

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

SWP No. 2202/2012
CMA No. 3364/2012

Date of Order: 26.02.2014

Mushtaq Ahmed Khan Vs. State of J&K and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For petitioner (s): Mr. O. P. Thakur, Advocate
For respondent (s): Mr. G. S. Thakur, Advocate

i)	Whether approved for reporting in Press/Media	:	YES/NO
ii)	Whether approved for reporting in Digest/Journal	:	YES/NO

Petitioner, claiming to have been engaged as a casual labourer in Social Forestry Division Ramban on 01.04.1994 and continued to be retained by Social Forestry Department beyond 02.02.2001, found tables turned on him when his prayer for a direction for regularization was rejected by the learned writ Court in SWP No. 2190/2006 decided on 20.08.2011. LPA (SW) No. 205/2011 filed against the judgment of Writ Court came to be disposed of by Hon'ble Division Bench of this Court vide judgment dated 08.02.2012 in terms whereof

petitioner was allowed to make a representation before 2nd respondent as per the order passed by the Division Bench in case titled **Ashok Kumar v State of J&K and ors** reported in 2003 (II) SLJ 475. The representation of the petitioner came to be rejected in terms of S.F. Order No. 109 of 2012 dated 02.07.2012 which has been impugned in the instant writ petition.

The grounds enumerated in the impugned order for rejecting petitioner's representation are reproduced herein below:-

“a. Shri Mushtaq Ahmed Khan, appellant was engaged as casual labourer in Social Forestry Division Ramban w.e.f. 01.04.1994 up to January , 2001.

b. Consequent upon issuance of Govt. Order No. 144-GAD Dated 02.02.2001, the appellant was dispensed with w.e.f. 02.02.2001 and since then he is not working in any capacity in the department, not to speak of Closure of Nursery as mentioned by the appellant in his representation dated 08.03.2012.

- c. The appellant has worked for an overall period of six years and nine months and he has been duly paid his wages for the said period as casual worker and not as daily wager or non- gazetted employee.
- d. That the appellant has been initially engaged as casual labourer and he was not holding any post in the department. The casual labourers are engaged in the department for discharging duties of casual nature.
- e. That the appellant was not in the service of the department on the date of issuance of Government order No. 1285-GAD of 2001 dated 06.11.2001, as wrongly contended by him in his application dated 8.3.2012. In fact, it was admitted by him in his application dated 25.06.2001 filed before the Hon'ble Court that he has been informed about the order dated 2.2.2001 directing disengagement of all casual labourers engaged after 31.01.1994.
- f. That the appellant has not completed 7 years of service, as required in terms of Government Order No. 1285-GAD Dated

06.11.2001 nor the Government Order No. 144-GAD Dated 2.2.2001 has been set aside by Hon'ble High Court nor withdrawn by the Government.

g. That there is no need for engagement of any daily wager or casual labourer in the nursery/closure where the appellant had been engaged as casual labourer and thereafter disengaged.”

Learned counsel for the petitioner submits that the grounds of rejection enumerated in the impugned order are no more available to respondents in view of the judgment rendered by a Division Bench of this Court in LPA No. 33/2010 decided on 20.12.2012. The said judgment relates to the case of casual labourers engaged in the Social Forestry Project which was wound up in terms of Govt. Order No.640-GAD of 2001 dated 14.06.2001 resulting in disengagement of the casual labourers. Writ Court dismissed the petition of casual labourers. However, review petition filed by casual labourers was allowed vide judgment dated 05.02.2010 and the State was directed to

accord consideration to the cases of said casual labourers for regularization of their services. The judgment rendered in review petition was assailed before Hon'ble Division Bench in LPA (SW) 33/2010 which came to be dismissed. After scanning through various Government orders and SRO's on the subject, the Hon'ble Division Bench concluded as follows:-

“What would emerge from above is that the daily rated workers/work charged employees who were appointed after imposition of ban and continued beyond ban period were given benefit of notification dated 6th November, 2001, which in effect, would mean that the daily rated workers/work charged employees engaged even after 01.04.1994 till 6th November, 2001, were also entitled to be regularized in terms of the Jammu and Kashmir Daily Rated Workers/Work-Charged Employees (Regularization) Rules, 1994.”

Noticing the distinction between daily rated workers and casual labourers, the Hon'ble Division Bench observed:-

“The marking difference in between two clauses is that the engagement of the casual labourer has to be occasional otherwise daily wages payable to the daily rated workers or

the casual labourers is the same but casual labourer will get daily wages only for such period for which he shall be occasionally engaged whereas engagement of daily rated workers is not on occasional basis.”

The Hon’ble Division Bench further relied upon para 40 of the judgment rendered in **Ashok Kumar’s** case (Supra), which is reproduced herein below:-

“CASUAL EMPLOYEES:

The cases of casual employees be also examined. In this regard it would be apt to note the dictionary meaning of the work ‘casual’. In Black’s Law Dictionary, Sixth Edition, the meaning of word ‘casual’ has been defined as ‘occurring without regularity, “occasional”, “Impermanent” and” as employment for irregular periods”. A perusal of above meaning would indicate that where an employee has continued to work for sufficiently long period, then, it would not be apt to call him having been appointed on casual basis. As a matter of fact this aspect of the matter was considered in Piara Singh’s case (supra). The relevant observation made in para 51 of the judgment stands already noticed above. For facility of reference, the relevant observations made in this paragraph are being quoted again:-

“.....If a casual labourer is continued for a fairly long spell say two or three years, a presumption may arise that there is a regular need for his services. In such a situation, it becomes obligatory for the authority

concerned to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with empathy for the person.....”

It finally concluded that the writ petitioners who had been working for long period were also entitled to be considered for regularization.

Adverting to the facts of instant case be it seen that the petitioner was engaged as casual labourer in Social Forestry Division, Ramban w.e.f. 01.04.1994. As per respondent's version he worked continuously for a period of six years and nine months before he was disengaged on 02.02.2001- the factum of disengagement being disputed by the petitioner. In terms of the judgment rendered by Hon'ble Division Bench of this Court in LPA (SW) 33/2010, petitioner would be entitled to the benefits of notification dated 6th November, 2001. The judgment is squarely applicable to the facts and circumstances of the instant case.

For the aforesaid reasons, writ petition is allowed. Impugned order dated 02.07.2012 issued by respondent No. 2- Director Department of Social

Forestry is quashed. Respondent No. 2 is directed to reconsider the representation of the petitioner in light of law laid down by Hon'ble Division Bench of this Court in LPA (SW) 33/2010 and pass appropriate orders in regard to the claim of the petitioner for regularization of his services. Let this exercise be initiated and concluded within a period of six weeks from the date a copy of this order is made available to the respondents by the petitioner.

(Bansi Lal Bhat)
Judge

Jammu:
26.02.2014
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