

(2022) 11 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1040, 1154, 1374 Of 2016, Civil
Miscellaneous No. 3824 Of 2022, CCP(S) No.189 Of 2021, CPSW
No.949 Of 2017

Abdul Rashid Wani & Ors

APPELLANT

Vs

State Of J&K & Others

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Citation : (2022) 11 J&K CK 0007

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Saima Mehboob, Lone Altaf, Raees-Ud-Din Ganai

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) Initially the petitioners filed writ petition bearing SWP No.1040/2016, whereby they sought a direction upon respondents to release legitimately earned wages in their favour with a further direction that their services should be regularized and that they should not be disengaged. When the respondents filed their response to the writ petition, it came to the knowledge of the petitioners that their services have been disengaged. The petitioners filed two more petitions i.e. SWP No.1154/2016 and 1374/2016 challenging their order of disengagement.

2) Briefly stated, the case of the petitioners is that in the year 2014 Government order No.585-HME of 2014 dated 17.10.2014 was issued by the Government of Jammu and Kashmir whereby a number of sub centres in the Health Department were upgraded/created and at the same time a number of posts were created in the said Department. The aforesaid Government Order also provided for hiring of 1284 casual workers to work as Nursing Orderlies for the newly upgraded/opened health institutions on the notified minimum wages.

3) The petitioners came to be engaged as casual workers in the respondent

Department in the year 2014/2015 vide various engagement orders issued by respondent No.3-Chief Medical Officer, Ganderbal. It is contended by the petitioners that pursuant to the engagement orders, they performed the duties assigned to them in a sincere manner. According to the petitioners, it is the constitutional obligation of the respondents to regularize their services as they have been continuously working as casual workers. It is further contended by the petitioners that the respondents without any reason stopped the wages of the petitioners and at the same time they extracted work from them.

4) As already noted, in the reply filed by the respondents to the first writ petition, it was claimed that the services of the petitioners have been disengaged in terms of order No.CMO/GBL/Casual Worker/569-75 dated 14.05.2016. While challenging the said action of the respondents by subsequent two writ petitions, the petitioners have contended that the said order has been passed in complete disregard of Cabinet decision and the Government Order dated 17.10.2014. It has been further contended that the impugned order of disengagement has been passed on the basis of circular dated 17.03.2015 issued by the Finance Department but the same relates to ban on engagement of casual workers and it does not cover the cases of those casual workers who have already been engaged prior to the coming into force of the said circular. It has also been contended that the petitioners had a legitimate expectation that their services/engagement would be continued and that their services will be regularized but the action of the respondents has resulted in violation of their rights.

5) The writ petitions have been contested by the respondents by filing replies thereto. In their reply, it is contended by the respondents that the engagement of petitioners was subject to release/allocation of funds by the Government and when the funds were not released by the Government, their engagement was cancelled. It has been further submitted that the Chief Medical Officer, Ganderbal, had no authority to engage the services of the petitioners without the authorization from the competent authority and it is only the Chief Medical Officer, Ganderbal, in whole of the Kashmir Division who has engaged the services of casual workers without any authority. It is also contended that the Chief Medical Officer, Ganderbal, had engaged the services of the petitioners without following any procedure/norms and for this reason their engagement had to be cancelled.

6) I have heard learned counsel for the parties and perused the record of the case.

7) The admitted facts which emerge from the pleadings of the parties and the documents on record are that the petitioners have been engaged as casual workers in terms of various orders issued by Chief Medical Officer, Ganderbal. The engagement orders bear reference to Government Order Nos.584-HME of 2014 and 585-HME of 2014 dated 17.10.2014, whereby sub centres of the Health Department were upgraded/established. As per the aforesaid Government Orders, besides creation of a number of posts, a provision was made for hiring of

1284 casual workers to work as Nursing Orderlies. It seems that engagement of the petitioners has been made by respondent Chief Medical Officer, Ganderbal, pursuant to the aforesaid clause of the Government Order.

8) A perusal of the engagement orders issued in favour of the petitioners reveals that the same have been issued on the basis of nominations of local MLAs and Ministers, meaning thereby that the contention of the respondents that no procedure/norms were followed while engaging the services of the petitioners appears to be well-founded. Engagement of the petitioners on the basis of recommendation of MLAs or Ministers without inviting applications or devising any process that would give any semblance of fairness and transparency in the matter of selection of these casual employees makes the whole exercise of their engagement illegal and arbitrary. The prayer of the petitioners that they are entitled to regularization of their services is grossly misplaced for the reason that if such a relief is granted, then their backdoor engagement created by the Chief Medical Officer, Ganderbal, would become an illegal channel of appointment and consequently it would amount to violation of the constitutional mandate.

9) That takes us to the question as to whether disengagement of services of the petitioners is not in accordance with law. For the said purpose, we need to have a look at the conditions of engagement of the petitioners as contained in their engagement orders. All the engagement orders issued in favour of the petitioners specifically provide that their engagement is subject to the allotment funds under the scheme. It has been specifically stated by the respondents in their reply that the Government has stopped allocation of funds for the scheme. Therefore, in the absence of the requisite funds, the petitioners' engagement as casual workers could not be continued due to non-allocation of funds by the Government for payment of their wages. In these circumstances, there was no option left for the respondents but to disengage the services of the petitioners.

10) Apart from the above, the respondents have specifically stated in the disengagement order dated 14.05.2016 that the department does not require the services of the petitioners. It is a settled law that the services of casual/seasonal labourers are need based and once an employer does not need the services of a seasonal/casual labourer, it cannot be forced to continue with their engagement. Therefore, the petitioners cannot claim continuation of their engagement with the respondents, more so because their services have been disengaged by the respondents after serving only for about one and a half year with the respondents. It is not a case where the petitioners have put in long years of service as casual labourers with the respondents that would give rise to legitimate expectation of continuation of their engagement or regularization of their services but it is a case where the petitioners have only put in a few months of service with the respondents and the finances regarding the scheme under which they were engaged have been stopped. Thus, their engagement as casual workers cannot be continued once the respondents have decided that their services are not needed.

11) For the foregoing reasons, I do not find any merit in these petitions. The same are, accordingly, dismissed. However, it is made clear that the respondents shall ensure that the legitimately earned wages for the period for which the petitioners have actually worked, either on the basis of interim orders passed by this Court or otherwise, are released in their favour.

CCP(S) No.189/2021

CPSW No.949/2017

Since the writ petitions, out of which the instant contempt petitions arise, stand dismissed, therefore, the contempt petitions do not survive for further consideration. The same are, accordingly, dismissed.