

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR
(through virtual mode)

LPA No.269/2019
CM Nos.6766/2019 5512/2020 &
5513/2020
c/w
LPA No.270/2019
CM Nos.6768 & 6769 of 2019
LPA No.271/2019
CM Nos.6771 & 6772 of 2019
LPA No.272/2019
CM Nos.6775 & 6776 of 2019
LPA No.273/2019
CM Nos.6777 & 6778 of 2019
LPA No.274/2019
CM Nos.6781 & 6782 of 2019
LPA No.275/2019
CM Nos.6784 & 6785 of 2019
LPA No.276/2019
CM Nos. 6787 & 6788 of 2019
LPA No.277/2019
CM Nos.6793 & 6794 of 2019
LPA No.278/2019
CM Nos.6795 & 6796 of 2019
LPA No.279/2019
CM Nos.6797 & 6798 of 2019
LPA No.280/2019
CM Nos.6799 & 6800 of 2019
LPA No.281/2019
CM Nos.6802 & 6803 of 2019
LPA No.282/2019
CM Nos.6805 & 6806 of 2019

Reserved on : 23.12.2020

Pronounced on : 29.01.2021

State of J&K and others

...Petitioner

Through:- Mr. Bikramdeep Singh, GA

V/s

Abdul Ahad Lone
And connected matters

...Respondent(s)

Through:- Ms. Saima Mehboob, Advocate
Mr. M.A.Wani, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

Sanjeev Kumar-J

1. Since the issue involved in all these appeals is common, as such, these are taken up together and are disposed of by this common judgment.

2. These *intra* Court appeals are directed against the order and judgment dated 04.06.2019 passed in a batch of writ petitions leading case being SWP Nos.481/2016, whereby all the writ petitions except SWP No.521/2015 have been allowed and the reliefs prayed for in the writ petitions have been granted.

3. Briefly put, the facts leading to the filing of these appeals, which have been disposed of by a common judgment impugned in these appeals, are that the writ petitioners came to be engaged on need basis in various Farms of the department of Sheep Husbandry, Kashmir in the year 2014. The engagement of the writ petitioners was for a period of 89 days but they were continued thereafter by giving them one day's break after every

spell of 89 days. In the year 2015, the Government came up with Government Order No.43-F of 2015 dated 17.03.2015, whereby the authority given to various departments to engage casual/seasonal labour, delegated by the Government from time to time, was withdrawn with immediate effect. Apprehending their disengagement, the petitioners approached the Writ Court by way of different writ petitions. The Writ Court while entertaining the writ petitions in terms of different interim orders also directed the appellant-department to allow the petitioners to continue and pay them legally earned wages. In the writ petitions filed by these need based labourers, following reliefs were claimed:-

- i) Writ, order or direction in the nature of mandamus commanding upon the respondents not to disengage the services of the petitioners and allow them to continue on the posts held by them.
- ii) Writ, order or direction in the nature of mandamus commanding upon the respondent-appellants to release the unpaid wages due to the petitioners for the period they had worked in the department.

4. The appellant-department resisted the writ petitions vehemently and in the reply affidavit filed before the Writ Court, it was pleaded that the writ petitioners were engaged by the appellant-department on need basis and that too for a period of 89 days in the first instance. It was also pleaded that the orders of engagement of the writ petitioners were subject to two specific conditions, i) that the arrangement was purely an interim arrangement and would not confer any right to lay claim on the post(s) on permanent basis

and (ii) the services of the engaged workers would cease at any time in case his/their performance is reported to be poor or if his/their services are no more required by the department. The further stand taken by the appellants was that the department of Finance issued Government Order No.43-F of 2015 dated 17.03.2015 in terms whereof, it was ordered that the authority to engage casual/seasonal labour delegated to various departments vide Government Order No.239-F of 2005 dated 29.01.2005, Govt. Order No.138-F of 2013 dated 23.05.2013 and Govt. Order No.105-PD of 2010 dated 25.10.2010 stood withdrawn with immediate effect. In pursuance of the said order, the Director, Sheep Husbandry Department, Kashmir forwarded the aforesaid Government Order along with Govt. Order No.384-GAD of 2015 dated 17.03.2015 and the clarification issued by the General Administration Department (GAD) vide communication dated 18.03.2015 to all the subordinate offices of the directorate for immediate necessary action. Acting swiftly on the instructions of the Director, Sheep Husbandry, Kashmir, it is claimed, that the Deputy Director, Sheep Breeding Farm, Daksun and other subordinate offices disengaged the writ petitioners and others engaged on need basis.

