

(2019) 04 J&K CK 0128

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1177 Of 2016, IA 01 Of 2016

Iftikhar Ahmed Itoo And Anr

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Jammu And Kashmir Daily Rated/Work Charged Employees (Regularisation) Rules,
1994 — Rule 3, 4,5, 8
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 J&K CK 0128

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.S Thakur, Ayjaz Lone

Final Decision : Disposed Off

Judgement

1. The petitioners claim that they were engaged as daily wagers in the department of Social Forestry in February, 1990 and March, 1991. While they were performing their duties continuously without any interruption since the date of their initial engagement, the respondent No.1 issued the Jammu and Kashmir Daily Rated/Work Charged Employees (Regularisation) Rules, 1994 in terms of SRO 64 of 1994 (for brevity, the rules of 1994), whereby a provision was made for regularization of daily rated workers/work charged employees who had rendered seven years continuous service and would fulfill the eligibility requirement as laid in rule 4. The petitioners claim that they completed seven years continuous service as daily rated workers in February, 1997 and March, 1998 and therefore became entitled to be regularized as Class-IV employees w.e.f 01.04.1997 and 01.04.1998 respectively by operation of rule 8 of the rules of 1994 but the respondents while according them the benefit of regularization in terms of aforesaid rules appointed the petitioners as Helpers w.e.f 01.04.2001. The petitioners, feeling aggrieved, represented to the respondents and sought their regularization/appointment as Helper retrospectively from the date they

had completed the requisite service of seven years as envisaged under the rules of 1994. The representation was made by the petitioners on 29.01.2008 to the Chief Conservator of Forests, Project Director Social Forestry, J&K Government, Jammu which was followed by another representation made on 29.01.2008. It is stated by the petitioners that the representation made on 27.01.2008 was taken cognizance by the Regional Director Social Forestry but no decision was taken. The petitioners claim that with a view to know the result of consideration of their representation, they made several rounds to the office of the respondents but with no avail. Having found no response from the respondents for all these years, the petitioners decided to approach this Court and hence this petition was filed in the year 2016.

2. Respondents have filed their objections and the principal objection taken to the maintainability of the petition is that the order of regularization of the petitioners was passed way back in the year 2001, whereas the petitioners came to this Court in the year 2016, i.e., nearly after a decade of the accrual of the cause of action. It is also stated that the delay and laches, if ignored, would create an administrative chaos in as much as many similarly situated daily rated workers who have been regularized from 01.04.2001 or before would en-block rank juniors to the petitioners.

3. Having heard learned counsel for the petitioners and perused the record. It would be necessary to set out some of the relevant provisions of rules of 1994 for better appreciation of the controversy raised. The rules 3, 4, 5 and 8 are reproduced hereunder:-

"3.Creation of posts:- (1) The Committee may from time to time on receipt of proposal from any Administrative Department approve the creation of posts for the purpose of regularization of Daily Rated Workers or Work Charged Employees.

(2) After the approval under sub-rule (1) above is conveyed to the Administrative Department, the Administrative Department concerned shall issue the orders of creation of posts. The posts so created shall be-

(a) borne on the Plan or Non-Plan establishment as the classification of the scheme or work may be on which such eligible persons are deployed, and

(b) in conformity with the existing sanctioned designation in the pay scale of Rs. 750-940.

4. Eligibility for regularization:- A Daily Rated Worker/Work Charged Employee shall be eligible for regularization on fulfillment of the following conditions; namely:-

(a) that he is permanent resident of the State;

(b) that on the date of his initial appointment his age was within the minimum and maximum age limit as prescribed for appointment in Government Service.

(c) that he possesses the prescribed academic and/or technical qualification for

the post against which he is required to be regularized;

Provided that in case of eligible Daily Rated Workers to be regularized against Class IV post, relaxation of qualification and/or age shall be considered on merits by the concerned Administrative Department.

(d) that he is not a retiree from any State or Central Government service or any Local Body, Public Sector undertaking or Autonomous Body in or outside the State.

