
(2019) 10 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 534 Of 2016, IA No. 01 Of 2016

Ghulam Mohammad Malik

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 10 J&K CK 0024

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Jahangir Iqbal Ganai, Omais Kawoosa, Irfan Andleeb

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. In this petition, the petitioner has prayed for the following reliefs;

i. Issue an appropriate writ, order or direction in the nature of Mandamus, declaring the regularization of the Petitioner w.e.f. 17.10.2005 as illegal and non-est in the eyes of law.

ii. Issue an appropriate writ, order or direction in the nature of Mandamus, directing the Respondents to grant retrospective effect to the regularization of the petitioner w.e.f. 01.10.1996, as has been done in case of other similarly situated daily rated workers, having regard to the mandate of Government order No. 1733-GAD of 1997 dated 24.10.1997 and grant all consequential benefits accruing thereto in favour of the petitioner.

iii. Issue an appropriate writ, order or direction in the nature of Mandamus, directing the Respondents to pay the admitted amount of Rs. 3.50 Lakhs as arrears accruing due in favour of the petitioner.

2. The petitioner has been engaged as Daily Wager in Power Development Department in the year 1994. It is submitted that the Government of Jammu &

Kashmir in order to conduct the State Assembly Elections of 1996 in the State of Jammu & Kashmir, accorded sanction to the adoption and grant of the package of incentives for the State Government employees including Daily wagers on Poll Duty in the valley vide Government order No. 1733-GAD of 1997 dated 24.10.1997. The relevant clause with reference to incentives to Daily wagers is extracted as under;

i. Out of those daily rated workers who have performed election duty, only those daily rated workers would be eligible for regularization who have two years of engagement as Daily Rated Workers on 31st March, 1996, in terms of the aforementioned Government order. Therefore, any person, engaged on 01.04.1994 or thereafter, shall eligible for regularization."

3. Learned senior counsel for the petitioner submits that the petitioner in order to avail the benefit of Government policy notified in the shape of Government order (supra, performed the election duty in the Assembly Elections of 1996 and the respondent No. 3 vide order No. 26 of 2005 dated 17.10.2005, recommended his case for regularization in terms of the aforesaid Govt. order dated 24.10.997. It is submitted that as the petitioner was required to be regularized w.e.f 01.10.1996 as per the mandate of Government order (supra) but he was instead regularized from 17.10.2005. The petitioner, as stated, claims to have represented before the respondents for seeking retrospective effect to his regularization and in pursuance whereof, the respondent No. 5 took up the matter with the respondent No. 3 in terms of communication dated 15.10.2008. The learned senior counsel pleads that as no action was taken on the recommendation made under and in terms of communication dated 15.10.2008, the petitioner again filed an application which was duly recommended by Assistant Engineer, Incharge Stores and having regard to the recommendation made, the Respondent No. 5, in terms of communication dated 03.12.2008, was pleased to submit the case of the petitioner for consideration in light of record/standing orders. It is contended that since the petitioner was entitled for regularization on the strength of Government policy notified in the shape Govt. order (supra) as having satisfactorily performed the election duty in the Valley, but the respondents having denied the said benefit, compelled the petitioner to approach this Court and challenge the decision by medium of the instant writ petition. Petitioner has strengthen his claim for grant of relief on the grounds detailed out as under:

"(a) That the petitioner has been subjected to hostile and invidious discrimination. In this regard, it is submitted that the respondents in case of other daily rated workers who had performed Parliamentary/ Assembly election duty have considered and accorded sanction to their regularization retrospectively w.e.f. 1996. The petitioner being similarly situated with that of the officials under law is entitled to the same and similar treatment as has been given to other similarly situated persons.

(b) That there has been no delay on the part of the petitioner in approaching this

Hon'ble Court for the relief as is being sought in the writ petition. In this regard, it is submitted that after order of regularizing the services of the petitioner was issued, the matter was take-up by the respondents for grant of relaxation of qualification bar. The petitioner also believed the representations made by the respondents from time to time whereby it was impressed upon the petitioner that the case of the petitioner shall be settled. Even otherwise, it is a settled proportion of law that where there is a violation of fundamental rights, this Hon'ble Court being assigned the role of a sentinel for protection of fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of latches, delay or like."

