

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 1957/2002

Date of order:-19.05.2016

Swaran Singh

Vs.

State of J&K and ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the petitioner(s) : Mr. Nitin Bhasin, Advocate
For the respondent(s) : Mr. R. S. Jamwal, Advocate

1. Petitioner claims to be a Daily Rated Worker in the department of Public Health Engineering since 1992, which is disputed by learned counsel for the respondents by stating that petitioner was engaged in the year 1996. Be that as it may, at the first instance petitioner seeks benefit of appointment on the ground that 50% of agricultural land belonging to the family of the petitioner was acquired by the respondents in the year 1992 for construction of a Tube-Well, therefore, he was entitled for appointment on the basis of SRO 181 of 1988. However, the said plea was rejected by the respondent No. 2-Chief Engineer, PHE, Department vide his letter dated 8th may, 2002 by holding that petitioner donated the land voluntarily which is less than 50% of his total land and SRO 181 was withdrawn in 1991 whereas the land was acquired in the year

1992, therefore, petitioner was not eligible for appointment. The aforesaid rejection order was challenged in SWP No. 1572/2001. The objection of the respondents appears to be justified, because SRO 181 of 1988 comes with a shelf life and that period has already expired and that the petitioner was not qualified because land was donated subsequently and he does not fall within that criteria. The alternate prayer of the petitioner is that he should be considered for regularization in terms of Jammu and Kashmir Daily Rated Workers/Work-charged employees (Regularization) Rules, 1994 notified vide SRO 64 and in terms of Govt. order dated 06.11.2001, wherein it is accorded that under Jammu and Kashmir Daily Rated Workers/Work-charged employees (Regularization) Rules, 1994 the daily rated workers who were engaged prior to 31.01.1991 were eligible for regularization after completing seven years of continuous service.

2. Petitioner challenge the order of respondent No. 2- Chief Engineer who declined to grant benefit of SRO 181 dated 03.06.1998 in lieu of land donated on the ground that he did not come within the criteria that is to say that SRO 181 came to an end in the year 1991. In the present case, the petitioner was appointed only

in the year 1996 as per the respondents-department. However, the authority fail to consider the claim of the petitioner for regularization in terms of Jammu and Kashmir Daily Rated Workers/ Work-charged employees (Regularization) Rules, 1994 and in terms of SRO 64 of 1994 amended by Govt. order No. 1285-GAD dated 06.11.2001. The issue raised by the petitioner is covered by the judgments rendered by the Hon'ble Division Bench of this Court in LPASW 33/2010 titled State of J&K and ors vs. Mushtaq Ahmed Sohail and ors reported in 2013 (1) SLJ, 73 and LPASW No. 115/2002 and connected matters decided on 25.02.2015.

3. In LPASW No. 33/2010, the Hon'ble Division Bench has held that:-

“13. As against order No. 144-GAD of 2001 dated 02.02.2001, the daily wagers/work charged employees, who were aggrieved, filed number of writ petitions. Finally the judgment passed in those writ petitions were challenged by medium of bunch of LPAs with lead case Ashok Kumar Vs. State of J&K and ors which have been decided vide judgment dated 26.07.2002, reported in 2003(11) S.L.J 475. In the reported judgment, position vis-à-vis right of casual labour/daily wagers/adhoc employees has been taken note of and as many as 15 directions were issued as contained in para 45 of the judgment. It may not be out of place to mention here that the cut of date has also been extended to 06.11.2001 in terms of Govt. order No. 1285-GAD of 2001 dated 06.11.2001 which has been issued in pursuance to Cabinet Decision No. 135/11(B) dated 10.09.2001. The above referred judgment was challenged before the Hon'ble Apex Court by medium of Civil Appeal No. 9299 of 2003. While disposing of Civil Appeal No. 9299 of 2003 the following order has been passed.

“Our attention has been drawn to the judgment of the Constitution Bench of this Court in Secretary, State of Karnataka and others vs. Umadevi and others (supra). In our view this judgment has no application in view of the fact that the respondents are employed by the State Government and are claiming the benefit of a scheme formulated by the Notification dated 31st January, 1994 as modified by Notification dated 6th November, 2001. The High Court is perfectly justified in his judgment.

We are satisfied that the impugned judgment of the High Court needs no interference at our hands.

In the result, the Appeal is dismissed. No costs.

14. What would emerge from above is that 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.

15. Again another aspect regarding writ petitioners is that they are stated to have been engaged s casual labours. The question for consideration is as to whether they in-effect were casual labours or under the style of casual labours, in effect they were working as daily rated workers. Casual labour/Worker and Daily Rated Worker are defined under Section 2(b) and (f) of the Rules of 1994 which reads as under:-

“(b) “Casual Labour/Worker” means a person who is engaged through an appointment order or otherwise on daily rated basis for rendering casual services to a Department.

(f) “Daily Rated Worker” means a person engaged on daily wage basis at the rates sanctioned by the Government from time to time.

16. The marking difference in between two clauses is that the engagement of the casual labour has to be occasional otherwise daily wages payable to the daily rated workers or the casual labour is the same but casual labour 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.

17. In the instant case writ petitioners styled to have been engaged as casual labours in-effect were daily rated workers, because they were not engaged occasionally. They have been working continuously. Division Bench of this Court in the reported judgment, as referred above, at para 40 have dealt with the position of casual labours, same 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 word ‘casual’. In Blacks 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 observations made in para 51 of the judgment stand 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 authority ought to adopt a positive approach coupled with an empathy for the person.....”

18. In view of the observations of the Hon’ble Apex Court quoted above, the writ petitioners having been working for long period are also entitled to be considered for regularization.

19. For the reasons stated hereinabove the appeal is dismissed, judgment impugned dated 05.02.2010 providing for according consideration to the cases of the writ petitioners for regularization of their services is maintained. The

appellants are directed to consider cases of the writ petitioners for regularization within three months from today.”

4. While disposing the LPASW No. 115/2002, the Hon’ble Division Bench of this Court observed that the issue which arises for adjudication in the present batch of appeals has already been conclusively dealt in LPASW No. 33/2010 (supra) and held as under:-

“We see no reason to take a view different from the one, which has already been taken by a Bench of this Court in Mushtaq Ahmed Sohails case(supra). Accordingly, following the said judgment, as also the observations of the Apex Court reproduced in paragraphs 13 and 14 hereinabove, we dismiss the appeals and uphold the judgment and orders dated 4.3.2002, 19.2.2002, 18.3.2002, 17.10.2001 and 7.11.2001, providing for according consideration to the cases of the petitioners for regularization. The appellants are directed to consider the cases of the petitioners for regularization within three months from today.”

5. The instant writ petition is disposed of with the direction to the respondents to regularize the services of the petitioner on completion of seven years of continuous service in terms of the above said rules and on the same analogy as has been directed by Hon’ble Division Bench of this Court in the above quoted appeals, if he is otherwise eligible.

(Ramalingam Sudhakar)
Judge

Jammu,
19.05.2016
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