
(2023) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : LPASW No. 47 Of 2017

Ghulam Mohammad Dar And Others	Vs	APPELLANT
State Of Jammu And Kashmir And Others		RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Citation : (2023) 09 J&K CK 0001

Hon'ble Judges : Sindhu Sharma, J;Puneet Gupta, J

Bench : Division Bench

Advocate : Allaudin Ganai

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. The writ petition filed by the appellants stands dismissed by the Writ Court on the ground that disputed questions of fact cannot be gone into by the Writ Court and give specific finding or positive directions to the authorities. The appellants herein are in litigation with the respondents for almost two decades.
2. This court is not required to go into the details of the earlier round of litigation initiated by the appellants for their regularization with the respondent-department.
3. The case of the appellants, in nut-shell, is that they were initially engaged by M/s Bharat Heavy Electrical Limited (BHEL) on daily wage basis for rendering their skill labour in setting up of gas turbine station at Pampore during the period prior to 1992-93. The project was taken over by the respondents in the year 1994 with petitioners employed therein. The appellants continued to be engaged with the respondents and the appellants sought to be regularized with the respondent-department. The appellants herein claim to be engaged as daily rated workers though the respondents considered the appellants as casual workers. The respondents treated the petitioners to have been engaged after

imposition of ban on the basis of SRO 64 of 1994 with effect from 01.04.1994. The petitioners are being not treated fairly by the respondents filed writ petition SWP No. 159/2006 and also contempt petition bearing No. 316/2006 in the aforesaid petition which came to be disposed of by the Writ Court with the direction that the appellants are free to invoke appropriate remedy in case they are not satisfied with the consideration accorded to them by the respondent-department to consider the case of the appellants herein. The court directed the respondents to consider the case of the appellants in pursuance to Cabinet Decision No. 59/5 dated 04.04.2003. The appellants infact seek regularization of their services in terms of the mandate contained in Worked Charged Employees Rules, 1972 and be paid for unpaid wages.

4. The claim of the appellants was rejected by the respondents vide impugned order dated 24.11.2006 as they were stated to have worked as casual labourers for the specific period on different occasions up to 19.01.1999. The appellants have been paid for the period they have worked is also mentioned in the order passed by the respondents. The appellants continued to be on the roll of the respondents and even worked beyond 1999 is also the claim of the appellants though the same has been denied by the respondents.

5. Mr. Altaf Haqani, learned Senior counsel appearing for the appellants, has taken the court through the claim preferred in the earlier writ petitions, orders passed by the court earlier and in the writ petition out of which the present appeal arises to impress upon the court that the respondents failed to give information regarding the persons who had been earlier employed by the respondents as daily wagers/consolidated workers on contractual basis in the Corporation since 1999 and have been regularized. The respondents, however, did not respond and failed to file the same.

6. The Writ Court while dismissing the claim of the appellants has stated that disputed questions of fact arise in the case, as stated above, and cannot be gone into by the Writ Court. The Court finds no reason to disagree with the findings of the learned Single Judge in this regard. The respondents have specifically denied the assertion made in the writ petition qua their engagement by the respondents after 1991-1999 or they worked in the capacity as contended by them even after 1999. The court is not required to give final opinion on the pleas raised in the writ petition and grant relief of the nature sought for in the writ petition or in the present appeal. The assertion of the appellants having been denied by the respondent-department, the Court cannot come to the rescue of the appellants herein in the appeal also.

7. The claim made by the appellants that they should be treated in service without any break even after 1999 and be paid wages, as argued by the learned counsel for the appellants, cannot be considered and accepted by any stretch of imagination.

8. Keeping in view the fact that the Court finds no reason to hold otherwise that

the disputed questions of fact do arise and so held by the Writ Court, the appellants cannot be held entitled to any relief in the present appeal.

9. The present appeal is, accordingly, dismissed.

10. The appellants are at liberty to avail any other remedy which still may be available with them against the respondents.