

# **HIGH COURT OF JAMMU AND KASHMIR**

## **SRINAGAR**

**Case No: SWP 1932/2015**

**Dated : 27<sup>th</sup> JUNE, 2016**

**ALI MOHAMMAD DAR**

**VERSUS**

**STATE & ORS**

### **ORDER SHEET**

#### **CORAM:**

**HON'BLE MR. JUSTICE MUZAFFAR HUSSAIN ATTAR- JUDGE**

*Whether approved for reporting : yes*

**FOR THE PETITIONER/s : MR. N.A.BEIGH**

**FOR THE RESPONDENT/s: MR. M.A.WANI, AAG**

#### **(ORAL)**

1/ The petitioner, as is admitted by the respondents in their Reply Affidavit, is working as contingency paid employee in the respondent – Department from 04<sup>th</sup> April, 2002 and has completed fourteen years of service in the said capacity.

2/ The petitioner, earlier also, filed a writ petition (SWP 1183/2012), which was disposed of by the Court on 02<sup>nd</sup> September, 2013 and respondents therein were directed to consider case of the petitioner under rules and having regard to the consideration order already passed by the Education Department in case of similarly situated persons. Respondents were further directed to consider and take decision preferably within two months from the date copy of the said order is served on them.

3/ The petitioner filed contempt petition No. 70/2014. The Court on 12<sup>th</sup> February, 2015 directed respondents 1&2 to consider the issue and take necessary steps for extending the benefit to the contingency paid employees of other Departments on the same pattern on which it has been given to the contingency paid employees of Education Department in terms of SRO 308 dated 16<sup>th</sup> October, 2008.

4/ This order has been set aside by the Letters' Patent Bench vide order dated 14<sup>th</sup> July, 2015, in as much as, it has been held that in contempt petition, no further directions can be given by the Court. However, the petitioner was given liberty to challenge the order dated 08<sup>th</sup> January, 2014, whereunder his claim for regularization stands rejected.

5/ It is for this reason that this writ petition is filed in which, besides seeking quashment of order dated 08<sup>th</sup> January, 2014, it has been prayed that

respondents be directed to frame rules as they have framed in other sister Departments for regularization of contingency paid employees including the petitioner. It is also prayed that respondents be directed to enhance the monthly wages of the petitioner.

6/ The only objection taken by the respondents to the claim of the petitioner is that there is neither any policy nor rules framed for regularization of the services of contingency paid employees working in the Finance Department.

7/ It is not in dispute but is, rather, admitted that the Government has framed the policy and notified the same in terms of SRO 380 dated 16<sup>th</sup> October, 2008, whereunder, as submitted at bar, 50% of class IV posts have been reserved for absorption/regularization of contingency paid employees in the State Education Department.

8/ The contingency paid employees, working in all the Departments in the State of J&K, constitute one single class. The respondent – State, has, by taking policy decision and notifying SRO 308 dated 16<sup>th</sup> October, 2008, redressed grievances of the contingency paid employees working in the Education Department by providing 50% of class IV posts for their absorption/regularization of their services.

9/ As already stated, all the contingency paid employees, working in different Departments under the State of J&K, constitute one single class. They have to be given uniform treatment. Admittedly, the respondent – State has subjected, to invidious discrimination, the petitioner as also other contingency paid employees working in other Government Departments. The respondent – State has to act as a model employer and has to uphold the constitutional values, more particularly, enshrined in articles 14 & 16 of the Constitution of India.

10/ The discrimination is writ large in the facts of this case.

11/ The respondent – State shall have to frame policy in the Finance Department, where the petitioner is working as a full time contingency paid employee as well as in other Departments. The respondent – State is dutybound to give same treatment to the petitioner and other contingency paid employees, who are working in other Departments to avoid further litigation and to ensure that this class of people, who can hardly make both ends meet, are not pushed to expensive litigation. The respondent – State has to perform this constitutional

obligation to this class of people as the benefit has been, rightly, given to similar class of people, who are working in the State Education Department.

12/ For the aforementioned reasons, this writ petition is disposed of along with connected IAs in the following manner :

*“Respondent No.1 is directed to consider and frame policy for permanent absorption of the petitioner and like persons in other Departments as has been done in the case of contingency paid employees working in the State Education Department in terms of Notification SRO 308 dated 16<sup>th</sup> October, 2008. The Respondent – State to consider and take necessary decision within ten weeks from the date copy of this order is served. The impugned consideration order dated 08<sup>th</sup> January, 2014 is, accordingly, set aside to ensure that it does not come in the way of petitioner for seeking benefit, which may flow to him from the decision, likely to be taken by the respondent – State.”*

13/ **Disposed** of along with CMPs.

TARIQ Mota  
SRINAGAR  
27-06-2016

(MUZAFFAR HUSSAIN ATTAR) J

