

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

LPA No. 10/2009
CMA No. 21/2009

Date of Order: 09.10.2012

State of J&K & Ors.	Vs.	Sandoor Singh & Ors.
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CORAM:

**Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge.
Hon'ble Mr. Justice J.P.Singh, Judge.**

Appearing Counsel:

For Appellant(s) : Mrs. Z.S.Watali, Dy.A.G.

For Respondent(s) : Mr. C.M.Koul, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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J.P.Singh-J :

This Letters Patent Appeal is directed against Judgment and Order dated November 11, 2008 on respondents' Writ Petition SWP No. 1172/2004 whereby Notices impugned in the Writ Petition requiring the respondents to execute Agreements in terms of Government Order No. 168-GAD of 2004 dated 09.02.2004 read with Order No. 237-GAD of 2004 dated 20.02.2004 for conversion of their existing status to Contractual Employees, were quashed.

The facts giving rise to the Appeal are these:-

Sandoor Singh-respondent No.1 was engaged as Driver on Daily Wage Basis @ Rs.15 per day by the Child Development Project Officer, Basholi with effect from December 23, 1987 vide Order No. CDPO/B/300-02/87 dated 22.12.1987. He was allowed to continue as

such from time to time until he was re-engaged as Driver on consolidated pay of Rs.900/- per month vide Order No. CDPO/B/389-90-92 dated 30.09.1992.

Hem Singh-respondent No.2 was engaged by the Child Development Project Officer, Bani on a consolidated salary of Rs.630/- per month vide Order No. ICDS/Bani/135-36/90 dated 31.05.1990.

Likewise, Pritam Chand-respondent No.3 too was engaged on consolidated salary of Rs.490/- per month as Driver w.e.f 20.09.1989 vide Order No. CDPO/K/7964-89 dated 20.09.1989.

During their continuance as Drivers in the Social Welfare Department of the State Government, they approached this Court by Writ Petition SWP No. 607 of 1997, *inter alia*, claiming regularization in service from the date of completion of seven years of service in the Department.

In terms of an interim order passed in the Writ Petition on 01.05.1997, the State-respondents were directed to consider their case for taking appropriate decision thereon and place the same before the Court.

The Writ Petition was finally disposed of on 19.08.2002 with following directions:-

- “i) that respondents would consider the issue in the light of what has been stated above and take a decision within a period of three months from the date a copy of this order is made available to them and also to the

- counsel who has appeared on their behalf by the petitioners;
- ii) that the salary claims of the petitioners for the period he has actually worked would also be settled within the same period;
 - iii) that in case the salary claims are not settled and ultimately it is found that the monetary benefits were due then the petitioners would become entitled to interest at the rate of 9% per annum and this interest component would be payable by the officer on whose account the delay occurs. It is, however, clarified that if there is any practical difficulty in settling the issue within the period stipulated in this judgment then the respondents would be at liberty to seek extension of time. This would be done before the expiry of period of three months fixed in this order. But in that eventuality, the respondents would have to explain the delay of each and every day in not implementing the directions given by this court;
 - iv) During the period the claims are under consideration the service tenure of the petitioners shall be kept intact and in case any adverse order is passed that be kept in abeyance for four weeks;
 - v) in case respondents come to a conclusion that there is some dispute as to facts they would pass a speaking order;
 - vi) in case the respondents conclude that the service tenure of the petitioner was brought to an end and the petitioners want to challenge that decision then the dispute would be referred under the Industrial Dispute Act of 1947 to the forum constituted under the Act and that forum shall decide the disputed question of fact.

Disposed of accordingly.”

These directions were issued in the light of the observations/findings by a Division Bench of the Court on similar issues which, *inter alia*, read thus:-

- “i) that an employee who has completed seven years of service before 31st March, 1994 is entitled to regularization in terms of SRO 64/94;
- ii) that the employees who were engaged before 31st March, 1994 but have not completed seven years of service are entitled to the benefit of regularization after completion of this tenure in the later financial years. This becomes apparent from the perusal of Rules 8 and 9 of the Rules referred to above;
- iii) That a further right stands conferred on the employees who have been engaged on daily rated/work charged basis. This right is conferred by Rule 9. This is to the effect that no direct recruitment is to be made unless and until the claims of the persons already appointed are duly considered for regularization;
- iv) That the case of those employee who were not strictly speaking, covered by SRO 64/94 are now to be dealt with in terms of Government Order dated 6th Nov’ 2001.”

Acting on the interim directions issued in the Writ Petition, the Director Social Welfare Department, Jammu and Kashmir, Jammu recommended respondents’ regularization to the State Government simultaneously permitting the respondents to be paid minimum of the pay scale of the posts of Drivers to avoid contempt proceedings against the Department. The entries made in the Service Book of the

respondents maintained by the State Government indicate them to have been paid not only the minimum of the pay scale of Drivers but also the *increments* from time to time.

The State Government was in the process of considering regularization of the respondents' case pursuant to the directions issued on their earlier Writ Petition, but the process appears to have been discontinued in view of coming into force of Government Order Nos. 168-GAD of 2004 dated 09.02.2004 and 237-GAD of 2004 dated 20.02.2004 and acting thereon, the Child Development Project Officer, required the respondents to enter into agreement with the Government for their conversion as employees on contractual basis.

The respondents questioned the Notices issued to them by their Second Writ Petition SWP No. 1172/2004 which was allowed vide Judgment and Order dated 11.11.2008 directing the State Government to maintain the regular status of the respondents that was given to them way back in the year 1997.

The above directions were issued by the Court proceeding on the premise that the respondents stood regularized by the State Government, which position is, however, not borne out from the records.