5. The Writ Court, after considering the rival contentions and going through the material on record, came to the conclusion that the Govt. order No.43-F of 2015 dated 17.03.2015 was prospective in operation and, therefore, not applicable to the engagements made prior to its issuance i.e. 17.03.2015. Similarly, the Writ Court also concluded that Government Order No.384-GAD of 2015 dated 17.03.2015 and the clarification issued by the GAD were applicable to the engagements made under Schemes against the

sanctioned post(s) without any selection process and, therefore, not applicable to the writ petitioners. The Writ Court, thus, allowed the writ petitions and quashed all the orders issued by the appellant-department for disengaging the writ petitioners in pursuance of Govt. Order No.43-F of 2015 dated 17.03.2015 and directed the respondents to continue the petitioners as casual labourers on need basis, in terms of their engagement orders and to give benefit, which has accrued to them in terms of policy decision of the Government. There was a further direction issued to the appellants to release the unpaid wages of the petitioners.

6. The appellants are aggrieved and have challenged the impugned judgment, *inter alia*, on the ground that the Writ Court has not appreciated that the engagement of the writ petitioners-respondents was on need basis and subject to the condition that their services were liable to be disengaged at any time either for poor performance or for the reason that their services were no more required. The Writ Court also did not appreciate the true import of Govt. Order No.43-F of 2015 dated 17.03.2015, whereby the authority under which the writ petitioners had been engaged on need basis had been withdrawn with immediate effect and as a result whereof, the appellants had lost their competence to make need base arrangements in the department. Similar error was committed by the Writ Court in appreciating the scope of Govt. Order No.384-GAD of 2015 dated 17.03.2015 and the clarification issued by the GAD.

7. Heard learned counsel for the parties and perused the record.

8. Admittedly, the engagement of writ petitioners is need based and temporary in nature subject to the terms and conditions laid down in the

orders of their engagement. Indisputably, engagement of the writ petitioners was not on any substantive post carrying regular pay scale. For facility of reference, engagement order of some of the writ petitioners issued by the Director, Sheep Husbandry Department, Kashmir may be reproduced here under:-

“In view of the dire requirement in the Department at different Districts and different Sheep Breeding Farms, the following persons are hereby engaged on need basis with one day break after every 89 days @ Rs. 3000/- per month (Rupees Three Thousand Only) at Sheep Breeding Farm, Daksum.

S.No.	Name	Parentage	Residence
1	Shakir Ahmad Bhat	Gh. Qadir Bhat	Larnoo Batpora, Kokernag Anantnag
2	Ab. Ahad Lone	Ab. Rashid	Soaf, Kokernag, Anantnag
3.	Ajaz Ahmad Ganie	Abdul Ahad	Soaf Kokernag, Anantnag
4.	Zahid Ahmad Zagoo	Manzoor Ahmad	Panzgam, Kokernag, Ang.
5.	Farooq Ahmad Mir	Gh. Ahmad Mir	Bindoo Zalangam, Kokernag

The above engagements are made subject to the following terms and conditions:-

1. This arrangement is purely and purely an interim arrangement and shall not confer any right to the incumbent to lay claim on the post or permanent absorption in the department.
2. The services of the engaged worker shall cease at any time in case of his/their poor performance report or if his /their services are not required by this department.”

9. From a plain reading of the order of engagement, it clearly transpires that the engagement of the writ petitioners on need basis is purely an interim arrangement without conferring any right on the incumbent to claim permanent absorption in the department. Initially the engagement was for a period of 89 days and could cease at any time in case of poor performance or if the services were not required by the department any more. There is also no dispute that these engagements, made on need basis,

were not in pursuance of any selection process conducted by the appellants. It was done purely on pick and choose method.

