

(2006) 04 J&K CK 0017
In the Jammu And Kashmir High Court

Gh. Nabi Dar

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Citation : (2007) 1 JKJ 483

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—Claiming to have been appointed as Teacher in Boys Middle School, Watrad, Budgam for one month in leave

arrangement of one Garid Sahani and thereafter allowed to continue in the post as the original incumbent did not report back for duties, under

various orders of extension passed in his favour from time to time, the latest being that of 16.08.1988, the petitioner maintains that he requested

respondents to regularize his services due to continued absence of the original incumbent which was not done whereupon he instituted a writ

petition being SWP No. 1272/1988 which was finally disposal of on 14.10.1998 with an observation that respondents may treat the writ petition

as a representation and while taking note of relevant rules and policy regarding regularization may take a decision in the matter within three months

under SRO 64 of 1994, which was, however, not done become the concerned Administrative Department found that the case was not covered by

the said SRO, and under communication dated 13.10.2000 Under Secretary of concerned Administrative Department while saying so asked

Director, School Education to pass a speaking order in the matter, which prompted petitioner to institute another writ petition being SWP No.

1762/2000 whereunder the Court directed respondents to allow petitioner to continue in the job which was, however, later withdrawn by petitioner

in view of order dated 29.11.2000 whereunder respondent sought to disengage petitioner and which is accordingly challenged in this writ petition

on the ground that since the original incumbent had not returned back to duties even after lapse of more than five years he would be deemed to

have been out of service in terms of Rules 113 of Civil Service Regulations, and petitioner as an adhoc employee would automatically be entitled

to regularization against the post in terms of Government order No. 1220-GAD of 1989 dated 11.09.1989. Impugning the order of his

disengagement dated 29.11.2000 as such the petitioner seeks its quashment alongwith regularization in the post with retrospective effect under

Government order No. 1220-GAD aforesaid.

2. In their reply respondents have among other things, stated that the petitioner was engaged as leave substitute for a period of one month by Tehsil

Education Officer, Budgam in a leave arrangement without any competence, and not by any authority, and as such no right of regularization vested

in him, particularly because the vacancy against which he was appointed was a leave vacancy. It is further pleaded that the post of teacher is a

selection post required to be filled by direct recruitment on the recommendations of Service Selection Board and the method of recruitment cannot

be diluted for sake of petitioner who as a matter of fact was never appointed on adhoc basis and as such cannot claim benefit of any of the

Government orders relating to adhoc appointments. Denying that respondent-department has ever regularized any case identical to the present one

respondents have also maintained that the initial engagement of petitioner is dehorse the rules and as such he cannot claim any right on the post

thereunder much less the right to regularization as contended by him etc.

3. Rebutting the pleas taken by respondents in their counter affidavit the petitioner has in his rejoinder further pleaded that he has been working on

the post for more than two decades during which period his work and conduct has been found satisfactory by his superiors and his regularization

duly recommended by them and as such his discontinuation under the impugned order was not only unwarranted but extremely harsh to him etc.

During course of submissions counsel appearing for parties have reiterated their

contents with specific references to annexures appended therewith.

4. I have heard learned Counsel and considered the matter. That the petitioner was originally engaged by concerned Tehsil Education Officer,

Budgam under instructions of District Education Officer, Budgam conveyed to him vide No. 1938 of 1984 dated 28.06.1984 in leave arrangement

of one Garid Sahani and thereafter allowed to continue from time to time under various orders purporting to have been passed by Tehsil/District

Education Officers concerned the latest being No. Apptt/5906-07 dated 16.08.1988 purporting to have been passed by District Education

Officer, Budgam whereunder petitioner has been temporarily appointed as teacher in Boys Middle School, Watrad, Budgam in leave arrangement

of aforesaid Garid Sahani for a period of two months or till his regularization whichever is earlier with one day's break in between his last spell and

the one under said order. His continuation till date either under administrative or Court orders is not denied. It is only the nature of his engagement

as such which is in dispute with petitioner claiming it to be 'ad hoc' and respondents categorizing it as a mere leaving arrangement ordered

incompetently. In view of that conflict, the main consideration arising is as to whether or not the petitioner in view of different spells of his

engagement can be categorized as an ad hoc employee, and if so he would be entitled to the benefit of Government order No. 1220-GAD of 1989

dated 11.09.1989 etc. It would, however, be appropriate to mention that unlike the earlier writ petition SWP No. 1272/1988 disposed of as

aforesaid the claim of ad hoc employment has been pressed into service with consequential benefits for which support is sought to be derived from

a judgment of this Court passed in SWP No. 772/1995 in 1998 wherein while accepting the status of writ petition as ad hoc employee he has been

held entitled to benefit of Government order No. 1220-GAD of 1989 dated 11.09.1989. The petitioner solely relies on said judgment for

canvassing his contention.

5. Perusal of the copy of aforesaid judgment dated 01.06.1998 reveals that the petitioner therein had been appointed as teacher against leave

vacancy of one Swam Lata initially for two months which was later extended by different spells of one month/two months till 14.02.1987 when the

concerned Zonal Education Officer under District Education Officer's instructions

allowed petitioner to continue till rejoining of the original

incumbent against whose leave vacancy she had been appointed with one day's break after every 89 days, whereafter she was ousted from service

on 04.01.1989, against which she filed the writ petition wherein the question formulated by Court for consideration was almost similar to the one

arising presently; that is, whether petitioner in given circumstances was appointed on adhoc basis or otherwise. Considering this question the Bench

observed that:

Moreover, the letter dated 11.08.92 (supra) indicates that the petitioner continued to be appointed only for 89 days with a break of one day after

every spell of 89 days. This means that her appointment was on adhoc basis, though against a leave arrangement. Therefore, her case is squarely

covered under Govt. order No. 1220-GAD of 1989 dated 11.09.1989 because she was continuing in service in terms of para-1 of the said order.

