

(2001) 01 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : LPA No. 249 of 1998

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

Date of Decision : 12-01-2001

Acts Referred:

Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994 — Rule 2, 4, 7, 8, 9

Citation : (2001) 2 LLJ 1575

Hon'ble Judges : B.P. Saraf, C.J.; Bashir-Ud-Din, J

Bench : Division Bench

Advocate : M.A. Qayoom, for the Appellant; M. Amin, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, C.J.—This is an appeal under clause 12 of the Letters Patent against the order of learned Single Judge dated 24.8.1998 by

which the learned Single Judge dismissed the writ petition of the appellants-casual labourers seeking a direction to the respondents to allow them to

continue in service for a period of seven years to enable them to get their services regularised in terms of SRO 64 of 1994. The learned Single

Judge dismissed the writ petition at the admission stage itself as he was satisfied that the petitioners were not entitled to the relief sought for. The

learned Single Judge, however, made it clear that the order of rejection of the writ petition would not deprive the petitioners of their continuation on

need basis. Aggrieved by the dismissal of the writ petition in limine, the appellants have filed this Letters Patent Appeal.

2. The material facts of the case are as follows. Appellant No.1, Ghulam Ahmad Bhat, was engaged as casual labourer on the muster role by the

District Sheep Husbandry Officer, Budgam (respondent No.3) in the month of February, 1994. He continued to work as casual labourer on

muster role till 31st March 1995. Thereafter, he was engaged as casual labourer for watch and ward of departmental property (building) with

effect from 1st April, 1995 by the Director, Sheep Husbandry Department, Kashmir (respondent No.2). The District Sheep Husbandry Officer,

Budgam (respondent No.3) also engaged appellant No.2, Muhammad Sultan, as casual labourer on muster roll with effect from 15th July 1996 for

agricultural work. He continued to work as such casual labourer. On 1st April, 1998, the Director, Sheep Husbandry Department, Kashmir

(respondent No.2), by his order dated 1st April, 1998, accorded sanction to engagement of three casual labourers for watch and ward/office work

with effect from 1st January, 1997 till May, 1998 and one casual labourer for lighting of hard coke stoves with effect from 15th November, 1997

to 15th March, 1998. This sanction was, however, subject to the following conditions:

i) All rules and regulations be observed before making payment on muster roll.

ii) No order is issued on name.

iii) The labourers have no claim for permanent absorption.

iv) The labourers are disbanded after expiry of the sanction.

In terms of the above order, respondent No.3 issued order dated 3rd August, 1998 directing the Belt Officers, ISD Ompora, Bandipore and

Zoohama to disband the casual labourers engaged in their respective belts with immediate effect. The appellants challenged the above order that

had the effect of bringing their service as casual labourers to an end by filing writ petition before this Court. In the writ petition, the petitioners

(appellants herein) not only sought quashing of the above order, but a direction to the respondents to allow them to continue to work as casual

labourers for a period of 7 years to enable them to get the benefit of regularisation under the SRO 64 of 1994. As stated earlier, the learned Single

Judge dismissed the writ petition as in his opinion the petitioners were not entitled to any such direction under SRO 64 of 1994. Aggrieved by the

dismissal of their writ petition by the learned Single Judge, the writ petitioners have filed this appeal.

3. We have heard Mr. Qayoom, learned counsel for the appellants, who submits

that under SRO 64 of 1994, even persons engaged as casual labourers are to be allowed to work in that capacity for a period of seven years to enable them to avail of the benefit of regularisation of their services under the said SRO. The submission of learned counsel for the appellants, in other words, is that once a person is appointed as a casual labourer, SRO 64 of 1994 becomes applicable to him and in terms thereof has to be allowed to continue as a casual labourer for a period of seven years to enable him to get the benefit of regularisation of his services under the said SRO. In support of his contention, the learned counsel places reliance on the Single Bench decisions of this Court 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, Nasir Ahmad Dar v State 1999 SLJ 536 and Bashir Ahmad Dhobi v State 1999 KLJ 273.

4. We have considered the submission of learned counsel for the appellant. We have also carefully perused the SRO 64 dated 24th March, 1994.

