

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

SWP No. 2183/2009

Date of decision: 28.04.2011

Sunil Kumar Sharma

vs.

State and ors.

CORAM:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE

Appearing counsel:

For petitioner(s)	Mr. P. N. Raina, Advocate
For respondent(s):	Mr. S. K. Shukla, Advocate

(i)	Whether to be reported in Press, Journal/Media:	Yes
(ii)	Whether to be reported in Journal/Digest:	Yes

With the consent of learned counsel for the parties, the matter is admitted to hearing and taken up for final disposal.

Vide order dated 22.11.2004, the petitioner came to be appointed as a Sewing Machine Mechanic in the Social Welfare Department, Jammu on consolidated wages of Rs. 2500/- per month for a period of two months. He was allowed to continue on contractual basis till further order. It seems that the petitioner is working as Sewing Machine Mechanic in the said department as on today.

Vide advertisement Notice No. 03 of 2006 dated 28.12.2006, applications were invited for filling up the post of Sewing Machine Mechanic against which the petitioner was working. The petitioner had also applied

under the said notification. The interviews for the said post were conducted on 20.08.2009, but the petitioner could not succeed in the said selection process.

The Government, vide its order No. 1423-GAD of 2009 dated 14.10.2009, constituted an Empowered Committee to scrutinize the particulars of the employees working on adhoc/ contractual/ consolidated basis in various Government departments. In terms of the said order, all the adhoc/ contractual/ consolidated appointment were banned and the posts already referred to recruiting agencies for contractual appointments, where selection has not been made so far, were withdrawn with immediate effect. The process for taking steps for regularization of adhoc/ consolidated/ contractual appointees was set in motion.

The Government of Jammu and Kashmir enacted Jammu and Kashmir Civil Services (Special Provision) Act, 2010. The said Act provides that an employee, who has been appointed on adhoc, contractual or consolidated basis should be regularized on fulfillment of the following conditions:

- (i) That he should be appointed against a clear vacancy on the post;
- (ii) That he continues as such on the appointed day.

- (iii) That he possessed the requisite qualification and eligibility for the post on the date of his such initial appointment; and
- (iv) That he should complete seven years of service as such on the appointed day.

The petitioner seeks indulgence of this court for issuance of a direction to the respondents to regularize his service in terms of the aforesaid Act.

On the other hand, stand of the respondents is that petitioner is working on contractual/consolidated basis as Sewing Machine Mechanic with effect from 20.04.2005. The said post was referred to the Service Selection Recruitment Board for making regular selection, in which the petitioner had also participated. Aforementioned selection process resulted in selection of one Rajesh Sharma against that post, which is held by the petitioner on consolidated basis as on today. As such, the petitioner is not entitled for any regularization to said post.

I have heard learned counsel for the parties.

Short controversy involved in this writ petition is as to whether the petitioner is eligible for being regularized under the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010. Looking into the scheme of the Act, which clearly provides that adhoc, contractual or consolidated appointees who have been working against a clear vacancy and have completed seven years of service

should be regularized. The Act provides that the appointee must be possessed of the requisite qualification and eligibility for the post on the date of his initial appointment. It further provides that any adhoc or contractual or consolidated appointee, who has not completed seven years service on the appointed day, should continue as such till completion of seven years and thereafter be entitled for regularization under the Act.

It is not in dispute that during the tenure of petitioner's contractual appointment, the post against which he is working was referred to the Service Selection Recruitment Board for making appointment on regular basis. The selection process has culminated in selection of one Rajesh Sharma as Sewing Machine Mechanic. As a result of this, the petitioner was required to be ousted from the said post. It is further revealed from the order that said Rajesh Sharma was selected by duly initiated selection process by the recruitment agency, but no appointment order was issued in his favour. He has filed an application for impleadment as party respondent, which has been contested by the petitioner. The controversy now involved is as to whether, the petitioner who was appointed on consolidated/ contractual basis

would be entitled for regularization under the Jammu and Kashmir Civil Services (Special Provisions) Act 2010.

Admittedly, the petitioner would be entitled for regularization under the said Act on completion of seven years of service. The question which arises, is that against which post he would be regularized once the post held by him has been referred to the recruitment agency for making regular appointment. In this context, right of a person who has been selected on regular basis cannot be taken away. At the same time, protection is required to be provided to the petitioner. In this connection, reference to Rule 13 of the said Act is required to be made, which reads as under:-

13." Creation of additional posts.- Additional posts of equal number as are required for regularization and continuation of adhoc or contractual or consolidated appointees may be created if the posts are not available in the Department when the regular appointments on the basis of the recommendation of recruiting agencies, to which the posts held by the adhoc or contractual or consolidated appointee have been referred for making selection, are made against such posts and the additional posts so created shall cease to exist once posts become available in the concerned Department of the Government."

Import of Section 13 of the Act envisages that an additional post is required to be created for regularization

and continuation of adhoc or contractual or consolidated appointees in a situation where post held by them have been referred to the recruiting agency for making regular appointment. This Section provides protection to an employee who has been working on adhoc, contractual or consolidated basis, be allowed to continue till the completion of seven years service. The regularization is to be made on the additional post, which is required to be created with the prior concurrence of the Finance Department. Continuity of such employees on adhoc or contractual or consolidated basis would be against the additional post, which is to be created by the respondents.

Rule 5 of the said Act contemplates that on completion of seven years service, the appointee becomes entitled to be regularized. Proviso appended to this Rule contemplates that adhoc or contractual or consolidated appointee, who has not completed seven years service on the appointed day, shall continue as such till completion of seven years and thereafter be entitled for regularization under this Act. Essence and object of this Act clearly contemplates that a person appointed on adhoc or contractual or consolidated basis and has not completed seven years service shall be allowed to complete seven years service in order to seek

regularization on the said post. Object of the scheme is to protect a person till his regularization. Merely because the post against which the petitioner is working has been referred to the recruiting agency and after due process of selection, the recruiting agency made appointment to the said post would not automatically result in termination of petitioner's service. His right of absorption/ regularization flows from the Act which is his independent right. Merely, because the petitioner has participated in the selection process would not dilute his right granted by said Act.

In view of the above, this petition is allowed and the respondents are directed to regularize the services of the petitioner after completion of seven years service. He shall be allowed to continue on the post of Sewing Machine Mechanic till his regularization, for which sanction from the finance Department be accorded for creating an additional post as required under Section 13 of the Act. However, this order will not preclude the selected candidate namely, Rajesh Sharma for seeking his appointment for the said post. The application of Rajesh Sharma for impleadment as party respondent is not found to be necessary as no direction is passed, which infringes his right to seek appointment after due selection process. Let process of creating additional post

be completed by the respondents within two months from today.

Disposed of alongwith connected CMP.

(SUNIL HALI)
JUDGE

Jammu
28.04.2011
Karam