

(2019) 06 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 521, 1213, 1351, 1559, 1729, 1957, 2156, 2236, 2568 Of 2015, 318, 481, 724 Of 2016, 852, 2529, 2565 Of 2017, CPSW No. 620 Of 2016

Abdul Ahad Lone

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 04-06-2019

Acts Referred:

Citation : (2019) 06 J&K CK 0011

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M. A. Wani, Z. A. Wani, Saima Mehboob, Bikramdeep Singh

Final Decision : Dismissed

Judgement

These batch of writ petitions raise a common issue for determination, therefore, these are taken up together for adjudication and this judgment shall govern all.

The petitioner, in SWP no. 481/2016, is working on need basis at Sheep Breeding Farm Daksum, having been engaged as such with one-day break after every 89 days, by respondent no. 2, Director, Sheep Husbandry Department, Kashmir, in the year 2014, for a monthly remuneration of Rs. 3000/-. The petitioner is stated to be continuing since then and his wages are stated to be unpaid for a long time. The petitioner, has filed this writ petition to seek a command in the name of respondents not to disengage him and release his unpaid wages for the period he has worked after allowing him to continue on the post held by him.

The petitioner is before the court as he apprehends his ouster in view of issuance of a Government Order No. 43-F of 2015 dated 17th March, 2015, by virtue of which the Government imposed a complete ban on the engagement of casual/ seasonal labourers in Government Departments/ State owned Public Service Undertakings. Hence the writ petition.

This court, in terms of order dated 14th March, 2016, while issuing notice to the

other side has directed that petitioner shall be allowed to continue and shall be paid legally earned wages.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioner is admitted but his continuance with the department is disputed.

SWP no. 318/2016

The writ petition is filed by the petitioners exactly on the same lines as taken note of in writ petition no. 481/2016 and are praying for the same relief also. The petitioners in this writ petition are engaged at District Sheep Husbandry Office Kulgam and Baramulla respectively.

In terms of order dated 25th February, 2016, this court, while issuing notice to the other side has directed that petitioners be permitted to continue on need basis as casual/ seasonal labourers if need persists and their legitimately earned wages shall also be released.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance with the department is disputed. It is averred in the reply further that acting on the Government Order No. 43-F of 2015 dated 17.03.2015, the petitioners have been disengaged and as such are not on the rolls of the respondent department.

SWP no. 852/2017

In this writ petition, the petitioners again plead the same facts. However, additionally it is averred in the writ petition that petitioners are not being allowed to mark their attendance for an unspecified period. The other dissimilarity in this writ petition is the place of engagement of petitioners having been engaged at different locations of Valley.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance with the department is disputed. It is averred in the reply further that acting on the Government Order No. 43-F of 2015 dated 17.03.2015, the petitioners have been disengaged and as such are not on the rolls of the respondent department.

SWP no. 1213/2015

In this writ petition also the petitioners plead the same facts with a difference about the place of engagement having been engaged at different locations of Valley.

This Court, while issuing notice to the other side, in terms of order dated 24th June, 2015, has directed that the present status of the petitioners shall not be disturbed.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but it is averred that the continuance

of the petitioners is always dependent on the need and they cannot seek their continuance as such.

SWP no. 1351/2015

In this writ petition, the petitioners again plead the same facts. However, the only dissimilarity in this writ petition is about the place of engagement of petitioners having been engaged at different locations of Valley.

This court while issuing notice to the other side has directed, in terms of order dated 10th July, 2015, that present status of the petitioners shall remain undisturbed and they shall be allowed to continue till next date.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance in the department is objected for having no vested right with them to seek such continuance being only need based employees.

SWP no. 1559/2015

Again the same facts are pleaded in this writ petition also. The only dissimilarity in this writ petition is about the place of engagement of petitioners having been engaged at different locations of Valley.

This court, while issuing notice to the other side, in terms of order dated 28th July, 2015, directed for maintaining status quo i.e. present position of the petitioners shall not be disturbed.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but object to their continuance as such, for having no vested right with them to seek such continuance being only need based employees.

SWP no. 1957/2015

In this writ petition, the petitioners again plead the same facts and the only dissimilarity is about the place of engagement of petitioners having been engaged at different locations of Valley.

This court, while issuing notice to the other side, in terms of order dated 10th September, 2015, directed for maintaining status quo till next date before the Bench.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance with the department is disputed. It is averred in the reply further that acting on the Government Order No. 43-F of 2015 dated 17.03.2015, the petitioners have been disengaged and as such were not on the rolls of the respondent department at the time when the writ petition was filed.

SWP no. 2156/2015

In this writ petition, the petitioners again plead the same facts. However, additionally it is averred in the writ petition that petitioners are not being allowed to mark their attendance for an unspecified period. The other dissimilarity in this writ petition is the place of engagement of petitioners having been engaged at different locations of Kashmir Valley.

