

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP no. 954/2007, CMP no. 1373/2007, CMP no. 1730/2011.

Date of order: 28.10.2011

Kasturi Lal v. State and others.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar-Judge.

Appearing counsel:

For the petitioner (s) :None

For the respondent(s) :Mr.Jagdish Parihar, AAG,

i/ Whether approved for law journal : Yes.

ii/ Whether approved for publication in Press :

ORAL:

The claim of the petitioner in this writ petition is that in the year 1993, respondent no.2 identified village Karole Krishna as an appropriate block under the component village Wood Lot for raising closures under the said scheme. It is pleaded in the writ petition that respondents 3 to 5 approached deceased father of petitioner and put a proposal for plantation (raising of closures) and gave assurance that two persons of family would be provided employment in the department in addition to sharing of the proceeds out of the closures. It is also pleaded that deceased father of the petitioner handed over the possession of over 35 hectares of land to the respondents in May 1993. Further case set out in the writ petition is that petitioner and respondent

no.6 were engaged as daily rated workers in August, 1993 in the office of respondent no.4 immediately after possession of the land was handed over to the respondents. It is also pleaded that the respondents have assured that services of the petitioner and respondent no.6 would be regularised in the near future. Further, case of the petitioner is that he worked at Karole Krishna Closures no.1 at Mathra Chak block of Hiranagar from August, 1993. Respondent no.4 made recommendation in respect of the daily rated workers which included the petitioner and respondents 6 to 8 for their consideration for being brought on regular establishment in terms of SRO 64 of 1994. Though, respondent no.6 was brought on regular establishment but the petitioner has been denied such consideration on the ground that he was engaged after 31.01.1994. It is under these circumstances, the petitioner has filed writ petition on hand for issuance of writ of mandamus commanding the respondents to appoint him as Helper in view of his being engaged as daily rated worker in August, 1993, with a further prayer to trace the service record of the petitioner which shows his engagement w.e.f. August, 1993. The petitioner has further prayed for issuance of writ of mandamus commanding the respondents to compensate the petitioner due to undue loss caused to him.

On notice, respondents have filed objections wherein it is pleaded that service record of the petitioner was lost, however, photocopy of the same was preserved. It is further pleaded that petitioner case for regularization could not be considered as he was engaged in February 1994.

Heard learned counsel for the respondents and considered the matter.

Learned counsel for the respondents submitted that petitioner could not be brought on regular temporary establishment in accordance with the mandate of Rules called Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularisation) Rules, 1994 (For short Rules of 1994) as he was engaged in February, 1994 when as a matter of fact daily rated workers who were engaged on or before 31.01.1994 alone could be considered for being brought on regular establishment.

Before notifying Rules of 1994 on 24.03.1994 which Rules in terms of Rule 1(2) came into force with effect from 01.04.1994, Government Order no. 26-F of 1994 dated 31.01.1994 came to be issued. In terms of the said Govt. Order, power to engage daily rated workers after 31.01.1994 was withdrawn.

It is under this misconception, the claim of the petitioner has not been considered for being brought on regular temporary establishment in terms of Rules of 1994. Rules of 1994 came into force w.e.f. 01.04.1994. Rules 7 and 8 of the aforesaid Rules being relevant and are reproduced as under:

“7. Restriction on engagement of daily rated workers/work charged employees:- 1. With effect from the commencement of these rules, on field/subordinate officer shall have the power for engagement of a daily rated worker or work charged employee in the department and the existing delegation, if any, in this regard is withdrawn,

Provide that the competent authority may engage casual labour or seasons labour in any of the departments to be specified by notification from time to time by the Government and such labour shall be on the muster roll for payment of wages and no engagement or appointment order shall be issued.

2. After the commencement of these rules the work charged posts shall be created only by the administrative departments in consultation with the finance and planning department.

8. Application for rules to existing daily rated worker and work charged employee:- The policy of absorption of daily rated workers and work charged employees shall also apply to such of the existing daily rated workers and work charged employees who may not have completed seven years on 31.03.1994 but may complete by the end of subsequent financial years and their absorption shall be considered in that financial year in accordance with these rules.”

Rule 7 of the Rules of 1994 provides that with effect from the commencement of these Rules, no field/subordinate officer shall have the power for engagement of a daily rated worker or work charged employees in the department and the existing

delegation, if any, in this regard was withdrawn. However, liberty was given for engagement of casual labour or seasons labour in any of the departments.

Rule 8 of Rules of 1994 provides that policy of absorption of daily rated workers and work charged employees shall also apply to such of the existing daily rated workers and work charged employees who may not have completed seven years on 31.03.1994 but may complete the said period by the end of subsequent financial years and the absorption of such persons is to be considered in that financial year in accordance with these Rules. Rule 10 of Rules of 1994 has saved the application of Govt. Order no. 26-F of 1994 dated 31.01.1994.

Rules of 1994 are statutory Rules. True, it is that in terms of Govt. Order no.26-F of 1994 dated 31.01.1994, the power for making engagement of daily rated workers was withdrawn but from plain reading of Rules 7 and 8 of Rules of 1994 in conjunction with Rule 1(2) what emerges is that engagement on daily wage basis could be made after 31.01.1994. Plain reading of Rules 7 and 8 of Rules of 1994 would demonstrate that engagements, if any, made from 01.02.1994, though, were made in breach of Govt. Order dated 31.01.1994, however, in view of

the language of the said Rules protected such engagements.

This conclusion is arrived at for following two reasons:

- (a) In terms of Rule 7 of Rules of 1994, power of engagement of daily rated workers/work charged employees was withdrawn w.e.f. 01.04.1994, the date when Rules of 1994 came into force. The language used in Rule 7 does demonstrate that the Government was conscious that engagement of daily rated workers has been made after 01.02.1994 and such engagements were protected by the statutory Rules. Reliance placed on Govt. Order no.26-F of 1994 dated 31.01.1994 thus pales into insignificance.
- (b) Statutory Rules having accorded protection to the engagements of daily rated workers engaged after 01.02.1994, Govt. Order no. 26-F of 1994 dated 31.01.1994 cannot be said to destroy such power and right accrued in favour of the candidate who has been engaged after 01.02.1994 is protected by Rules 7 and 8 of the Rules of 1994.

The denial of consideration to the case of the petitioner for being brought on regular establishment in consequence to Rules

of 1994 is rendered illegal and violative of the aforesaid Rules. The respondents are under obligation to follow the statutory rules and writ of mandamus would require to be issued to direct the respondents to follow the statutory rules. The claim of the petitioner for being appointed on Class-IV is also to be considered on the basis of promise extended that in lieu of providing of land, two persons of the family would be appointed. Respondents at this time cannot wriggle out from the promise extended.

The petitioner who was engaged as daily rated worker in view of the assurance given by the respondents as also statutory assurance contained in the Rules of 1994 that his services will be regularised was prevented to seek employment elsewhere. The respondents are estopped to deny relief to the petitioner.

For the aforementioned reasons, this writ petition is disposed of in the following manners:-

- (a) By issuance of writ of mandamus respondents are directed to consider the claim of the petitioner for regularisation of his services and to appoint the petitioner on a post as provided by SRO 64 of 1994 and in the light of the observations made in this judgment;

- (b) Respondents to consider the claim of the petitioner and take a decision preferably within a period of twelve weeks from the date copy of this order is served upon them.

Disposed of along with connected CMP(s).

(Muzaffar Hussain Attar)
Judge.

Jammu
28.10.2011
'Madan'