4. The respondents have filed their objections, wherein it is stated that the petitioner was engaged on daily wage basis on 01.02.1994 and subsequently regularized as Helper in the pay scale of 2550-3200 w.e.f 17.10.2005 in terms of SRO 64 of 1994 dated 24.03.1994. It is further submitted that the petitioner has performed the election duty in Bandipora constituency on 07.09.1996 as per the certificate issued by the competent authority. It is further averred that regularization order in favour of the petitioner was issued by the Chief Project Engineer KGHEP, Bandipora vide order No. 26 of 2005 dated 17.10.2005 in the pay scale of 2500-3200. The regularization of the petitioner required the qualification bar which was granted vide Govt. order No. 283-PDD of 2008 dated 02.09.2008. In the end, the respondents have prayed that the petition of the petitioner be dismissed.

5. Heard learned counsel for the parties, perused the pleadings on record and considered the matter.

6. Perusal of the pleadings makes it axiomatic that having acted upon the promise extended by the respondents vide order no. 1733-GAD of 1997 dated 24.10.1997, the petitioner performed election duty in the year 1996 and, therefore, the respondents are required to regularize the services of the petitioner with effect from 1996. The petitioner having put his life to danger, fulfilled the requirement by performing the election duty in the militancy hit area with the hope that the respondents will fulfill the promise and extend the benefit of regularization in his favour from the year 1996. Denial of benefit of regularization of services of the petitioner amounts to an arbitrary exercise of the power by the respondents and has the effect of violating the valuable rights of the petitioner, therefore, the contentions raised by the petition in his petition have substance.

7. Learned senior counsel for the petitioner has submitted that the respondents have in fulfillment of promise extended to the Daily wagers in terms of Govt. order (supra) regularized the services of similarly situated Daily wagers and the said benefit has been denied to the petitioner which action amounts to discrimination and violation of Articles 14 and 16 of the Constitution. To bring home this argument, learned senior counsel has relied upon a decision dated 29.04.2014 of this Court rendered in SWP No. 61/2010 titled 'Rouf Ahmad

Sheikh vs State & Ors', which judgment stands upheld by the Division Bench of this Court in appeal bearing LPA No. 157/2014 vide its decision dated 09.09.2015. The submission of learned senior counsel with reference to the violation of fundamental right of the petitioner is well founded, has substance and is accepted.

8. The contention of Mr Irfan Andleeb, learned Deputy Advocate General, that the relief claimed by the petitioner is considerably delayed and, therefore, the writ petition is hit by the principle of delay and laches is rebutted by Mr Jahanagir Iqbal, learned Senior Counsel, by submitting that the delay in seeking regularization of his services on the part of the petitioner in the respondent department has occasioned only on account of the inaction of the respondents as is brought to the fore by the records. The learned senior Counsel further submits that notwithstanding the delay, a right for seeking the benefit of regularization of his services has accrued to the petitioner which right is a fundamental right guaranteed to the petitioner and against a fundamental right, the plea of delay cannot be agitated.

9. This Court has considered the issue with reference to delay on the part of the petitioner in seeking the benefit of regularization of his services and is of the opinion that it is the inaction of the respondents that has formed the basis for such delay. The records bear testimony to the fact that the matter has remained pending with the Government/ respondents for a considerable period of time, firstly, for accord of relaxation in favour of the petitioner and thereafter, sanctioning the regularization of the services of the petitioner.

10. In the above background the instant petition is allowed in the following terms.

i). The respondents are directed to give effect to the regularization of the services of petitioner in the respondent Department from the year 1996 in terms of Government order No. 1733-GAD of 1997 dated 24.10.1997.

ii. The respondents are further directed to release all the consequential benefits and arrears in favour of the petitioner from 1996 against the post presently held by the petitioner.

11. Writ petition disposed of as above alongwith connected IA(s)/CM(s).