By the said SRO the Government has framed rules called the "Jammu and Kashmir Daily Rated Workers Work Charged Employees

(Regularisation) Rules, 1994" ("Rules") to provide for regularisation of daily rated workers. These rules came into force with effect from 1st April

1994. Rule 4 of the rules provides for regularisation of the services of daily rated workers and work charged employees on fulfilment of the

conditions set out therein. One of the conditions is that he has completed seven years continuous period of working as daily rated worker or work

charged employee or partly as daily rated worker and partly as work charged employee. Rule 7 of the rules puts a restriction on the engagement of

daily rated employees or work charged employees after the commencement of the rules on 1st April 1994. Work charged posts can be created

only by the Administrative Department in consultation with the Finance and Planning Department. Rule 8 of the rules provides that the policy of

absorption of daily rated workers and work charged employees shall also apply to such of the existing daily rated workers and work charged

employees who may not have completed seven years on 31st March, 1994 but may complete the same by the end of subsequent financial years. It

provides that their absorption shall be considered in that financial year in accordance with those rules. The expressions "Daily Rated Worker" and

Work Charged Employee"" have been defined in clause (f) and (j) of rule 2 of the rules. The expression ""Casual Labour/Worker"" has also been

defined in clause (b) of rule 2 of the rules. ""Seasonal Labour/Worker has also been defined in clause (h). The definition of daily rated worker and

work charged employee who are entitled to the benefit of regularisation on fulfilment of the conditions set out in the above SRO are set out below:

2. Definitions: In these rules, unless the subject or context otherwise requires:

...

(f) 'Daily Rated Worker' means a person engaged on daily wage basis at the rates sanctioned by the Government from time to time.

(j) 'Work Charged Employees' means any person employed on a work charged establishment to do any skilled, unskilled, manual, supervisory or technical work.

The definition of casual labour worker and seasonal labour worker reads as below:

(b) 'Casual Labour/Worker' means a person who is engaged through an appointment order or otherwise on daily rated basis for rendering casual service to a Department.

(h) 'Seasonal Labour/Worker' means a person who is employed in any department for a defined season or period of a year.

Work Charged Establishment"" has been defined in clause (k) as follows:

(k) 'Work Charged Establishment' means such establishment as is employed upon the actual execution and distinct from the general supervision of

a specific work or of sub-works of a specific project or upon the subordinate supervision of departmental labour, stores and machinery in

connection with such a work or sub-works; provided that as an exception to the above, mistries and mates employed in the interest of Government

on the Technical supervision of contractors work and Khalasis attached to subordinates for assisting them on works will be treated as Work

Charged Establishment.

Rule 4 of the rules which deals with the eligibility of a daily rated worker or work charged employee for regularisation reads as follows:

4. Eligibility for Regularisation: - A Daily Rated Worker/Work Charged Employee shall be eligible for regularisation on fulfilment of the following

conditions; namely: -

(a) that he is a permanent resident of the State;

(b) that on the date his initial appointment his age was within the minimum and maximum age limit as prescribed for appointment in Government

Service;

(c) that he possesses the prescribed academic and/or technical qualification for the post against which he is required to be regularised;

Provided that in case of eligible Daily Rated Workers to be regularised against Class IV posts, relaxation of qualification and or age shall be

considered on merits by the concerned Administrative Department.

(d) That he is not a retiree from any State or Central Government service or any Local Body; Public Sector Undertaking or Autonomous Body in

or outside the State;

(e) That his work and conduct has remained satisfactory during the period he worked as Daily Rated Worker or Work Charged Employee and no

disciplinary proceedings are pending against him; and

(f) That he has completed seven years continuous period of working as Daily Rated Worker or Work Charged Employee or partly as Daily Rated

Worker and partly as Work Charged Employee.

Rules 5, 6 and 8, which deal with the regularisation of daily rated workers, read as follows:

5. Regularisation of Daily Rated Workers: - All the Daily Rated Workers who on 31.3.1994, are eligible under rule 4 for regularisation shall with

effect from 1.4.1994, be appointed on the regular pay scale of Class IV prescribed in the concerned department for the relevant category of posts

in the scale of Rs.750-940.

Provided that if any of the categories have higher pay scale of Rs.775-1025 such employee(s) shall be placed in the higher pay scale of Rs.775-

1025 after completion of 2 years of service in the scale of Rs.750-940.

6. Absorption of Work Charged Employee on Regular Temporary Establishment: - All the Work Charged Employees who, on 31.3.1994 fulfil all

the conditions as laid down in rule 4 shall be brought on regular temporary establishment with effect from 1.4.1994 in the corresponding pay scale:

Provided that if on absorption of the employee the available pay scale is lower, his pay shall be protected by creating post on regular establishment

with corresponding reduction of such work charged post, if no suitable vacancy is available.

8. Application of rules to existing Daily Rated Worker and Work Charged Employee: - The policy of absorption of Daily Rated Workers and

Work Charged Employees shall also apply to such of the existing Daily Rated Workers and Work Charged Employees who may not have

completed seven years on 31.3.1994 but may complete by the end of subsequent financial years and their absorption shall be considered in that

financial year in accordance with these rules

Rule 7 puts a restriction on the engagement of the daily rated employees or work charged employees with effect from the commencement of the

above Rules i.e. 1st April 1994. It reads as under:

7. Restriction on engagement of Daily Rated Workers/Work Charged Employees: - (1) With effect from the commencement of these Rules, no

field/subordinate officer shall have the power for engagement of a Daily Rated Worker or Work Charged Employee in the Department and the

existing delegation, if any, in this regard is withdrawn:

Provided that the Competent Authority may engage Casual Labour or Seasonal Labour in any of the Departments to be specified by Notification

from time to time by the Government and such Labour shall be on the Muster Roll for payment of wages and no engagement or appointment order

shall be issued.

