

(2022) 05 J&K CK 0040
In the Jammu And Kashmir High Court
Case No : LPASW No. 29 Of 2019

Abdul Majid Magray

APPELLANT

Vs

Sate Of J&K And Ors

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Jammu And Kashmir Civil Services (Special Provisions) Act, 2010 — Section 3, 5

Citation : (2022) 05 J&K CK 0040

Hon'ble Judges : Pankaj Mithal, CJ; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : Bhat Fayaz Ahmad, Irfan Andleeb

Final Decision : Dismissed

Judgement

1. Heard Sh. Bhat Fayaz, learned counsel for the petitioner-appellant and Sh. Irfan Andleeb, learned Dy.AG appearing for the respondents.
2. The present appeal under clause 12 of the Letters Patent is directed against the judgment and order dated 20.02.2019, whereby the writ petition SWP No. 212/2019 of the petitioner-appellant titled "Abdul Majid Magray Vs. State of JK and Others" has been dismissed.
3. The petitioner-appellant by the medium of aforesaid writ petition claimed regularization of his services as a Gardner w.e.f. 19.06.2008 instead of 26.12.2017.
4. The petitioner-appellant came to be appointed as a Gardner on 19.06.2001 on ad-hoc basis. He continuously worked for more than 7 years and, as such, became eligible for regularization in view of J&K Civil Services (Special Provisions) Act, 2010. The petitioner-appellant, as such, was regularized as Gardner vide Government order dated 26.12.2017.
5. The petitioner-appellant alleges that he is entitled to be regularized from the date when he completed 7 years of continuous service on ad-hoc basis as a

Gardner i.e., with effect from 19.06.2008. The writ court has not accepted the plea of the petitioner-appellant for the reason that the aforesaid Act provides for regularization from the date of order of regularization.

6. Learned counsel for the petitioner-appellant has relied upon two decision of this Court, the first being a Division Bench decision dated 19.05.2015 passed in SWP No. 624/2014 wherein the benefit of regularization to the petitioner therein has been accorded under the aforesaid Act from the date of completion of 7 years of service. The other is the decision of the another Division Bench dated 27.11.2020 passed in LPASW No. 39/2019 : State of JK and Ors Vs. Ulfat Ara and Others which has been rendered relying upon the earlier judgment mentioned above and following the same has dismissed the appeal of the State.

7. It is settled law that no person can claim regularization in service until and unless the regularization is provided under any statute, rule or Government order. The petitioner-appellant is claiming regularization in the light of the above Act. The said Act vide Section 5 provides for regularization of ad-hoc or contractual or consolidated appointees on fulfillment of certain conditions, inter alia, completion of 7 years of service on the appointed date. The first proviso to Section 5 of the aforesaid Act clearly lays down that the regularization of eligible ad-hoc or contractual or consolidated appointees under the Act shall have effect only from the date of regularization, irrespective of the fact that appointees have completed more than 7 years of service on the appointed date or thereafter but before such regularization.

8. The aforesaid proviso is reproduced herein below for the sake of convenience: -

"5. Regularization of ad hoc or contractual or consolidated appointees- Notwithstanding anything to the contrary contained in any law for the time being in force or any judgment or order of any Court or tribunal, the ad hoc or contractual or consolidated appointees referred to in Section 3 shall be regularized on fulfillment of the following conditions, namely: -

(i) That he has been appointed against a clear vacancy or post;

(ii) That he continues as such on the appointed day;

(iii) That he possessed the requisite qualification and eligibility for the post on the date of his initial appointment on ad hoc or contractual or consolidated basis as prescribed under the recruitment rules governing the service or post;

(iv) That no disciplinary or criminal proceedings are pending against him on the appointment day; and

(v) That he has completed seven years of service as such on the appointed day:

Provided that the regularization of the eligible ad hoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before

such regularization:

Provided further that any ad hoc or contractual or consolidated appointee who has not completed seven years service on the appointed day shall continue as such till completion of seven years and shall thereafter be entitled to regularization under this Act.”

9. In view of the unequivocal language employed in the aforesaid proviso, it is implicit that the regularization has to be from the date of regularization irrespective of the person having completed 7 years of service earlier. There is no other statutory rule or provision which may provide for regularization of the services of the petitioner-appellant from some earlier date than the date of regularization. The regularization, as such, cannot be ordered from any earlier date other than the date of the regularization.

10. In the case of Mrs. Rabia Shah v. State of J&K and others (SWP No.624/2014), the controversy was simply with regard to the regularization of the services of the petitioner therein and the Court without noticing the proviso to Section 5 of the aforesaid Act held that the petitioner is entitled for regularization on completion of 7 years of service. There was no controversy before the Division Bench as to the date of regularization of the petitioner therein. The said Division Bench has not considered about the effective date of entitlement of regularisation of the petitioner therein and, as such, is not a good precedent to be followed in a case where the controversy is regarding the effective date of regularization of the candidate. Since the other decision relied upon by the learned counsel for the petitioner-appellant is based upon the above decision of Mrs. Rabia Shah (supra), we are of the opinion that the same will also not be of any assistance to the petitioner-appellant rather while referring to the Mrs. Rabia Shah’s, case it clearly mentions that the regularization of appointees under the Act shall have effect only from the date of such regularization irrespective of the fact that such appointees may have completed 7 years or more service on the appointed date or thereafter but before regularization.

11. In view of the aforesaid facts and circumstances, we are of the opinion that there is no error or illegality in the judgment and the order passed by the writ court and the petitioner-appellant is not entitled to regularization under the Act from any earlier date other than the date of regularization.

12. In the aforesaid background, the appeal is dismissed.