

(1999) 08 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 4607/96

Ab.Raheem Reshi

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994 — Rule 4, 5

Citation : (1999) SriLJ 488 : (1999) 2 SriLJ 488

Hon'ble Judges : G.L.Raina, J

Bench : Single Bench

Advocate : M.H.Attar, G.R.Tantray, Advocates appearing for the Parties

Judgement

1. The petitioner got engaged on 1st of December 1988 as a casual worker on daily wage basis. This was done by the competent authority of the

department of public works, District Budgam. The District Superintending Engineer, PWD, District Budgam directed, vide his No. 746566 dated

2891988, the petitioner to work as a works supervisor on daily wage basis.

2. The Petitioner claims that vide the aforesaid Superintending Engineer's communication he got elevated to the post, on which he has been

working, in the PHE Division at Budgam, Kashmir. Vide the regularisation Rules of 1994, nomenclature as J and K Daily Rated Workers/Work

Charged Employees (Regularisation) Rules 1994 issued under SRO 64/94, the petitioner having continuously worked for a period of seven years

as such daily worker got regularised in the grade of Rs. 750940. This regularisation took effect from 141994. The petitioner has the grievance that

having been put to work as the works supervisor he was entitled, after the regularisation to be designated as such works supervisor and was

further entitled to be accorded the pay scale of the work supervisor, in the grade of Rs. 9401500. Instead of being designated as such

workssupervisor he got labelled as a helper. He made representations for the charge of his designation and for being allowed the grade of works

supervisor but to no results. Claim to the grade of Rs. 9501500 is based on the plank that other works supervisothers in the department are paid

salary in that grade so on the principle of equal pay for equal work, he is entitled to that grade.

3. It is on the aforesaid pleas that the petitioner seeks the writ of mandamus so as to command the respondents to designate him as the works

supervisor and to release the first grade of pay of works supervisor that is Rs. 9501500 in his favour with effect from the date of his regularisation

that is 141994.

4. After the admission of the petition the respondents were afforded reasonable opportunity to file the reply affidavit but as does often happen, the

reasons whereof need not be commented upon him, the reply affidavit has not been filed and the result is that the petition has come up for final

hearing, without any reply to the pleas advanced in the writ petition which thus assume significance.

5. The matter of fact is that somewhere in the year 1988 the petitioner was engaged on daily wage basis as a casual labour/coolie. Annexure PI to

the petition makes the mention that the petitioner had been working as a casual coolie on daily wage basis. While working as such casual worker

on daily wage basis the District Superintending Engineer adjusted him as the workssupervisor on daily wage basis. This was presumably done as

the petitioner has some technical knowhow for performing the job of Works Supervisor. Assuming that the Superintending Engineer has the

jurisdiction to make the appointment of a workssupervisor on daily wage basis yet the communication, annexure PI, would entitle the petitioner to

claim at the best, that he has been working from September 1988 on daily wage basis as such works supervisor.

6. The Regularisation Rules (SRO 64/ 94) required the bringing on the regular establishment of those daily wagers/work charged employees who

had been working as such daily wagers/work charged employees for a continuous period of seven years prior to 141994. The regularisation was

to be effected in the pay scale of Rs. 750940.

7. The Regularisation Rules define the casual labourer/worker as also the "daily rated worker". Rule 5 of these rules provided that all daily rated

workers who are on 31.4.1994 eligible under rule 4 for regularisation shall, with effect from 14.1.1994, be on the regular pay scale of class IV

employees in the grade of Rs. 750940. There is the proviso added to this Rule which is:

Provided that if any of the categories have higher pay scale of Rs. 7751025 such employee(s) shall be placed in the higher pay scale of Rs.

7751025, after completion of two years of service in the scale of Rs. 750940".

8. The bare reading of Rule 5 goes to show that the requirement for a daily rated worker/work charged employee to become eligible for

regularisation on the pay scale of class IV employees was the completion of seven years continuous period of working as such daily rated

worker/work charged employee. In order to claim the benefit of the proviso to Rule 5, it has further to be shown that the class IV employees in the

PHE department had at the relevant time the other category of the higher pay scale of Rs. 7751025.

9. It has to be noted that while issuing the SRO the Government had to create posts of class IV employees in various departments to bring on

regular establishment such workers as daily rated worker/work charged employees. It is not pleaded, much less established, that any of the

categories of class IV employees in the PHE department had at the relevant time the higher pay scale of Rs. 7751035. The benefit of regularisation

against that higher pay scale could not be conferred thus on the petitioner. Under Rule 5 the regularisation had to be against the posts in the pay

scale of Rs. 750940. The petitioner was regularised against the post on this pay scale but the claims, on the strength of annexure P2, the right to be

regularised on 'the grade of works supervisor which is said to be Rs. 9501500.

10. There are two snags to the claim projected. It is not firstly shown that the class IV posts created in lieu of the Regularisation Rules in the Public

Health Engineering Department had the higher pay scale of Rs. 7751025. The question of regularisation of the daily rated worker/work charged

employee in the department against the posts of pay scale of Rs. 7751025 could not, therefore, arise. It has to be in the second place noticed that

the adjustment as works supervisor on daily wage basis was not the elevation or promotion of the petitioner. He was a daily wager working on

casual basis. He was assigned the job of works supervisor on daily wage basis. This adjustment/assignment was not his promotion to that post.