(2) After the commencement of these rules the work charged posts shall be created only by the Administrative Departments in consultation with

the Finance and Planning Department.

Rule 9 provides for adjustment of a daily rated worker or work charged employee against vacancies occurring in the department where daily rated

workers are adjustable under the rules. It reads as under:

9. Miscellaneous: - (1) No Class IV vacancy occurring in any department where Daily Rated Workers or Work Charged Employees are

adjustable under these rules shall be available for direct recruitment till whole lot of such workers/employees is adjusted;

(2) If any retired person has been engaged as Daily Rated Worker, his/her service/engagement as such shall be terminated forthwith; (3) Formal

orders of regularisation of Daily Rated Worker and absorption of Work Charged Employee on regular temporary establishment shall be issued by

the concerned Head of the Department.

5. A plain reading of SRO 64, in particular sub-rule (3) of rule 1, makes it abundantly clear that it applies only to "daily rated workers/work

charged employees engaged in any government department". Daily rated worker has been defined to mean a person engaged on daily wage basis

at the rates sanctioned by the Government from time to time and a work charged employee has been defined to mean a person engaged on a work

charged establishment to do any skilled, unskilled, manual, supervisory or technical work. These two categories of employees obviously do not

include a casual labour/worker and a seasonal labour/worker within their ambit. That is also clear from the definition of "casual labour/worker" and

seasonal labour/worker" contained in clauses (b) and (h) of rule 2 of SRO 64. "Casual labour/worker" is a person who is engaged for rendering

casual service to a department. Similarly "seasonal labour/worker" is a person engaged in any department for a defined season or period of a year.

The fact that a casual labour is also engaged on daily rated basis will not make him a daily rated worker for the purpose of SRO 64 which deals

with the regularisation of the service of daily rated workers and work charged employees on fulfilment of the conditions set out in rules 4 and 5

thereof. It does not provide for regularisation of the services of casual workers or seasonal workers. That is also clear from rule 3 of the SRO that

provides for creation of posts for the purpose of regularisation of "daily rated workers or work charged employees". In no way SRO 64

contemplates regularisation of the services of casual workers or seasonal workers nor it could have done so because regularisation in case of such

workers is impossible in view of the nature of the work for which they are employed, viz., casual or seasonal. It is, therefore, impossible by any

process of interpretation to hold that the benefit of regularisation under that SRO 64 would be available to casual workers/ seasonal workers. We

find no basis or foundation for the submission of the learned counsel for the appellants that there is no difference between a casual labour/worker

and a daily rated worker for the purpose of regularisation under SRO 64. We find that the distinction is clear and obvious. We are, therefore, of

the clear opinion that SRO 64 applies only to daily rated workers and work charged employees and not to casual labour/workers or

seasonal/labour workers which have been separately defined in clauses (b) and (h) of Rule 2 of SRO 64. No other interpretation is possible.

6. Reliance of the learned counsel for the appellants on the Single Bench decision of this Court in *Nasir Ahmad Dar v State* 1999 SLJ 536, in our

opinion, is misplaced. In that case the finding of the court was that the nomenclature of the workmen, who were initially engaged on daily wages,

had been changed to casual labourers. The said judgment is not an authority for the proposition that daily rated worker as defined in SRO 64

includes casual worker. In any event, as stated above, we are of the clear opinion that SRO 64 is not applicable to casual labour/worker or a

seasonal labour/worker. No process of interpretation can bring these two categories of workers within the ambit of the said SRO by the court.

7. This conclusion of ours gets full support from Rule 7 of SRO 64 which puts a restriction on the engagement of daily rated workers/work

charged employees but provides for engagement of casual workers and seasonal workers by the competent authority in any department specified

by the Government from time to time. Every rule of SRO 64 categorically refers to daily rated workers or work charged employees or both. This

Court, by the process of interpretation or construction, cannot amend the SRO to bring casual labour/worker or seasonal labour/worker within the

definition of daily rated worker or work charged employee contrary to the clear provisions of the SRO.

8. The appellants in this case were engaged as casual workers for a defined period. That being so, SRO 64 is not applicable to them.

