrastructure and staff for meeting the needs of the increased judge strength from 14 to 17 (as per the date of that order which strength has now increased from 17 to 25 judges). In 2014, the Registry of this Court vide a communication dated 29.01.2014 followed by another dated

26.11.2015, required the increase in the staff strength to the 334 posts (as on 2021) in different categories. The matter remained pending with the Government for more than eight years without any palpable progress. The said communications mention about the several meetings between the representatives of High Court and Government had taken place but on account of the obduracy of the government, no substantial progress could be made in the creation of 334 posts in the different categories to meet the requirement of support staff for the judges. The said order of 08.02.2023 also records the fact that Government has neither accepted nor declined the proposal and that there was a time when the Secretary to the Government, Department of Law, Justice and Parliamentary Affairs made a statement before the Court that the matter with regard to the creation of 334 posts recommended by the High Court was referred to the Finance Department for concurrence but the same was subsequently withdrawn by filing an application. All this happened in the year 2014/15 and observed in the order dated 08.02.2023. Thereafter, the said order records that in the light of the increase in strength of judges, a communication was addressed by the High Court to the UT Government to immediately create 24 posts of different categories to provide the requisite personal staff to the newly elevated judges and after great persuasion, 24 posts were created in different categories which was given effect on 25.05.2023, which includes Bench Secretaries, Secretaries, Readers and Private Secretaries. The Court also observed strongly that it is unable to understand how the creation of posts by the Administration of UT of J&K needs approval from any other authority other than the UT of J&K and held that notwithstanding the conditions made in the order of creation with respect of its approval by the Government of India, the order creating 24 posts shall be deemed to be final and no further action on the

same was required to be taken. In paragraph 5 of the said order, this Court held unequivocally that the creation of 334 posts recommended by the High Court does not give the discretion to the Government to think otherwise. It was also astonished to note that the Government has been sitting over the proposal of the High Court for more than seven years with impunity and that the time had come, that the Department of Law, Justice and Parliamentary Affairs, in right earnest gets the financial concurrence from the Finance Department. Further, this Court also held *“We make it clear that for creation of posts for the judiciary, no concurrence or approval either of the Department of Law and Justice, Government of India or the Ministry of Home Affairs, Government of India, is required”*. The Court held that the financial implication of creation of such posts is required to be met from the consolidated fund of the UT of J&K. Finally, the Court also observed that all expenses of the High Court and its staff are required to be borne from the consolidated fund of the UT of J&K.

**03.** In paragraph 7 of the afore-mentioned order, the Court directed the Chief Secretary of UT of J&K to convene a meeting of the following officers to take a final call in the matter:-

1. Secretary to Government of UT of J&K,  
Department of Law, Justice and Parliamentary Affairs.
2. Secretary to Government of UT of J&K,  
Department of Finance ; and
3. Secretary to Government of UT of J&K,  
General Administration Department.

**04.** In paragraph 10 of the said order , this Court made it clear that in case, the aforesaid directions are not complied with and the aforesaid 334 posts recommended by the High Court are not created, the Chief Secretary of UT of J&K, Secretary to Govt. of UT of J&K, Department of Law, Justice & Parliamentary Affairs, Secretary to Govt. of UT of J&K, Finance Department

and Secretary to Govt., UT of J&K, General Administration Department shall appear in person on the next date to explain their inaction in the matter. Against this order, the UT has preferred a Special Leave Petition (SLP No. 6806 of 2023) which is still pending before Hon'ble Supreme Court which its while order dated 10.02.2023 had stayed only paragraph 10 of the order dated 08.02.2023 which had made a prospective requirement of the aforementioned officers in person before the Court on the next date of hearing had those 334 posts recommend by the High Court not been created.

**05.** The manner in which the Union Territory and its bureaucracy has proceeded with the consistent demands of this Court is laggardly and casual. We are not impressed by the arguments/submissions put forth by the learned Senior Additional Advocate General, saying that consistent efforts have been made by the UT Government in order to fulfill the requirement of the High Court with regard to staff and infrastructure. UT has consistently been using the phrase ***“that it is complying with the direction of this Court in a phased manner”***. The Union Territory has consistently resorted to this phrase without specifying the time span within which it would comply with the orders passed by this Court. Part of the problem lay with the High Court itself which has given the UT Government and its bureaucracy *excessive latitude* and compliance reports after compliance reports have been filed with very little to nil being done on the ground. In order to elaborate this Court's observations hereinabove, the Court relies on a document that has been handed over to it by the respondents today in the morning which is the Minutes of the Meeting dated 25.05.2023, which is communicated to the Principal Secretary to the Chief Justice of this Court on 15.09.2023. It took the UT four months to communicate to this Court, the Minutes of the Meeting held on 25.05.2023. The communication refers to a

