
(2023) 07 CAT CK 0055

In the Central Administrative Tribunal

Case No : Transfer Application No. 62, 1474 Of 2021 (SWP No. 2730 Of 2015)

Ghulam Mohammad Bhat

APPELLANT

Vs

State Of Jammu And Kashmir Through Commissioner, Forest
And Wildlife Protection Department, Civil Sectt. Sgr/Jammu &
Ors

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Citation : (2023) 07 CAT CK 0055

Hon'ble Judges : K. Haripal, Member (J); Dr. Chhabilendra Roul, Member (A)

Bench : Division Bench

Advocate : Bhat Fayaz, Bikram Deep Singh

Final Decision : Dismissed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The petitioner has filed the present petition seeking the following relief(s):-

"I) Writ of Certiorari, thereby quashing the impugned communication bearing No.1101/WLWS, dated 5.3.2015, issued by Wildlife Warden SouthKashmir, forming Annexure "E" to this writ Petition.

II). Writ of Certiorari, thereby quashing the impugned order bearing No.57 of 2015, dated:25.08.2015, issued by Chief Wildlife Warden J&K Government Srinagar, whereby the case of the petitioner has been rejected, forming Annexure "F" to this writ petition.

III) Writ of Certiorari, commanding thereby the respondents to regularize the petitioner in terms of SRO 64 of 1994. W.e.f. 4.1.1999 when the petitioner completed seven years of continuous service in the respondent department.

IV) Writ of Certiorari, commanding thereby the respondents to allow the petitioner in this service as Daily Wager in terms of this intital engagement order.

V) Writ of Certiorari, commanding thereby the respondents to release the salary / Wage of the petitioner along with the arrears by regularizing the service of the petitioner w.e.f. 4.1.1999 and pay the petitioner as permanent employee since 4.1.1999.

VI) Writ of Certiorari, commanding thereby the respondent to give other service benefits to the petitioner viz promotion, increment and other benefits.

VII) Writ of Certiorari, commanding thereby the respondent to give the same treatment to the petitioner as has been given to other similarly situated persons (Daily Wagers)

VIII). Any other writ, order or direction which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the petitioner and against the respondents.

2. Brief facts of the case is that the present petitioner was engaged in the respondent department as daily rated worker/casual worker vide communication No.561 dated 3.1.1992 by the Wild Life Warden, South Kashmir Division, as claimed by the petitioner. His engagement with the respondent department was periodically extended in 1992. The petitioner claims that he remained in continuous engagement for more than 7 years. The Jammu & Kashmir government issued SRO No.64 in 1994 to regularize daily rated employees who have completed 7 years of continuous engagement in government departments. The petitioner submitted representation to regularize him in pursuance of the said SRO 64 of 1994. Even, the Wild Life Warden, South Kashmir (respondent no.4) recommended petitioner's case to the Principal Chief Conservator of Forest(Wild Life) J& K for regularization vide his communication dated 7.5.2014 (Annexure-A). As the petitioner did not get any favorable communication from the department for his regularization, he approached the Hon'ble High Court at Srinagar in SWP No. 223/2015 claiming that he completed seven years of continuous service on 4.1.1999 and as per SRO 64 of 1994, he deserved to be regularized. The Hon'ble High Court vide order dated 13.2.2015 passed the following order:-

".. This petition alongwith connected CMP is disposed of and respondents are directed to consider the claim of the petitioner for regularization of service in terms of the rules notified by SRO 64 of 1994. The respondents to consider and take a decision preferably within twelve weeks from the date of a copy of this order is served.

Respondents while considering the claim of the petitioner shall also consider the recommendations made in his favour (Annexure A and B to the writ petition).

Till decision is taken, the present position of the petitioner shall not be disturbed and he be paid legally earned wages.

Disposed of as above along with connected CMP."

2.1 In pursuance of the said order, the respondents did not take action within due date and hence the petitioner was constrained to file contempt petition NO.115/ 2015. The respondents filed their compliance report containing the communication No. 1101/WLWS dated 5.3.2015 (reiterated in communications dated 19.3.2015 and 25.8.2015) rejecting the claim of the petitioner on the ground that the petitioner has not been on the rolls of the respondent department since January 1993. Being aggrieved, the petitioner has filed the present petition seeking the aforementioned reliefs.

3. The petitioner in his petition as well as through his counsel during the arguments have taken the ground that petitioner has completed continuous service as daily rated worker with the respondent department and as per SRO 64 of 1994, the petitioner is entitled for regularization. In support of his claim, the petitioner has submitted the copy of communication dated 7.5.2014 from the Wild Life Warden, South Kashmir Division to Conservator of Forests (Wild Life, Kashmir Region, Srinagar. The said letter mentions that :

"Whereas, his claim of representations how desperate he was to be heard and get justice on the reasonable grounds of being continuously rendering his services to the Government without wages."

3.1 The learned counsel further averred that the communication dated 5.3.2015 by the Wild Life Warden, South Kashmir is a non speaking one. It contains only two lines rejecting the claim of the petitioner. It contains the following:-

"Please refer your writ petition vide number referred to above, in this context you have not been paid since January, 1993. It is obvious that you are not on active duty since January, 1993."

4. The respondents have countered the ground taken by the petitioner. The learned counsel for the respondents referred to the counter affidavit filed by the respondents where in the respondents have squarely denied that the petitioner was engaged as a daily rated worker. Instead, they claim that the petitioner was engaged as a seasonal worker. For his casual/seasonal works, he was paid various amounts as contained in the communication dated 7.5.2014 (Annexure A) by the Wild Life Warden, South Kashmir. As the petitioner was never engaged as a daily rated worker and as he was not in continuous engagement for 7 years, the respondents have rightly rejected the claim of the petitioner vide their communication dated 5.3.2015 (annexure-E). As the petitioner had no legitimate claim, the short reply was legitimate.

5. We have perused the records of the case thoroughly and heard the arguments advanced by the counsels carefully. It is our considered view that the petitioner has failed to substantiate his claim of continuous engagement as a daily rated worker with the respondents. The communication date 7.5.2014 (Annexure-A) speaks volumes about its contradiction. It contains the payments for seasonal/casual work rendered by the petitioner for various discontinuous periods till December 1992. At the same breadth the Wild Life Warden in the same

communication states that the petitioner was working continuously without wages. These kinds of communications are not reliable at all. The petitioner has not able to produce any other documentary evidence that he was employed as a daily rated worker and he remained in continuous engagement in that capacity for 7 years since his initial engagement, to derive the benefit of SRO 64 of 1994 for regularization.

5.1 In view of this, the petition is without merit and hence is dismissed.

No order as to costs.

All pending MAs are also disposed of accordingly.