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(2021) 10 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 417 Of 2017

Ghulam Hassan Najar & Ors — APPELLANT

Vs

State Of J&K & Ors — RESPONDENT

Date of Decision : 11-10-2021

Acts Referred:

Citation : (2021) 10 J&K CK 0015

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Tasaduq H. Khawja, Asif Padroo

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. Petitioners, who are working as Helpers in J&K Lakes & Waterways Development Authority, Srinagar (hereinafter referred to as LAWDA), have filed the instant writ petition seeking a direction upon the respondents to induct them in regular hierarchy of the LAWDA as per their qualification and job profile. The petitioners have also sought a direction upon the respondents to formulate promotion policy so that the avenues of promotion are created for them with a further direction that the respondents should not make any promotion from Class IV posts till the petitioners are inducted in regular hierarchy in terms of Government Order No.257-F of 2008 dated 03.09.2008.

2. It is the case of petitioners that they were initially engaged on daily wage basis in Urban Engineering Environment Department of Government of Jammu and Kashmir in the year 1997. With the creation of LAWDA, the petitioners were transferred to the establishment of the LAWDA. In terms of SRO 64 of 1994, the petitioners came to be regularized as Helpers from time to time with effect from 01.04.1995 to 01.04.2001 on completion of seven years of service on daily wage basis. According to the petitioners, the respondents were supposed to adjust the regularised Helpers against the regular posts available in the organizational

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hierarchy of LAWDA so as to offer them avenues of promotion to higher posts available in LAWDA. However, the same was not done by the respondents.

3. It is further averred that Government issued order No.257-F of 2008 dated 03.09.2008, which provided for induction of existing posts of Helpers in respective organizational hierarchies and their consequent re-designation with suitable/appropriate work assignments.

This, according to the petitioners, was done so that Helpers are considered for promotion in due course.

4. It is the grievance of the petitioners that despite issuance of Government Order No.257-F of 2008 dated 03.09.2008, the respondents have failed to induct the petitioners against the posts available in the organizational hierarchy whereas similarly situated persons in other departments of the Government have been extended the benefit of induction into hierarchy of respective departments. According to the petitioners they are well qualified and are discharging clerical and other supervisory functions in different offices of LAWDA for last several decades but inaction on the part of respondents has created stagnation and frustration amongst them.

5. Respondents No.2 and 3 have filed their reply to the writ petition. In their reply, they have admitted the factual aspects projected by the writ petitioners, inasmuch as it has been admitted that the petitioners were initially appointed on daily wage basis, whereafter they were regularized as Helpers in LAWDA by applying SRO 64 of 1994 to their cases. According to the respondents No.2 and 3, the cases of petitioners for their induction into regular hierarchy of LAWDA has been taken up with the Government so that benefit in terms of Government Order No.257-F of 2008 is also extended to the petitioners but final decision has not been taken by the Government in this regard. It is averred in the reply that the respondents No.2 and 3 have taken up the matter with respondent No.1 in terms of communication No.LDA-726/2185-86 dated 19.07.2017 and they are pursuing the matter vigorously with the said respondent.

6. In the face of the response of respondents No.2 and

3, this Court vide order dated 28.02.2018 directed respondent No.1 to file a status report as regards the steps taken by it in pursuance of communication dated 19.07.2017. Accordingly, status report dated 20th of March, 2018, came to be filed by respondent No.1. In the status report, it has been conveyed that a committee has been constituted in terms of Government Order No.212-HUD of 2017 dated 16.10.2017 to finalize formation of recruitment rules of LAWDA. According to the status report, several meetings of the Committee have taken place and Draft Recruitment Rules shall be placed before the competent authority after seeking prior approval of Law Department whereafter necessary notification shall be issued.

7. I have heard learned counsel for the parties and perused the record.

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8. The facts forming basis of this writ petition are not in dispute. The petitioners, after their initial engagement as daily wagers, have been regularized as Helpers on different dates by applying SRO 64 of 1994 to their cases. Thus, it is an admitted case of the respondents that the LAWDA has adopted the policy of regularization of daily rated workers notified by the Government in terms of SRO 64 of 1994.

