

(2020) 04 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : SWP No. 677 Of 2014, Civil Miscellaneous No. 946 Of 2014

Chaman Lal And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 22-04-2020

Acts Referred:

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

Citation : (2020) 04 J&K CK 0003

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Veenu Gupta, K.D.S. Kotwal

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. Through the medium of this writ petition, the petitioners are seeking to quash Order No.PHEJ/GE/04/E of 2014 dated 04.01.2014 issued by Chief Engineer, Public Health Engineering Department, Jammu, respondent No.2 herein, whereby the case of petitioners herein for regularization of their services came to be rejected. The petitioners, among other prayers, are also seeking a direction to the respondents to release their unpaid wages.

2. The facts in short, as averred in the writ petition, are that the petitioners, seventeen in number and belonging to District Kathua, came to be engaged as Daily Rated Labourers in Civil as well as Mechanical Divisions of PHE, Kathua between the period October 1994 to January 2000 and since then they have been discharging their duties, which has also been certified and authenticated by the respondents themselves in the year 2005 and also in the year 2010. It is averred that the petitioners during all these years made a number of representations to the respondents for regularization of their services and when nothing fruitful came out, they filed SWP No.143/2009. The said writ petition was filed by as many as 26 persons including the petitioners herein, which came to

be disposed of on 01.11.2013 with a direction to the respondents to accord consideration to the petitioners case for regularization in the light of averments made in the petition, annexure appended thereto and of course in accordance with rules/scheme in J&K Civil Services (Special Provisions) Act, 2010 governing the field. However, instead of regularizing the services of petitioners, respondent No.2 vide Order No.PHEJ/GE/04/E of 2014 dated 04.01.2014, impugned herein, rejected the claim of petitioners. Hence, the present writ petition.

3. Learned counsel appearing for petitioners argued that respondent No.2 did not consider the case of petitioners in an effective and bonafide manner nor respondent No.2 while passing the impugned order had taken into consideration that the petitioners have been working since the dates of their respective engagements without any break in service. Thus, the action of respondents is per se illegal and arbitrary. Learned counsel further argued that the State Government from time to time has framed various policies for regularization of adhoc/daily rated workers/casual labourers but the benefit of said policies has not been extended to the petitioners herein, more particularly when the petitioners have already rendered more than qualified service, thus are entitled for regularization of their services in terms of SRO 64 of 1994. Learned counsel further asserted that the respondents have also not paid the petitioners their legitimate wages.

4. Objections on behalf of respondents came to be filed on 09.07.2014 averring therein that as per the report submitted by the concerned Executive Engineer, the petitioners were engaged for a specific period and work. It is further averred that at present the petitioners are not working in the department and have left the department since 2003, 2004 and 2005 on their own. It is also averred that the wages in respect of petitioners were calculated on individual basis and were deposited before this Court in the form of cheque, as such the claim of petitioners do not sustain for any monetary benefit.

5. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the writ file.

6. A perusal of the writ file reveals that although the respondents have not disputed the engagement of petitioners as Daily Rated Labourers between the period October 1994 to January 2000, yet their stand is that they were engaged for a specific period and work and all of them have already left the department since the years 2003, 2004 and 2005 on their own. Even the petitioners have also failed to establish their claim or to produce on record anything which could substantiate that they were discharging their duties without any break even after the year 2005 to the date of filing the instant writ petition. Further, a perusal of impugned order reveals that notices were published by the concerned Executive Engineers in leading newspapers for verification and establishment of claim by the petitioners on 22.03.2013, 01.04.2013, 20.07.2013 and 27.07.2013 and only 12 petitioners were found to have genuine claim of work for the specific period of time. The details of such petitioners have also been given in the impugned order

which reveals that none of the petitioners had worked after March 2005. Further, it is also not the stand of petitioners that they were engaged/appointed against a clear vacancy or post by the competent authority.

7. Further, it would be appropriate to reproduce Section 5 of J&K Civil Services (Special Provisions) Act, 2010 hereunder:

"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 appointed 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."

8. Since the petitioners have failed to establish that they were regularly discharging their duties without any break from the dates of their respective engagements to the date of filing of the present writ petition on 10.03.2014 and as per the clear stand of respondents that after inquiry it came to fore that the petitioners were engaged only for a specific period and work and all of them have left the department on their own before April 2005, as such neither the petitioners fall within the ambit of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 nor SRO 64 of 1994 applies in the case of petitioners because as per their own stand, all of them came to be engaged after September 1994, whereas as per SRO 64 of 1994 the incumbent must be engaged as Daily Wager prior to 31st March, 1994. Further, as per J&K Civil Services (Special Provisions) Act, 2010, the petitioners were not engaged/appointed against a clear vacancy or post nor they were found to be continuing as such on the date

of commencement of this Act.

9. Viewed thus, I do not find any merit in the writ petition and the same is, accordingly, dismissed along with connected CM. Interim direction shall stand vacated forthwith. However, respondents are directed to release the unpaid wages, if any due in respect of any of the petitioners, within a period of four weeks from today. Registrar (Judicial) is also directed to release the wages in favour of petitioners as per their entitlement after proper verification and identification, if the same have been deposited in the Registry of this Court in the form of cheque, as averred in paragraph-3 of the objections filed by the respondents, and till date the same have not been released in favour of eligible petitioners. File of SWP No.143/2009 be also returned in the Record Section of the Registry.