10. It may be pertinent to take notice that prior to the year 1994, various departments of the Government had made similar engagements, which were continued for years together. The Government with a view to confer benefit of regularization on such daily wagers, who had completed seven years continuous service, came up with SRO 64 of 1994. In terms of Rule 5 of SRO 64, all the daily rated workers, who on 31.03.1994 had completed seven years continuous service, were entitled to be appointed on the regular pay scale of Class-IV prescribed in the concerned department for relevant category of posts and those who would complete seven years in the subsequent years were to be accordingly regularized in the relevant financial year. Rule 7 of the SRO 64, however, put a complete ban on the fresh engagements of daily rated workers/work-charge employees in any of the department of the Government by providing that with effect from the commencement of the Rules, no field/subordinate officer shall have any power for engagement of daily rated workers or work-charge employees in the department and the existing delegation, if any, in this regard shall stand withdrawn. However, by way of proviso added to Rule 7, it was provided that the competent authority in the department, may engage casual or seasonal labourers, to be specified by notification issued by the Government. Acting under the proviso to Rule 7 of SRO 64 of 1994, the Government vide order No.239-F of 2005 dated 29.11.2005 authorized the Agriculture Production Department, PWD(R&B) Department, PHE, I&FC Department and Power Development Department to engage casual or seasonal labourers

from time to time on need base on muster roll for payment of wages. Similar delegation was made in favour of the Finance Department vide Order No.138-F of 2013 dated 23.05.2013 etc.

11. Although, the department of Animal Husbandry was not specifically and separately authorized to make the need base engagement of casual/seasonal labourers, yet the department of Agriculture Production being the administrative department of the Directorates of Animal Husbandry, Jammu and Kashmir shall be deemed to have been authorized to make such engagements. It, thus, appears that in exercise of the powers delegated in terms of Government Order dated 29.11.2005, the Directorate of Animal Husbandry, Kashmir made several engagements on need basis to cater to the need of different Sheep Breeding Farms in the valley. This is how the writ petitioners came to be engaged. It is also worthwhile to notice that the services of the writ petitioners have not been terminated by the appellants on the ground that their services are no more required by the department, but have been disengaged in application of Government Order No.43-F of 2015 dated 17.03.2015 read with Government Order No.384-GAD of 2015 dated 17.03.2015. With a view to appreciate the stand of the appellants, it is necessary to set out both government orders (supra) herein below:-

Govt. order No.43-F of 2015

“Government Order No. F of 2015

Dated: 17/03/2015

As approved by the Competent Authority, it is hereby ordered that authority to engage Casual/Seasonal Labourer to various Departments as, delegated vide Government orders mentioned below or any other order is withdrawn with immediate effect

1. Government Order No. 239-F of 2005 dated 29.01.2005.
2. Government Order No. 138-F of 2013 dated 23.05.2013.
3. Government Order No. 105-PD 2010 dated 25.10.2010 .

By order of the Government of Jammu & Kashmir.”

Govt. Order No.384-Gad of 2015

“GOVERNMENT ORDER NO: 384-GAD of 2015
DATED: 17-03-2015

It is hereby ordered that:

- a) all the re-employment orders issued by various Government Departments are revoked with immediate effect;
- b) all the engagements/arrangements made by the different Departments/Public Sector Undertakings/Boards/ Autonomous Bodies under any scheme against sanctioned posts without any selection procedure even on Contractual basis, shall cease to exist with immediate effect;
- c) any other engagement/arrangement, made by the Departments/Public Sector Undertakings/Boards/Autonomous Bodies, at their own level shall also be governed by (a) and (b) above.

By order of the Government of Jammu and Kashmir.”

12. From a perusal of Government Order No.43-F of 2015, it clearly transpires that the authority to engage casual/seasonal labourers delegated by the Government to various departments including the department of agriculture has been withdrawn with immediate effect and as a natural consequence of withdrawal of the authority, none of the authorized departments including the department of agriculture was left with any authority to engage the casual/seasonal labourers in their departments.

13. Whether Government Order No.43-F of 2015 is prospective or retrospective is not likely to change the position in any manner. Admittedly, the engagement of the writ petitioners, as need base labourers to perform the duties in different Sheep Breeding Farms, was temporary in nature, initial engagement order being only for a period of 89 days, though the engagement of the writ petitioners has been extended from time to time by giving them a break of one day after every spell of 89 days. That being the position, on or

after the issuance of Government Order No.43-F of 2015, the appellant-department had no authority to extend their engagements or permit them to continue on need basis for the reason that the authority under which the writ petitioners were being engaged from time to time stood withdrawn by the Government.