Since the post became available subsequently she had acquired a right to be regularized against that post. It was, therefore, not an appointment

against leave arrangement simplicitor but appointment on adhoc basis against a clear vacancy, though absentee teacher holding a lien until

acceptance of her resignation. The petitioner is thus entitled to regularization in terms of Govt. order dated 11.09.1989 and the attempts made to

terminate her when the vacancy became available is against the spirit of said Govt. order.

6. Coming back to the case in hand, in addition to respective pleadings of petitioner in above quoted case as summarized above, and in order to

bring out the position obtaining in said case clearly, it would be appropriate to quote from the letter written by second respondent Director, School

Education to the concerned Administrative Department under his No. Estt-III/B-Writ/669 dated 15.12.1999 wherein he projected the status of

case in following terms:

Mr. Garid Sahani, Teacher, Middle School, Watrad has proceeded on leave on 4.8.1984 and the erstwhile District Education Officer, Budgam

appointed one Mr. Gulam Nabi Dar S/o Abdul Gani Dar R/o Harkara, Tehsil Budgam against the said leave arrangement for a period of 30 days.

Subsequently the Teacher extended his leave and the candidate too was allowed to continue against the said arrangement with usual breaks.

During the course the candidate, apprehending his termination, filed service Writ petition No. 1272/88 CMP No. 3194/88 in the Hon'ble High

Court at Srinagar praying for continuance against the said arrangement. The Hon'ble High Court in its preliminary orders dated 15.5.1988 directed

the respondents to allow the Teacher to continue against the post till original incumbent rejoins. In the process the Directorate issued circular

instructions to the subordinate offices to disengage all candidates engaged/working against such long leave vacancies. He too was terminated, but

his court orders, as mentioned above, did not allow the Department to disengage him and he was allowed to continue against the said arrangement.

The original incumbent namely Garid Sahani, Teacher did not report back to his duties after five years, so his lien was suspended in 6/1989 leaving

the post in lien free, against which the said candidate is still continuing as per court orders. The case was also referred to your office under this

office letter No. 16583 dated 8.2.1991 for regularization of his service, but nothing has been heard as yet.

Perusal of the aforesaid paragraph clearly brings out the similarity between present petitioner and the petitioner in Rita Sharma case quoted above

with almost striking similarity of circumstances as attending both. The circumstances in present case have also been brought out by the second

respondent in the impugned order of petitioner's termination being No. DSEK 2632 of 2000 dated 29.11.2000 in following terms:

Whereas, Mr. Gulam Nabi Dar S/o Abdul Gani Dar R/o Harkara Tehsil Budgam was appointed against a leave chance of Mr. Garid Sahani

teacher Middle School Watrad for a period of 30 days in 8/84.

Whereas, the original incumbent Garid Sahani, teacher Middle School, Watrad had extended his leave and the said candidates Gulam Nabi Dar

was allowed to continue against the said arrangement with usual breaks;

Whereas, the said candidate Mr. Gulam Nabi Dar during the course, apprehending his termination from the temporary arrangement, filed SWP

No. 1272/88 in the Hon'ble High Court prayed for continuance against the said arrangement;

Whereas, the Hon'ble High Court in its preliminary orders dated 15.5.1988 directed the respondents to allow the candidate Gulam Nabi Dar to

continue against the post till original incumbent rejoins;

XXX XXX XXX

Whereas, the court orders dated 15.5.1988 were complied with and the said candidate Gulam Nabi Dar was allowed to continue in the temporary

leave arrangement of Garid Sahani;

Whereas, the original incumbent namely Garid Sahani did not report back to his duties after five years, so his lien was suspended in 6/89 leaving

the post lien free against which the said candidate viz Gulam Nabi Dar is still continuing as per interim court orders dated 15.5.1988.

Whereas, the case was accordingly referred to the Admn. Department for consideration of regularization of the services of the candidate Gulam

Nabi Dar under this office letter No. Estt-III/B-Writ/669 dated 15.12.1999.

Whereas, the Admn. Department vide letter No. Edu/I/W/80/2000 dated 13.10.2000 has intimated that the case does not fall within the ambit of

SRO 64 of 1994 as the same is applicable to persons working on daily wage basis only;

Now, therefore, the representation of Gulam Nabi Dar is disposed of with the order that the services of the candidate Gulam Nabi Dar does not

merit regularization and accordingly he be disengaged forthwith. However, in compliance with the court order this order shall remain in abeyance

for four weeks with effect from issuance.

7. Thus, in terms not only facts and circumstances but the termination orders in both cases too, appear to be strikingly similar. Obviously,

therefore, the treatment that has been given to the petitioner in that case would automatically cover the instant case also with perhaps greater force

because instantly the petitioner has been in the job for 26 years now and his discontinuation at this juncture may well amount to a complete

devastating of his and his family's life.

8. Accordingly, the petition is disposed of with an observation that respondents may consider giving benefit of the Govt. order No. 1220-GAD of

1989 dated 11.09.1989, to petitioner and settle his case of regularization thereunder within three months from now. The order impugned herein

which was in its own terms kept in abeyance till challenged in this Court shall continue to remain so, till settlement of his case as said.

9. The petition stands accordingly disposed of alongwith connected CMPs.