
(2023) 05 J&K CK 0046
In the Jammu And Kashmir High Court
Case No : Service Writ Petition No. 1106 Of 2018

Haseena Begum	Vs	APPELLANT
Ut Of J&K And Others		RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Jammu And Kashmir Municipal Act, 2000 — Section 307, 307(1)

Citation : (2023) 05 J&K CK 0046

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Saima Mehboob, Rais-Ud-Din Ganie

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The petitioner has filed the present petition for directing the respondents to regularise/confirm her services on the analogy of previously engaged employees, who were absorbed/confirmed by the respondents. Further, prayer has been made for directing the respondents to release the unpaid wages/salary of the petitioner.

2. The petitioner has approached this Court for the grant of the above mentioned reliefs by pleading in the petition that she was engaged as sweeper in the year 2009 against a clear vacancy and by proper procedure and ever since then, she has been performing her duties to the satisfaction of the respondents. The petitioner was also paid wages for some time but subsequently the respondents, without any rhyme or reason, did not permit the petitioner to mark her attendance, as the respondents wanted to engage some other person, thereby depriving the petitioner of the salary as well as her right to the post/position. It is also stated that the similarly circumstanced employees working in the Municipal Committee in the sanitary section are performing their duties and are

being paid their wages. The petitioner also deserves to be treated at par with the similarly circumstanced employees of the Municipal Committee. It is also stated that certain employees appointed prior to the petitioner have been regularized and their seniority has been fixed and they are being paid their wages regularly. The petitioner has placed on record her engagement order, the bank account statement to demonstrate the payment of salary and the communication dated 07.10.2017 directing the Municipal Councils/Committees to utilize the services of the existing CPWs for sanitation/sweeping purposes only.

3. The respondents have filed their response, wherein it is pleaded that the petitioner was engaged in Municipal Committee Sumbal by the then President, Municipal Committee Sumbal, on pick and choose basis in the flagrant violation of the mandate of Article 14 and Article 16 of the Constitution of India without following any criteria, more particularly, without any approval by the competent authority as prescribed by sub section (1) of Section 307 of J&K Municipal Act, 2000. It is also pleaded that the petitioner has not been working with the Municipal Committee Sumbal since June 2013, therefore, she is not entitled to any wages. It is further pleaded that the whole record of the Municipal Committee has been seized by the Vigilance Organization, relating to the illegal appointments made by the Municipal Committee Sumbal without approval under Section 307 of J&K Municipal Act.

4. Ms. Saima Mehboob, learned counsel for the petitioner submits that the petitioner has been working with the respondents, as is evident from the salary statement, therefore, she is required to be regularized.

5. Per contra, Mr. Rais-ud-din Ganie, learned Dy.AG submitted that the petitioner was engaged by the then President, Municipal Committee Sumbal, just on the recommendations of the then Speaker of the Legislative Assembly on the minimum wages of Rs.2100/- per month and the petitioner worked only till May, 2013 and thereafter the petitioner has not been working with the respondents.

6. Heard and perused the record.

7. The engagement order of the petitioner dated 28.08.2009, issued by the then President of Municipal Committee Sumbal, reveals that the same has been issued on the recommendations of the then Speaker of J&K Legislative Assembly. No advertisement was ever issued for engagement of the sweeper to enable the other candidates to participate in the selection process. The engagement of the petitioner as sweeper in the Municipal Committee Sumbal is prima facie in violation of Article 14 of the Constitution. The petitioner is a back door entry, who has been engaged without there being any process for selection for the post of sweeper.

8. Once the petitioner has not been engaged pursuant to the proper selection process, she has no right to seek regularization. It would be apt to take note of the para-34 of the judgment of the Hon'ble Apex Court in case titled "Secretary, State of Karnataka and Ors v. Umadevi and Ors" (AIR 2006 Supreme Court

1806) and the relevant part of the para-34 is reproduced as under:

".....Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

(Emphasis added)

9. It is the stand of the respondents that the petitioner has not been working with the respondents since June, 2013 and this fact is substantiated by the bank statement placed on record by the petitioner herself, wherein, the last salary she

has received is for the month of May, 2013 and the present writ petition was filed in the year 2018. It needs to be noted that in the synopsis annexed with the petition, it has been mentioned that she has been paid salary up to the year 2013, without specifying any month. Thus, the contention of the respondents that the petitioner has not been working with them since June 2013 is substantiated by the documentary evidence placed on record by the petitioner herself.

10. Therefore, there is no merit in the present petition. The same is, accordingly, dismissed.