This court, in terms of order dated 01.10.2015, while issuing notice to the other side, has directed for maintaining the statusquo till next date of hearing.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance is objected to for being vested with no right to seek continuance as need based employees. It is further stated therein that the concerned authorities have already acted upon the Government Order No. 43-F of 2015 dated 17.03.2015.

SWP no. 2529/2017

In this writ petition, the petitioners again plead the same facts. However, additionally it is averred in the writ petition that petitioners are not being allowed to mark their attendance for an unspecified period. The other dissimilarity in this writ petition is about the place of engagement of petitioners having been engaged at different locations of Valley.

This Court, while issuing notice to the other side, in terms of order dated 13.12.2017, has directed that present position of the petitioners shall not be disturbed till next date of hearing.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance is objected to for being vested with no right to seek continuance as need based employees. It is further stated therein that the concerned authorities have already acted upon the Government Order No. 43-F of 2015 dated 17.03.2015.

SWP no. 2565/2017

In this writ petition, the petitioners again plead the same facts. However, additionally it is averred in the writ petition that petitioners are not being allowed to mark their attendance for an unspecified period. The other dissimilarity in this writ petition is about the place of engagement of petitioners having been engaged at different locations of Kashmir Valley.

This Court, while issuing notice to the other side, in terms of order dated 14.12.2017, has directed that petitioners shall be allowed to continue and shall be paid legally earned wages.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance is objected to for being vested with no right to seek continuance as need based employees. It is further stated therein that the concerned authorities have already acted upon the Government Order No. 43-F of 2015 dated 17.03.2015.

SWP no. 2568/2015

In this writ petition, the petitioners again plead the same facts with one dissimilarity about the place of engagement of petitioners having been engaged at two different places.

This Court, while issuing notice to the other side, in terms of order dated 01.12.2015, directed for maintaining status quo i.e. present position of the petitioners, as it exists that time, shall be maintained.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance is disputed. It is further stated therein that the concerned authorities have already acted upon the Government Order No. 43-F of 2015 dated 17.03.2015 and disengaged all need based workers including the petitioners.

SWP no. 2236/2015

Mr M. A. Wani, Advocate with

Mr Z. A. Wani, Advocate for the petitioners.

Mr Bikramdeep Singh, GA for respondents.

In this writ petition, the petitioners again plead the same facts and the only dissimilarity is about the place of engagement of petitioners having been engaged at different locations of Valley.

This Court, while issuing notice to the other side, in terms of order dated 13.10.2015, has directed that legally earned wages of the petitioners be released and their status shall also remain undisturbed.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance is disputed. It is further stated therein that the concerned authorities have already acted upon the Government Order No. 43-F of 2015 dated 17.03.2015 and disengaged all the casual labourers/ need base workers.

SWP no. 1729/2015

Mr. Mohammad Ayoub Bhat, Advocate for Pet. No.1

Ms Saima Mehboob, Advocate for Pet Nos. 2 to 35

Mr Bikramdeep Singh, GA, for respondents.

In this writ petition also the petitioners again plead the same facts.

However, the place of engagement of petitioners is certainly not similar.

This court while issuing notice to other side had directed for maintaining status quo i.e. present position of the petitioners shall not be disturbed.

Upon notice the respondents appeared and filed their reply wherein the engagement of the petitioners is admitted but their continuance with the department is disputed. It is averred in the reply further that acting on the Government Order No. 43-F of 2015 dated 17.03.2015, the petitioners have been disengaged and as such are not on the rolls of the respondent department.

SWP no. 521/2015

None for the petitioners.

Mr Bikramdeep Singh, GA, for respondents.

Though the writ petition is tagged for similarity with the rest of the petitions, but the perusal of the file would reveal that the petitioners plead in the writ petition that despite their engagement as need based workers @ monthly remuneration of Rs. 3000/-, they were not allowed to perform their duties by respondent no. 3, District Sheep Husbandry Officer, Baramulla.

Upon notice the respondents appeared and filed their reply wherein they have stated that petitioners, after their engagement, did not join the duties, therefore, question of allowing them to perform their duties pursuant to said engagement order does not arise.

The question for determination, in this writ petition, being different shall be dealt with separately at the end of the judgment.

CONSW no. 620/2016 in SWP no. 1213/2015

The instant contempt petition is filed for seeking initiation of contempt proceedings against the respondents for the wilful disobedience of the Order dated 24th June, 2015, passed in writ petition, SWP no. 1213/2015, by virtue of which it was directed that present status of the petitioners shall not be disturbed and they shall be allowed to continue till next date of hearing before the Bench.

Upon notice respondents appeared and filed the statement of facts, wherein it is contended that petitioners had been disengaged prior to filing of the writ petition, therefore, the question of violation or disobedience of the court order does not arise.

Heard learned counsel for the parties. Perused the material made available and considered the submissions made.

