

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.2863/2001m CMP No.2869/2001.

Date of decision : 04.11.2010

Noor Hussain v. State of J&K and others.

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

Mr. O.P.Thakur, Advocate for the petitioner.

Mr. Jagdish Parihar, AAG for the respondents.

- i/ Whether to be reported in : Yes/No.
Press, Journal/Media.
 - ii/ Whether to be reported in : Yes/No.
Digest/Journal.
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The case set out by the petitioner in this writ petition is that Social Forestry Department decided to make closure in Village Rattan-bass, Tehsil Banihal. For that purpose land which was in exclusive possession of the father of the petitioner came to be selected. The father of the petitioner agreed to provide the said land subject to engagement of his son as Class-IV on permanent basis to look after the said closure. The respondents agreed and the petitioner came to be engaged as casual labourer on daily wage basis @ Rs.25/- per day. The petitioner was engaged for erecting the polls and also fencing barbed wire etc.

It is contended that the petitioner was engaged on the project executed by Social Forestry Department and has been continuously working ever since his engagement and paid his salary upto January, 2001. Thereafter, his salary has not been released by the respondents. He further claims the benefit of SRO-64 of 1994 for being regularized after the completion of seven years of service.

The respondents on the other hand state that the petitioner came to be engaged as casual labourer in the Social Forestry Project after March, 1994 much after the issuance of Government Order dated 31.01.1994 and has no right to maintain the petition, in view of the order passed by the Government on 02.02.2001. It is further stated that the Social Forestry Project was being run in phased manner on the basis of aid provided by the World Bank. It is further stated that the aid provided by the World Bank has since been stopped and the Government has already issued order for winding up Social Forestry Project and there is hardly any work left with the respondents. The petitioner stands disengaged w.e.f. 05.02.2001 in pursuance to Government Order No.144-GAD of 2001 dated 02.02.2001. The Social Forestry Project stands wind up vide Order dated 14.06.2001.

I have heard the learned counsel for the parties and perused the record.

In order to attract the provisions of SRO 64, both the Casual Labourers and the Daily Rated Workers should be for rendering casual service to the department. Department means a Government Department. Regularization Rules are applicable only to those who have been engaged by the department of the State Government to render the casual service to the State Department. Engagement on a project for which the funds are given by an Organization would not clothe petitioner's right to seek regularization in the Government service. This in essence, is the import of SRO 64 of 1994.

It is not in dispute that the petitioners have been engaged on a project which was financed by the World Bank. The aid provided by the World Bank has since been

stopped and the Government has already issued an order for winding up the Social Forestry Project. The said order has been passed on 14.06.2001. While approving winding up of Social Forestry Project in the Forest Department, the following things were taken note:-

- (a) That the Forest Department will henceforth be responsible for undertaking the plantation programme in the degraded forests. The Social Forestry Project be carried out by the respective Panchayats with people's participation.
- (b) All nurseries of the projects along with the assets thereof be referred to the Rural Development Department for their ultimate transfer to the Panchayats.
- (c) The waste lands converted into village woodlots under the Social Forestry Project and maintenance of over 1.40 lac hectares of plantation be handed over to the Village Forest Committees constituted under the Project.
- (d) The project employees drawn from various Government departments be reverted to their parent departments for their adjustment against vacant posts and future vacancies. Those borne on the establishment of the Project are hereby declared 'surplus' and will be gradually absorbed in the Forest, Rural Development and other Government Departments against available and future vacancies on the recommendation of a Committee to be constituted by the General Administration Department for the purpose.

Analyzing the import of the aforesaid order, it is manifestly clear that the petitioners were not engaged for

rendering service to the department but were engaged in the Project, which was financed by the World Bank.

However, Mr. Thakur has placed reliance on a Government Order No.481-FST of 2004 dated 28.10.2004 whereby Government Order No.640-GAD of 2001 dated 14.06.2001 by which the Cabinet has approved the winding up the Social Forestry Project in the Forest Department, has been withdrawn and as a consequence of this order, the Social Forestry Project, which was undertaken with the aid of the World Bank, would be a Government Department named as "Department of Social Forestry". His contention is that in view of the aforesaid order, the petitioner would be entitled to regularization of his services.

On the other hand, Mr. Parihar learned counsel appearing for the respondents contends that even if it is assumed that the petitioner is working in a Department, he had been engaged after 1994 and as such would not be entitled to regularization of his service.

The order dated 14.06.2001 stood withdrawn vide order dated 28.10.2004. The implication of which reflects that the persons working in the Project are deemed to be working in a Department. The contention of the respondents that the petitioner is not entitled for regularization as his appointment is after the cut off date, is an issue which is not res-integra in view of the judgment passed by this Court in SWP No. 963/2005 dated 13.02.2009. The finding of the Court in that writ petition is reproduced below :-

“ Applying these observations to the case in hand, it can safely be stated that any person who has not completed seven years of service as on 31.03.1994 would be entitled for regularization will also apply to those persons who got appointed after March, 1994. This interpretation will achieve the object and purpose

of SRO, which came into force for providing permanent status to the daily rated workers under SRO 64 of 1994. The mischief, which is sought to be achieved, if any, in the rules will get eliminated. I, therefore, hold that all those persons who were appointed after 31.03.1994 would be also eligible for regularization under SRO 64 of 1994”.

For all what has been stated herein above, I allow this writ petition with the directions to the respondents to accord consideration to the case of the petitioner for regularization of his services within a period of three months from the date a copy of this order is made available to them.

Disposed of along with connected CMP(s).

(Sunil Hali)
Judge

Jammu.
04.11.2010.
'Madan'