meeting that was convened on 25.05.2023 by Hon'ble the Chief Justice of this Court to discuss the issues for making arrangements for 19<sup>th</sup> All India Meet of Legal Services Authorities, during which meeting, the issue of creation of staff in various cadres of the High Court was also discussed as agenda Item No. 3. It was agreed that the requirement for the increase in staff shall be examined by the Government. The communication further states that in spirit, it was agreed that the posts shall be created in a "phased manner" based on the norms keeping in view the requirements of the High Court and the financial implications involved in creation of such posts. Thereafter, it was also stated in the said communication that orders passed in this writ petition which go to reveal that this Court has understood that the Government has agreed for the creation of all 334 proposed posts (while it has not done so, as stated by the learned counsel for the UT Government under instructions) has led to the passing of various coercive orders by this Court in the aforesaid SWP. The implied reference is to the order dated 08.02.2023, wherein in paragraph 10, *this Court had directed prospective appearances of the high functionaries of the UT if it did not place before the Court, the proposal by which it would comply with the orders passed earlier by this Court for the creation of 334 posts.* That part of the order was stayed by the Hon'ble Supreme Court in the afore-mentioned SLP. In the third page of the said communication, the State has communicated ***"however, the creation of posts has to be made as per the established norms, inter alia based on the strength of Hon'ble Judges, the workload of pending cases, and the financial constraints before the Government"***. Thereafter, the said communication further states that ***"in pursuance to directions passed vide order dated 02.08.2023 by Hon'ble High Court, a meeting on the subject was also convened under the chairmanship of Chief Secretary on 23.08.2023 in***

*which Principal Secretary to the Government, Finance Department, Registrar General, J&K High Court and Law Secretary also participated. In the said meeting, the proposal of creation of posts was analyzed in the context of staff strength in other High Courts based on the parameters of (i) number of posts against each sanctioned post of Hon'ble Judge and (ii) number of posts against the ongoing cases. During the meeting, the issue of the two separate benches at Jammu and Srinagar was also discussed".* Later on, in the same communication, the Government states *"the Government has examined the staff strengths of Hon'ble High Court of Himachal Pradesh (which has 17 Hon'ble Judges as in Hon'ble High Court of Jammu and Kashmir and Ladakh) and Hon'ble High Court of Allahabad (which has two notified benches at Lucknow and Allahabad)".*

**06.** The above is nothing but contempt of the Court orders. On the judicial side, vide order dated 08.02.2023, this Court, in paragraph no. 6, had unequivocally held *"we need not reiterate that the recommendation made by the High Court/Hon'ble Chief Justice with respect to creation of posts are binding on the Government and there is no discretion in the matter"*. Once the High Court has given on the judicial side its requirement for 334 posts, the act of the Government in stating that it would have to examine the requirement of the High Court based on the parameters of the number of judges working in the High Court and the number of posts against ongoing cases and also examining the requirement of this Court of 334 posts while drawing a comparison with the High Court of Himachal Pradesh and the Allahabad High Court with its principal seat at Allahabad and one Bench at Lucknow, is gross contempt. It is not for the UT to examine whether the requirement of the High Court is just or improper and the High Court through the Chief Justice is the sole authority

which is entitled to decide its requirement and there can be no examination of the same by the executive. It is understandable, if the executive had expressed its inability to comply on grounds of lack of funds but anything beyond that of examining whether the requirement is justified or not is an act of gross contumacious conduct.