It is mentioned at the cost of repetition that the writ petition, SWP no. 521/2015, being dissimilar shall be dealt with at a later stage of the judgment after the similar writ petitions are done.

The controversy, in all the writ petitions, revolves around the Government Order No. 43-F of 2015 dated 17.03.2015 that banned all the engagements of casual/seasonal labourers in Government Departments/ State owned Public Service Undertakings. The petitioners in almost all cases apprehend their ouster by application of the Government Order supra. The basis for developing such

apprehension is stated to be the disengagement of many casual labourers made by the respondents by application of the Government Order Supra. So, before proceeding ahead, let us take a look at the Government Order No. 43-F of 2015 dated 17.03.2015, in the first instance, thus:

"As approved by the Competent Authority, it is hereby ordered that authority to engage Casual/ Seasonal Labourers 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 of 2010 dated 25.10.2010."

Before analysing the scope of the order vis-à-vis its applicability, it would be quite desirable to look back at the factual matrix to see as to where the controversy hinges. In all the writ petitions the petitioners plead and the respondents admit the engagement of the petitioners as Need Based Workers, therefore, the engagement of petitioners is not disputed. The second aspect of the matter is that the petitioners have been continuing as such at the time the Government Order No. 43-F of 2015 dated 17.03.2015 came to be issued. The respondents in all their reply affidavits have categorically stated that the petitioners in some of the writ petitions, which have been taken note of separately in the foregoing paragraphs, have been disengaged by the application of the Government Order Supra. The learned counsel for the parties, while making submissions have also laid the whole thrust upon the applicability or otherwise of the said Government Order to the case of the petitioners.

Now since the controversy finds its origin in the Government Order supra, therefore, let's first analyse the scope of the order vis-à-vis its applicability or otherwise to the petitioners' cases.

The plain reading of the Government Order No. 43-F of 2015 dated 17.03.2015, makes it emphatically clear that the authority to engage casual/ seasonal labourers to various departments as delegated with such power vide Governments orders mentioned in the order or any other order has been withdrawn with immediate effect. But the question is whether the engagements made before the issuance of the said Government order are also required to be withdrawn or it is only dealing with the future practice of such engagements?

The Court is of the considered view that the order mentions a ban for such engagements prospectively and not retrospectively as is stated to be construed by certain Authorities. Having said that the engagements made prior to the issuance of the Government Order Supra stand separated and kept out of its purview. Therefore, the petitioners whose engagements are made prior to the issuance of the Government Order Supra cannot be proceeded against and disengaged in application of the said Government Order. While so holding the

court is further conscious of the fact that the writ petitions are filed by the petitioners on the basis of mere apprehensions. The only cause of approaching this Court is shown to be some unspecified action of the respondents of disengaging certain similarly placed persons. The Respondents-Subordinate Departmental authorities have exceeded their jurisdictional authority and by wrong interpretation of Government Order Supra have disengaged some of the petitioners in some writ petitions.

Needless to mention that the respondents-departmental authorities while disengaging some of the petitioners have made reference to the Government Order No. 384-GAD of 2015 dated 17.03.2015 and letter no. DSHK/Gen-23/inf/2015/0483-512 dated 18.04.2015. The Government Order and the circular issued by the Government pertain to the engagements/ arrangements made by different departments/ Public Sector Undertakings/ Boards/ Autonomous Bodies under any scheme against sanctioned posts without any selection procedure, even on Contractual basis. The application of the Government Orders/ Circular instructions to the case of the petitioners having reference to their disengagement is by sheer abuse of power and by wrong application of these orders.

In the above fact situation, the writ petitions are allowed and the following directions are passed:

- i) By a writ of certiorari all the orders issued by the respondents-subordinate departmental authorities disengaging any of the petitioners, in application of Government Order No. 43-F of 2015 dated 17.03.2015, in any of the writ petitions shall stand quashed.
- ii) By a writ of Mandamus, the respondents are directed to continue the petitioners as Casual Labourers on need basis in terms of their engagement orders and be given the benefit which has accrued to them in terms of policy decision of the Government.
- iii) By a writ of Mandamus, the respondents are directed to release the unpaid wages in favour of the petitioners forthwith.
- iv) The directions supra shall favour only the petitioners whose engagement is made prior to issuance of Government Order supra.

CONSW No. 620/2016 in SWP no. 1213/2015

Since the writ petition, out of which the present petition has come into being, has been disposed of on the above terms, therefore, the instant contempt petition shall stand disposed of as settled.

SWP no. 521/2015

The writ petition, as taken note of earlier, is different than the rest of the writ petitions is, thus taken up separately. The petitioners seek direction in the name of respondents to allow them to perform their duties after having failed to join

pursuant to engagement orders issued in their favour. The Court does not see any merit in the writ petition, however, since there is no representation on behalf of petitioners, the writ petition along with connected MP is dismissed in default and for non-prosecution.

Copy of the judgment be kept on each file.