
(2003) 04 J&K CK 0029
In the Jammu And Kashmir High Court
Case No : Review Petition No. 12 of 2001

Ghulam Ahmad Bhat and Another	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Civil Procedure Code, 1977 — Section 114

Citation : (2003) 2 JKJ 508

Hon'ble Judges : Y.P. Nargotra, J; Syed Bashir-ud-Din, J

Bench : Division Bench

Advocate : M.A. Qayoom, for the Appellant; M.A. Rathore, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-ud-Din, J.—The writ petition SWP No. 1534/98 filed by Review Petitioners was dismissed by the Ld. Single Judge on

24.8.1999 after observing that the Petitioners casual labourers are not covered by SRO 64 of 94 for regularization and that they have no right to

seek continuance as such casual labourers, though their continuance on need basis by the employer is permissible.

2. Against this Judgment, writ petitioners filed LPA 24 of 1998. The Division Bench after taking note of salient feature of the case and material

facts and circumstances having bearing on the question and on examination of provisions of the J&K Daily Rated Workers, Work Charged

Employees (Regulation) Rules, 1994 (SRO 64 of 1994) on discussion, held:

(i) that the above rules (SRO 64) apply only to Daily Rated Workers and Work Charged Employees and not to Casual labour/workers or

seasonal labour/workers, and

(ii) the above rules, do not confer any indefeasible right on a Daily Rated Worker to continue in engagement for 7 years to enable him to get a right

to be considered for regularisation.

3. This finding was in pare-materia with what was held in *Rabinder Paul v. Shri Mata Vaishno Devi Shrine Board* 1997 SLJ 131. The decisions

contrary to the above finding of the Division Bench by the Single Bench(s) in *Smt. Sudesh Kapoor v. State* 1995 SLJ 51 *Abdul Hamid Shah v. State* 1998 SLJ 20 *State v. Abdul Raheem Reshi* 1999 SLJ 488 *Bashir Ahmad Dhobi v. State* 1999 KLJ 273 and *Nasir Ahmad Dar v. State*

1999 SLJ 536 were set aside and held not laying good law.

On the aforesaid finding, the Division Bench found no merits in the appeal and, therefore, appeal was dismissed.

4. Against this judgment in the LPA, this Review Petition is filed. The counsel, M.A. Qayoom, contends that in the event of finding of Division

Bench, that the rules contained in SRO 64 of 94 are not applicable to the applicants, as they are casual labourers, their cases are covered by

Labour laws in as much as they are workmen having put in more than 240 days of service in one calendar year and thereby they cannot be

removed from service. He cites *Niadar and Anr. v. Delhi Administration and Anr.*, (1992) 4 SCC 112

5. The counsel contends next that the applicants after initial disengagement, are working as Casual Labourer with Sheep and Health Department

under the interim orders of the writ court and the High Court and, therefore, they have a right to continue and cannot be thrown out

notwithstanding the final decision in the writ petition. The counsel further contends that petitioner No. 2 has performed Election duty in 1996 on

assurance of the Government that he would be absorbed and regularised.

6. Mr. M.A. Rathore, AAG, contests the right to seek review by the petitioners. He submits that none of the grounds available for review exists in

this case. Petitioners cannot seek re-hearing of the case on merits. There is no error apparent on the face of record. On consideration of petitioners

case and the legal principles that are to apply in their case, not only the writ court but even the LPA Bench has recorded a finding against the

petitioners and rejected their case.

7. It is found that the petitioners have filed the writ petition seeking the relief of quashment of the orders of disengagement of petitioners/applicants

as Casual Labourers and a Mandamus for allowing petitioners to function as such till they complete the period of seven years and on completion of

seven years to regularize their service in terms of SRO 64 of 1994.

8. In fact the whole case of the petitioners is that having been engaged as casual labourers in respective belts, their casual engagement could not

have been put to an end by disengaging them, as is done by the impugned orders as they have a case of continuance for seven years and at the end

of this period for regularization under the provision of SRO 64 of 94 (Supra). There is no allegation or plea taken even in the writ petition that the

petitioners are workmen to be governed by the relevant labour laws. Even no argument there to has been as such advanced before the writ court

or before the LPA Bench. Review appears to be wholly an attempt by the petitioners to fish out a new case to continue as casual labourers,

notwithstanding, the ultimate decision of the court. The case pleaded and argued before the writ court and the Division Bench having been rejected

on merits by the court, petitioners cannot be permitted to reopen the case in the guise of Review proceedings to press the points which were not

taken up and argued, for whatever reason, at the time when the matter was heard and finally disposed of.

9. It is now well settled that an interim relief in this case in the nature of provisional direction to respondents to continue petitioners as Casual

Labourers is subject to final decision of the writ petition. Such an interim direction cannot confer any right or status on a litigant unless he succeeds

on merits and the court comes to the final conclusion that he has a right to the relief.

In N. Mohanan Vs. State of Kerala and Others, , while negating contention of regularization of provisional appointment based on an interim order

of court, the Apex court observed:--

It is then contended that even though the petitioner has no right to be appointed since he was appointed on the basis of the order of the Court

provisionally, the appointment already made should be allowed to be continued and should be regularized. The High Court has negated this

contention, and in our view rightly. The interim order is subject to result of

outcome of the final decision. If the petitioner is not successful in the final decision, the interim order would stand set aside. So appointment by interim order does not create any right nor the petitioner gets any right to regularization on that basis.

In State of U.P. and Others Vs. Raj Karan Singh, , the Supreme Court held:-

11. Thus, it is apparent that a daily wagger or casual worker against a particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularization in accordance with the rules....".

10. The ground of service rendered in elections of 1996 pressed in aid of prayed continuance and sought regularization has not been taken either in the pleadings or before the writ court or the Division Bench. Therefore, the court had no opportunity to examine the premise of the submission on

this count as to whether petitioner had any enforceable right on that score. It again appears to be an attempt to bolster the case of the review

petitioners to continue as such Casual labourers notwithstanding that the court has rejected their cases for continuance and regularization on merits.

11. Viewed from any angle, the Division Bench judgment in question given by the LPA Bench, does not suffer from any error apparent on face of

record. The whole attempt appears to get rid of the Division Bench order and to circumvent the operation of the court judgment. There cannot be

re-hearing of the case once the case is finally disposed of on merits resulting in rejection of the petitioners case. Under the guise of review in

absence of any ground much less good ground to warrant review, the matter cannot be reopened on projection of altogether a new case.

Petitioners are seeking re-hearing of the case which cannot be permitted. Notwithstanding sought re-hearing and the projection of the fresh case,

this review is beyond the scope of the Review proceedings for which no foundation and justification is laid on record.

12. In the above view of the matter, we dismiss the Review.