

(2005) 06 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1636 Of 2002

Ghulam Hassan Bhat and others

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Citation : (2006) 3 JKJ 307 : (2005) SriLJ 681 : (2005) 2 SriLJ 681

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : N.H.Shah, L.A.Latief, Advocates appearing for the Parties

Judgement

1. Admit. With the consensus of learned counsel for the parties, the petition is taken up for final adjudication.

2. The petitioners are continuously working as Casual Labourers from last ten years. The petitioners have sought indulgence of this Court for

directing the respondents to, regularize their services in terms of SRO 64 of 1994, pay to the petitioners the minimum pay scale with all

consequential benefits and, continue the petitioners in service till their services are regularized.

The respondents have filed reply. It is profitable to reproduce para3 and 6 of the reply herein;

3. That in reply to para3 it is submitted that the petitioners were engaged causally and are presently continuing. The department requires labour on

need basis in various schemes from time to lime. It is further submitted that the petitioners are being paid on work progress basis. They have not

been engaged directly by the department but through mates. It is denied that the petitioners were paid against muster sheets or have continued

without break, as alleged in this paragraph. The list referred to in this para was submitted to the competent authority for their consideration as daily

wagers and not for purpose of regularization,

6. That in reply to para 6 it is submitted that the petitioners cannot seek benefit of regularization in context to SRO 64/94 as being engaged as casual

labourers and not at par with daily rated workers.

3. The moot point for consideration is, whether a casual labourer can seek benefit of Jammu and Kashmir Daily Rated Workers/Work charged

Employees (Regularization) rules, 1994. hereinafter referred to as Rules?

4. In order to thrash out this point, it is profitable to reproduce subrule (3) of Rule 1 of SRO 64 herein;

Rule 1(3) They shall apply to the daily rated workers/ work charged Employees engaged in any Government Department.

5. While going through this Rule, it is crystal clear that SRO 64 is applicable only to the daily rated workers/ work charged employees. The casual

labourer/ worker is not included in this rule.

The definition of daily rated worker as given in Rule 2(f) reads as under;

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

The definition of work charged employees' is given in subrule (j) of Rule 2, which reads as under;

Work charged employees"" means any person employed on a work charged establishment to do any skilled, unskilled, manual, supervisory or

technical work.

While going through the said definitions, one comes to inescapable conclusion that casual labourer is not included in both these definitions.

It is worthwhile to mention herein that the definition of casual labourer/ worker is also given in the said Rules and it is profitable to reproduce

subrule (b) of Rule 2 herein;

"Casual labour/worker"" means a person who is engaged through an appointment order or otherwise on daily rated basis for rendering casual

services to a Department.

While going through this definition, the casual labourer/ worker cannot be termed as a daily rated or work charge employee. A casual

labourer/worker is engaged for rendering casual services to the department. The casual labourer/ worker cannot be termed as daily rated worker

or work charged employee for the reasons that he is also engaged on daily rated basis.

6. SRO 64 of 1994 deals with the regularization of the services of daily rated worker and work charged employees on the fulfillment of the

conditions set out in rule 4 and 5 of the said Rules. It is profitable to reproduce Rule 4 and 5 herein;

'Rule 4. Eligibility for Regularization: A daily rated worker/work charged employee shall be eligible for regularization on fulfillment of the following conditions; namely:

a. that he is a permanent resident of the state;

b. that on the date of 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 regularized: provided

that in case³ of eligible daily rated workers to be regularized 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 retiree from any slate 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. Rule 5. Regularization of daily rated workers: All the daily rated workers who on 31.3.1994, are

eligible under rule 4 for regularization shall with effect from 141994, be appointed on the regular pay scale of class iv category of posts in the scale

of Rs. 750940;

Provided that if any of the categories have higher pay scale of Rs. 7751025, such

employee(s) shall be placed 2 years of service in the scale of Rs.

750940.

7. While going through these Rules, the said rules are only applicable to the daily rated worker and work charged employees. If a daily rated

worker or a casual labourer or a seasoned labourer would have been treated as a one category, then why the rules have made applicable only to

dailyrated worker/work charged labourer despite of the fact that the Rules contain the definitions of all the said classes.

8. The Rules are not applicable lo the casual labourer or seasoned labourer. Thus the writ petition merits dismissal.

9. Learned counsel for the petitioner referred a judgment passed by this Court in the case titled as Nissar Ahmad Vs. State, reported in 1999 SLJ

536, which stands overruled by the Division Bench of this Court in case Ghulam Ahmad Bhat Vs. State of J and K and others, reported in 2001

SLJ 72.

10. In the given circumstances of the case, the writ petition is dismissed along with all CMPs. Interim direction, if any. shall stand vacated.