9. As per the policy notified vide SRO 64 of 1994, all daily rated workers who on 31st of March, 1994, were eligible for regularization in terms of said SRO were to be appointed on regular pay scale of Class IV in the concerned department for the relevant category of posts. The SRO further provide that no Class IV vacancy occurring in any department where daily rated workers are adjustable shall be available for direct recruitment till the whole lot of such workers is adjusted. Thus, it was made clear that daily rated workers whose services were regularized as Helpers in a particular department would be adjusted against the vacancies of Class IV employees and till all these regularized Helpers are adjusted against these Class IV posts, no recruitment to Class IV posts was to be made in a particular department. The idea was to induct the regularized Helpers in the cadre of a particular department so that in future, they would have the avenues of promotion as per the Recruitment Rules of that particular service.

10. It seems that pursuant to the implementation of policy notified vide SRO 64 of 1994, temporary posts were created over and above the normal strength of the departments with the aim to facilitate regularization of daily rated workers and it was expected that with the passage of time, number of these posts will diminish as the regularized Helpers would get absorbed in the regular cadre of the service. However, the same did not happen even after the lapse of 14 years as a large number of Helpers could not be inducted in the regular hierarchy of their respective departments. This compelled the Government to issue Government Order No.257-F of 2008 dated 03.09.2008. Taking note of the aforesaid situation. The aforesaid order provided as under:

"Now, therefore, it is hereby ordered that the induction of the existing posts of 'Helpers' in their respective organizational hierarchies and their work assignment shall be authorized by the Finance Department on a case-by-case basis on the recommendations of the Administrative Departments. As a sequel to this, the concerned Administrative Departments shall make necessary amendments in the relevant recruitment rules, if so required, in consultation with ARI & Trainings Department and Law Department.

11. It seems that pursuant to the aforesaid Government Order, respondent LAWDA took steps to consider the cases of the petitioners for their absorption in regular cadre of the Authority and in this regard, they have approached the respondent No.1, the Government, from time to time. Petitioners have placed on record copy of the minutes of

21 st meeting of the Board of Directors of LAWDA that was held on 15th

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December, 2016, wherein it was decided that the matter regarding induction of the Helpers in the hierarchy of LAWDA shall be placed before the Establishment Committee for consideration. The petitioners have also placed on record a number of communications exchanged between the authorities of LAWDA and respondent No.1 on the issue of induction of petitioners in the regular hierarchy, which has not been disputed by the respondents. In fact, respondent No.1 in its status report has admitted that the matter is under active consideration of the Government and even Draft Recruitment Rules are under submission before the competent authority for seeking approval.

12. In the face of aforesaid admitted position of the parties, the question that comes to mind is as to how much time the concerned authorities of the respondents would consume to sort out this issue. The respondents in terms of Government Order No.257-F of 2008 dated 03.09.2008 were required to take immediate steps to resolve the issue of induction of petitioners in regular hierarchy of the LAWDA by amendment of Recruitment Rules. It seems that respondents just slept over the matter and did not take steps in pursuance of the aforesaid Government Order for a pretty long time or even if they initiated the process but the follow up has been extremely tardy in the sense that the issue has not been resolved even after lapse of 13 years.

13. As already noted, on 28.02.2018, the respondent No.1 was directed to furnish the status report in the matter or else remain present in person. Though respondent No.1 did file the status report but it failed to gauge the urgency involved in the matter and remained satisfied with only filing the status report without taking up any follow up action. The present case is a classic example of lethargy, red-tapism and inertia in the functioning of Government officials at all levels and because of this attitude of respondents, the petitioners have not been able to get their dues even after 13 years and their legitimate rights have been denied.

14. For the foregoing reasons, the writ petition is allowed and the respondents are directed to take all necessary steps in the direction of induction of petitioners in organizational hierarchy of LAWDA by making necessary amendments in the relevant Recruitment Rules in accordance with the mandate of Government Order No.257-F of 2008 dated 03.09.2008. The exercise in this regard shall be undertaken by the respondents expeditiously within a period of two months from the date a copy of this order is produced by the petitioners before the respondents. Till this exercise is undertaken, the respondents shall not fill up Class IV posts in the LAWDA by direct recruitment.

15. The petition stands disposed of.

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