9. It may also be expedient to deal with the next contention of the learned counsel for the appellants that once a person is engaged as a daily rated

worker even for a specified period, under SRO 64, he gets a right of continuance in employment for a period of 7 years and consideration for

regularisation after completion of 7 years. The learned counsel submits that rule 8 of SRO 64 envisages continuation of daily rated workers and

work charged employees till regularisation of their services or completion of 7 years to make them eligible for regularisation. We have perused rule

8 of SRO 64. We do not find any such indication in the said rule. Rule 8 merely extends the benefit of the policy of absorption of daily rated

workers and worked charged employees who have completed seven years continued service on 31st March, 1964 to those employees of the above categories also who might not have completed 7 years service as on that date but might complete the same by the end of subsequent financial years and provides that their case for absorption shall be considered in that financial year in accordance with those rules. Rule 8 does not contemplate and cannot be construed to contemplate, that all those persons who were working as daily rated workers or work charged employees on the coming into force of SRO 64 will have to be allowed to continue in service till they complete 7 years of service to enable them to get the benefit of regularisation. Such an interpretation runs counter to the object, scheme and the clear provisions of SRO 64. Such an interpretation would convert an engagement of a person as daily rated worker even for a period of 89 days as a permanent appointment for a period of 7 years with a right to be considered for regularisation on the expiry of the said period. In our opinion, it is not possible to construe rule 8 in that manner by application of any principle of interpretation. Rule 8 is intended only to extend the benefit of regularisation to those existing daily rated workers who did not complete 7 years continuous service on 31.3.1994 but did so in subsequent financial years. It does not confer an 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.

10. We find that identical controversy came up for consideration before a Division Bench of this Court in *Rabinder Paul v Shri Mata Vaishnoo*

Devi Shrine Board 1997 SLJ 131. In that case also the contention of learned counsel for the appellant was that rule 8 provides that the existing

daily rated workers and work charged employees, who had not completed 7 years of service on 31.3.1994 to become eligible for regularisation,

were required to be continued till they would attain 7 years and would be regularised. The Division Bench of this Court repelled this contention. It

was held:

Rule 8 cannot be interpreted in a manner to lead to absurd results. It was intended only to make provision for accord of consideration for

regularisation even to those existing daily rated workers and work charged employees who had not completed '7 years continuous working' on

31.3.1994 but could do so in subsequent financial years. It would be doing violence to its provisions to suggest that such workers and employees

had acquired an indefeasible right to continue in engagement for 7 years or till their regularisation and resultantly could not be ousted or disengaged.

Any such interpretation of the provision would be illogical and clothe such workers with superior rights than the regular employees.

The court observed:

It is true that Rule 8 extends the benefits of the policy of absorption to those daily rated workers and work charged employees who had not

completed 7 years as on 31.3.1994 but may complete by the end of subsequent financial years. But, this benefit is available and accruable subject

to their continuity in engagement. If they remain in engagement for 7 years in subsequent financial years they would be eligible for consideration of

regularisation. But that cannot be stretched to mean that they would have to be continued in engagement necessarily till they could complete 7

years. If that were so, the daily rated workers would enjoy better security of tenure than the regular employees would. That could not have been

the intent and purpose of the provisions of rule 8. After all a daily rated worker is living by the day. He cannot be credited with any right to

continue to work against a post or for a specific term. If he carries on for 7 years, he would acquire a right of regularisation and absorption in a

regular service on completion of this period and where he falls short that is the end of the matter. In other words, the completion of 7 years is a

pre- condition and furnishes a basis for eligibility. Even this is conditioned by the requirements laid in Rule 8 of SRO 64 and even when a daily

rated worker would have completed '7 years of continuous working' he would still have to satisfy the other requirement to make the grade or face

rejection.

The controversy raised before us, in our opinion, stands concluded by the above decision of the Division Bench of this Court.

11. The learned counsel for the appellants relied on the decision of the Single Bench of this Court in Smt. Sudesh Kapoor v State of J&K 1995

SLJ 51 wherein it was held that by virtue of rule 8 of SRO 64, an employee is clothed with a right to continue till absorption. Reliance is also

placed on the decision of this Court in Abdul Hamid Shah v State 1998 SLJ 20

wherein also it was held that the intention of the rule making authority was to continue a daily rated worker or a work charged employee who was engaged on 31.3.1994. It was held that such a person had to be permitted to continue to work as such and absorbed after completion of 7 years of service. The above decision has also been relied in *Bashir Ahmad Dhobi v State of J&K* 1999 KLJ 273. The learned counsel also placed reliance on the decision of the learned Single Judge of this Court in *Nasir Ahmad Dar v State of J&K* (supra). These decisions, in our opinion, are not good law in view of the Division Bench decision in *Rabinder Paul v Shri Mata Vaishnoo Devi Shrine Board* (supra).

12. In the premises, we don't find any merit in this appeal. It is dismissed accordingly with no order as to costs. The interim order stands vacated.