14. Undoubtedly, as rightly held by the Writ Court, Government Order No.43-F of 2015 is prospective in operation and would have the effect of taking away the authority of the appellants to extend the engagement of the writ petitioners or to continue their engagements further. The Writ Court has not appreciated the Government Order from this perspective and, has thus, erroneously held that the services of the writ petitioners were not liable to be disengaged or discontinued by application of Govt. Order No.43-F of 2015 dated 17.03.2015. Govt. Order No.384-GAD of 2015 dated 17.03.2015 is clearly not attracted in the case on hand, for, the same pertains to the engagements/arrangements made by different Government Departments, PSUs and other autonomous bodies under schemes against the sanctioned posts and without any selection process. In the instant case, the engagement of the writ petitioners was neither under any scheme nor against any sanctioned post(s) and, therefore, applicability of Govt. Order No.384-GAD of 2015 is clearly ruled out. To the similar effect is the clarification issued by the GAD with regard to the import of Govt. Order No.384-GAD of 2015.

15. That apart, the services of the writ petitioners, as is apparent from the record, stood disengaged on the date the writ petitions were entertained and interim directions were passed by the Writ Court. The mere fact that the engagement of the writ petitioners was on need basis and

without following any due process of selection would justify their disengagement by the appellants. The authority delegated to the appellants by the Government in terms of Govt. Order No.239-F of 2005 dated 29.01.2005 stood withdrawn and, therefore, the appellants were devoid of any authority or competence to extend or continue the engagement of the writ petitioners further. That being the position, the appellants were well within their powers to disengage the writ petitioners. The direction of the Writ Court to allow the writ petitioners to continue on 'need basis' arrangement was not justified in the facts and circumstances of the case.

16. We are, therefore, of the view that having regard to the nature of engagements of the writ petitioners, no right was vested in them to continue in the department indefinitely, more so, when the authority under which the writ petitioners were being engaged from time to time stood withdrawn by the Government in terms of Govt. Order No.43-F of 2015 dated 17.03.2015.

17. Mr. M.A.Wani, learned counsel appearing for some of the writ petitioners has raised the issue of applicability of SRO 520 of 2017 and urges that the writ petitioners having been engaged before 17.03.2015 were entitled to the benefit of regular engagement under the said SRO. This issue has been raised for the first time during the hearing of these appeals. We could not find any whisper about SRO 520 of 2017 in the pleadings that were before the Writ Court. Applicability of SRO 520 of 2017 may involve determination of other allied questions of fact and law, which this Court hearing appeal may not be able to determine in the absence of pleadings. We, therefore, keep this issue open for the writ petitioners to agitate before

appropriate forum by way of appropriate proceedings. Nothing said in this judgment shall prejudice their right to claim the benefit of SRO 520 of 2017, if that is attracted in their case.

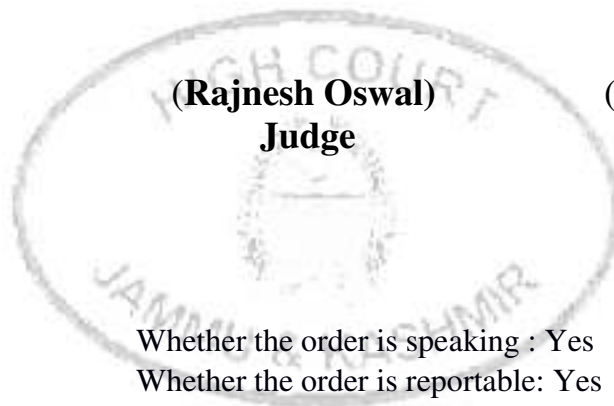
18. We are not advertent to judgments relied upon by the learned counsel appearing for the parties, for, they deal with the issue of regularization of daily wage/need based casual workers. In the instant case, the writ petitioners are only claiming their continuous engagement and are not praying for the regularization of their services.

19. In view of the foregoing, all the appeals are allowed and the impugned judgment passed by the Writ Court is set aside.

(Rajnesh Oswal)
Judge

(Sanjeev Kumar)
Judge

Srinagar.
29.01.2021
Vinod.



Whether the order is speaking : Yes
Whether the order is reportable: Yes