Appearing for the appellants, Ms. Watali, learned Deputy Advocate General would submit that having not

been appointed pursuant to any regular recruitment process prescribed for the post of Drivers, the respondents were not under law entitled to regularization. She next contended that the State Government having not passed any orders for respondents' regularization, erroneous grant of minimum pay scale of the posts to them would not improve their position to entitle them to regularization.

Mr. C.M.Koul, learned counsel for the respondents, on the other hand, submitted that being in service of the State Government, initially on daily wage basis and thereafter on consolidated pay, the respondents were entitled to regularization in service, for, it may not be fair and appropriate for the State Government to refuse regularization of the respondents who had given all their youth to serve the State Government pursuant to their legal and authorized engagement against available posts of Driver in the Department. He would further submit that the State Government was not right in directing conversion of respondents' Status to that of Contractual Employees on the basis of the Government Orders issued after more than two years of the issuance of directions by the Court requiring consideration of their case for regularization in service in light of the observations and directions made by the Court.

We have considered the submissions of learned counsel for the parties and perused the Writ Records and the facts pleaded by the appellants in their Memo of Appeal.

The undisputed facts appearing from the records are that Sandoor Singh was engaged on 23.12.1987 on daily wage basis and he continued serving as such until October 01, 1992 when he was re-engaged as Driver on consolidated pay of Rs.900/- per month. Hem Singh and Pritam Chand, respondent Nos. 2 & 3, were engaged right from the very beginning on consolidated salary in the years 1990 and 1989 respectively. During their continuance as such, the State Government permitted them to draw increments on the minimum of the pay scale of the Driver pursuant to the directions issued by the Director, Social Welfare Department, Jammu and Kashmir, Jammu in compliance to the interim orders passed in their earlier Writ Petition.

The position that, therefore, emerges from the above facts is that the respondents have been continuing in the State Government Service for over a period of 20 years and now getting the minimum pay scale of the post of Driver. They have also been allowed increments indicating them to have satisfactorily discharged their duties as Drivers.

To tell them at this stage, as was done by the State Government, that their Service Status needs to be

changed, to that of Contractual Employees, would be adding insult to the injury, for, had the functionaries of the State Government not elevated the Status of respondent No.1 from that of a Daily Wage Employee to an Employee on consolidated salary, he would have otherwise been entitled to regularization in terms of the Rules in force after putting in seven years of daily wage service. Thus, having been placed at an elevated position of an Employee on consolidated salary to that of an Employee on a Daily Wage Basis, respondent No.1 cannot be denied relief to consideration for regularization additionally because of the State Government's Policy declared vide the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 to regularize even the Employees engaged on *Consolidated, Ad hoc, Contractual* and other arrangements.

Even before coming into force of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, the State Government had issued orders regularizing the services of Employees engaged on *ad hoc* basis. Not only this, the State Government has, in numerous cases, exercising its power of relaxation, regularized the services of persons engaged on *ad hoc, consolidated* salary and in various other capacities.

In this view of the matter, the respondent No.1's case needs consideration by the State Government for

regularization in service. On similar lines and keeping in view the length of service of the other respondents in the Social Welfare Department, they are also entitled to same consideration by the State Government.

The respondents' learned counsel is, therefore, right in contending that refusal of the State Government to consider the respondents' case for regularization in service may not be just and proper, in the given facts and circumstances of the case. This is additionally so because the conversion of respondents' status to that of employees on contractual basis would amount to lowering them from their present position in which they have been continuing for a considerable period.

This apart, what we find from the facts on records is that rather than complying with the directions issued on the respondents' Writ Petition in considering their case for regularization, the appellant-State had opted to follow the Government Orders issued two years after the issuance of directions by the Court. The respondents were entitled to consideration for regularization in service on the strength of the case set up by them in their earlier Writ Petition and in view of the recommendations made for their regularization by their Controlling Officers from time to time including those made by the Director, Social Welfare Department, Jammu, their Appointing Authority as also in the light

of the observations and directions issued by the Court on the respondents' earlier Writ Petition.

The omission of the State Government to consider the respondents' case in the light of the directions issued in their earlier Writ Petition and on the other hand opting to follow the Government Orders which had no play on the respondents' case, cannot, therefore, be justified.

The appellant-State had, therefore, erred in considering the respondents' case in the light of the Government Orders which had no application of their case, rather than considering their case in terms of the directions of the Court.

The appellants' learned counsel's plea that having not been engaged pursuant to a Selection process, the respondents were not entitled to regularization, is found without merit, for, engagement of persons pursuant to regular Selection process, needs no regularization as such because their engagement, in terms of the Rules becomes substantive after their probation in terms of the Rules and there was no need for regularization of their services. Regularization in service, in terms of the Rules in force in the State, is warranted only in those cases where the engagement was temporary, on Daily Wage Basis, *Ad hoc* or otherwise, as permissible under rules.

For all what has been said above and in view of the peculiar facts and circumstances of the case, when the State Government has been paying the minimum of the pay scale attached to the post of Driver to the respondents as also the increments accruing thereon and they have been continuing in service for over a period of 20 years, we are of the view that the respondents' case needs consideration afresh by the State Government for taking appropriate decision on their regularization in Service in view of the observations made hereinabove.

We, accordingly, modify the Judgment of the learned Single Judge dated 11.11.2008 and direct the appellants to pass fresh appropriate orders on the respondents' case for regularization in service, within eight weeks.

This Appeal stands disposed of accordingly on the above terms.

(J. P. Singh)
Judge

(Mansoor Ahmad Mir)
Judge

JAMMU :
09.10.2012
Pawan Chopra