Such an interpretation sought to be placed on this communication is misconceived. It has in this context to be noticed that it is not shown as to what

were the daily wages of a works supervisor or a coolie on the date annexure PI was issued by the Superintending Engineer. Probably the post of

work supervisors in the department was a substantive post carrying the pay scale beyond the grade of a classIV employee. Had it been

otherwise then SRO 64/94 would have taken note thereof and provided for regularisation of works supervisors, engaged on daily wage basis as

well'. Nonexistence of the provisions for regularisation of works supervisor, working on daily wage basis, in the said SRO goes to suggest that

such an engagement was not permissible prior to the date when the regularisation of daily wagers was to take effect.

11. By no amount of reasoning can annexure PI be, therefore, labelled as an order of promotion/elevation of the petitioner from the engagement of

daily wage based worker to the post of works supervisor.

12. To say, at the cost of repetition, the SRO in reference provides in Rule 5 that if any category of employees in the PHE department at the level

of classIV had the higher pay scale of Rs. 7751025 then alone could the benefit of the proviso be considered in favour of the petitioner. Absence

on such a category of pay scale at classIV level would not attract the application of the proviso in favour of the petitioner. It is not the case of the

petitioner that he has worked, after Regularisation for two years in the pay scale of Rs. 750940 so by the application of the proviso to the rule he is

entitled to be placed in the higher pay scale or Rs. 7751025. The claim to Regularisation on the post of works supervisor in the pay scale of Rs.

9501500 and that too with effect from 141994 is beyond the scope and ambit of the Regularisation Rules.

13. The daily rated worker/work charged employees can be under the Rules regularised against the posts carrying the pay scale of Rs. 750940.

Regularisation on any other post or pay scale in the absence of a higher pay scale of any of the categories of classIV employees, could not and

cannot arise. The Rules did not provide for Regularisation of works supervisor or any other worker engaged under whatsoever nomenclature,

against the posts carrying a higher pay scale than Rs. 750940. In the face of the rule position the claim to regularisation as a works supervisor and

that too in the pay scale of Rs. 9501500 is totally misconceived.

14. Recommendatory communications, as for example the endorsement of Assistant Executive Engineer, Annexure P2 or communication

Annexure P4 from Executive Engineer to be Superintending Engineer cannot become the basis for bending the Rules so as to confer the benefit of

regularisation on the petitioner on the Higher pay scale, as claimed. The petitioner who stands regularised as class IV employee is entitled to the pay

scale of Rs. 750940. He cannot be allowed to have a walkover so as to be designated as a works supervisor in the pay scale of Rs. 9501500.

The plank on which this claim is based is the superintending Engineer directions assigning him, on account of his technical knowhow, the job to

work as a works supervisor on daily wage basis. He was prior to this communication a daily wage worker, engaged on casual basis, and it was on

the recommendation of the Executive Engineer that the Superintending Engineer assigned him the job of works supervisors but on the daily

wage basis and not against any substantive post. This engagement could not and did not bring him on the regular establishment. The scheme of

regularisation issued under SRO 64 of 1994 does not envisage regularisation of any daily rated worker to a post in the pay scale of Rs. 9501500.

15. There is another aspect of the matter which calls for a mention.

16. The petitioner has laid claim to the grade of Rs. 9501500 on the ground that the other Works Supervisors working in the Department are

paid salary in that grade, so on the basis of principle of equal pay for equal work, he is entitled to be regularised in that grade.

17. It is not in the first place set out in the writ petition as to who are those Works Supervisors in the Department of the Public Works

Department who have been regularised in the claimed pay scale of Rs. 951500. It is not disclosed as to whether the other Works Supervisors

were regularly engaged/appointed directly in that grade or they were promoted. In the absence of the necessary particulars it cannot, in any off hand

manner be said that the petitioner is entitled to the same grade as is allowed in

favour of the regularly employed Works Supervisors.

18. It is to be mentioned in this context that the petitioner was not engaged/employed as Works Supervisor but while working as a daily wager, he

was directed to discharge the job of the Works Supervisor. It is thus not possible to countenance the argument that on the principle of equal pay

for equal work, the petitioner should be directed to be regularised as Works Supervisor in the pay scale of Rs.9501500.

19. The decision rendered in LPA NO. 225 of 1996 on 1481998 will in terms not be a precedence for this case as the bench while deciding that

LPA clearly made the mention that it be not taken as a precedence. Assuming that the decision in the LPA is a guideline to consider the tenability

of the prayer for direction for the claimed Regularisation yet it is in the facts and circumstances of this case not open to accept the contention that

the petitioner is entitled to be designated as Works Supervisor and entitled to be granted the grade of that post. This is so because his engagement

as such Works Supervisor was not in accordance with the rules of recruitment. If any daily rated/ work charged employee was in any situation

regularised as a Works Supervisor in the pay scale of Rs. 9501500, the same cannot be said to be in accordance with law. One wrong cannot

justify the issuance of a command to repeat the wrong in another case.

20. Even if it is accepted for a while that there are other persons who while working as Works Supervisor were regularised as such, yet the same

cannot be the basis to issue the command to the State to regularise the petitioner against the post of Works Supervisor in the pay scale of Rs.

9501500 as that direction will go against the mandate of SRO 64 of 1994. No mandamus can be issued to compel the exercise of executive

power in violation of or in derogation to the prescribed rules.

21. Again if any daily rated worker has been regularised as Works Supervisor under the Court's order, yet that cannot become the basis to make

a command for similar treatment to the petitioner. It is so because the petitioner has not identified or given particulars of those persons, who while

working as daily wagers discharged the duties of Works Supervisors and were regularised in the pay scale of Rs. 9501500.

22. There is no scope for the exercise of discretionary power to command the respondents to either designate the petitioner as a works supervisor

and/or to regularise him in the pay scale of Rs.9501500. The petition is liable to fail.
For the reasons said above, the petition is dismissed but without any order as to costs.