**07.** The bureaucracy has misguided itself by trying to compare the requirements of the High Court of Jammu and Kashmir with the High court of Himachal Pradesh and the High Court of Allahabad. The High Court of Himachal Pradesh has only one single establishment and its seat is at Shimla where the Chief Justice and all puisne judges sit. There is no bench of the High Court of Himachal Pradesh. As regards the High Court of Allahabad, its principal seat is at Allahabad where the Chief Justice and almost 50% of the judges sit and the bench is at Lucknow. To add further, the High Court of Madhya Pradesh has its principal seat at Jabalpur and one Bench at Indore and Gwalior. The uniqueness of the High Court of Jammu and Kashmir as to why it cannot be compared with the other High Courts is for the followings reasons:- Firstly- in the High Court of Allahabad and in Madhya Pradesh, judges sit almost perpetually at the principal seat or at the benches to which they are appointed/assigned. One of us (Atul Sreedharan-J) functioned as a judge at Jabalpur Bench for the seven straight years from 2016 till 2023 till he was transferred by the order of the then Chief Justice of Madhaya Pradesh to the Bench at Gwalior before being transferred finally he transferred to this High Court in the month of May 2023. Similar is the case with Allahabad High Court. The situation in J&K is completely different. This High Court does not have any Bench because there is no concept of a principal seat. The establishment at Srinagar and Jammu are referred to as 'wings' and not as 'benches' because, as

stated earlier, there is no principal seat in this High Court. The judges sit at both the wings every two or three months as per the roster assigned by the Chief Justice. On account of this, judges have two separate independent establishments with regard to the residences both at Srinagar and Jammu. In other words, when a judge was otherwise headquartered at Srinagar is sent to Jammu for two months, he stays in his official residence in Jammu. Similar is the case with the judge who is sitting at Jammu who has been headquartered at Jammu but is assigned to Srinagar for 2-3 months at a stretch, resides in his residence that is allotted to him in Srinagar. He has staff which is working for him at both these places. This peculiar situation to the best knowledge of this Court does not exist in any of the High Courts other than J&K. Even the Chief Justice sits at both these wings periodically as per his/her discretion. In the other High Courts like Madhya Pradesh and Allahabad, if a judge has to go and sit in another Bench, upon the direction of Chief Justice for a week or two or perhaps a month, as per the requirement, that judge stays in the guest house and operates from the guest house and is not allotted a separate house in the bench to which he has been temporarily being sent to. Even other infrastructure like vehicles, adequate numbers have to be maintained at both the places. Therefore, the bureaucracy in the UT comparing this High Court with the High Courts of Himachal Pradesh or Allahabad for that matter is trying to draw a comparison of similarity between an ambassador car and Mercedes-Benz only because they have four wheels, an engine and a steering. Therefore, this Court puts to notice the UT Government that they are forbidden from ascertaining the requirement of the High Court as it is not within their domain. This High Court shall understand and accommodate the UT if the question is restricted only to the issue of finances. But we would take very serious note henceforth, if committees

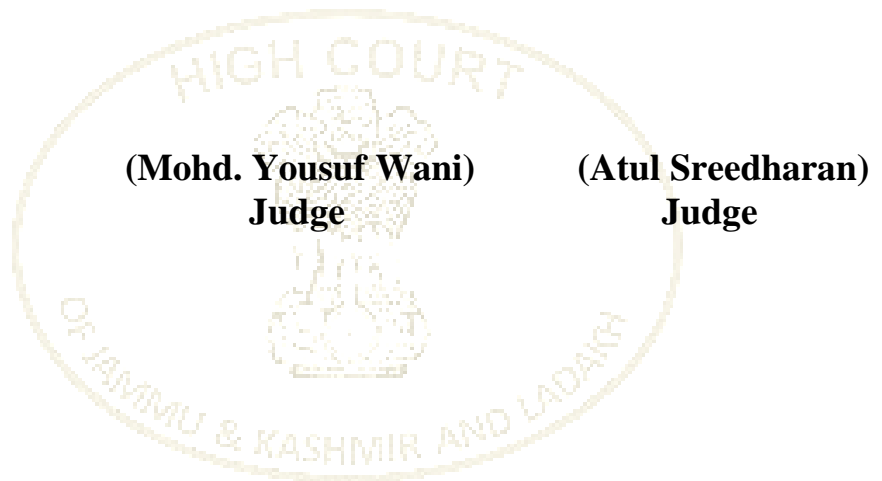


are made to sit and ascertain and assess the requirement of this Court. If it is ever so done again, this Court shall exercise its powers to initiate proceedings of contempt against those officers for their indiscretion.

**08.** We direct the respondents to complete the process of creating 334 posts within a period of 60 days.

**09.** List on 29.01.2025.

**10.** As regards the physical presence of the worthy Law Secretary, Mr. Achal Sethi, the same was at the behest of the learned Senior Additional Advocate General, and he has appeared on his own account and was not summoned by this Court.



JAMMU  
12.11.2024  
Abinash