(e) that his work and conduct has remained satisfactory during the period he worked as Daily Rated Worker or Work Charged Employee and no disciplinary proceedings are pending against him; and

(f) that he has completed seven years continuous period of working as Daily Rated Worker or Work charged Employee or partly as Daily Rated Worker and partly as Work Charged Employee.

5. Regularisation of Daily Rated Workers.--All the Daily Rated Workers who on 31-3-1994, are eligible under rule 4 for regularisation shall with effect from 1-4-1994, be appointed on the regular pay scale of Class IV prescribed in the concerned department for the relevant category of posts in the scale of Rs. 750-940 : Provided that if any of the categories have higher pay scale of Rs. 775-1025, such employee(s) shall be placed in the higher pay scale of Rs. 775-1025 after completion of 2 years of service in the scale of Rs. 750-940.

8. Application of rules to existing Daily Rated Worker and Work Charged Employee.--The policy of absorption of Daily Rated Workers and Work Charged Employee shall also apply to such of the existing Daily Rated Workers and Work Charged Employees who may not have completed seven years on 31.3.1994 but may complete by the end of subsequent financial years and their absorption shall be considered in that financial year in accordance with these rules."

4. From plain reading of the aforesaid rules, it is abundantly clear that the daily rated workers who, on 31.03.1994, were found eligible were entitled to regularization w.e.f 1.4.1994 for being appointed on the regular pay scale of Class-IV as prescribed in the concerned department for the relevant category of post. It is very vividly provided in rule 5. Similarly in terms of rule 8, reproduced above, the regularization of daily rated workers and work charged employees who had not completed seven years of service as on 31.3.1994, but completed the same in subsequent financial year, their absorption was to be considered in that financial year in accordance with rules of 1994. From plain reading of rule 5 along with rule 8 makes the position crystal clear that the petitioners who had completed seven years of service in February, 1990 and March, 1991 were entitled to be regularized w.e.f 1.4.1997 and 1.4.1998 respectively. This, however, was not done. From the regularization order placed on record, it is evident that their regularization was given effect from 1.4.2001, although, no specific reasons therefor are coming forth from the reply of the respondents. But

the reading of the objections in its entirety would reveal that the services of the petitioners have been regularized w.e.f 1.4.2001 on the ground that the Empowered Committee created the said posts only on that date or in that financial year.

5. Be that as it may, the regularization of the petitioners w.e.f 01.04.2001 instead of 01.04.1997 and 01.04.1998 respectively was not in consonance with the provisions of the rules of 1994. It is true that for the purpose of giving effect to the regularization policy enunciated in the rules of 1994 there was an obligation cast on the Empowered Committee constituted under the rules to create the posts for regularization of daily rated workers/work charged workers. This creation was required to be done simultaneously with the daily rated workers becoming eligible for such regularization. Be that as it is, from reading of rule 5 along with rule 8, the clear position that emerges is that the daily rated workers who had completed seven years as on 31.3.1994 were entitled to regularization w.e.f 1.4.1994 and those who would complete seven years of service in the subsequent year were to be considered for absorption in the subsequent year in accordance with the rules of 1994. The position of law as emerging from the rules of 1994 and as adumbrated above is not very seriously disputed by the learned counsel for the respondents. He however, submits that the petitioners have remained slept over their rights for almost a decade and therefore cannot be permitted to invoke the equitable jurisdiction of this Court vested in terms of Article 226 of the Constitution of India read with Section 103 of the State Constitution, particularly when entertaining this petition and granting relief at this belated stage would trample upon the accrued right of seniority of many others who also came to be regularized along with the petitioners from the same date or the dates prior to the date the petitioners were regularized.

6. I have given my thoughtful consideration to the matter and find that this petition, on the face of it, is hit by delay and laches. As per own showings of the petitioners, whole batch of daily wagers similarly circumstanced with the petitioners was regularized w.e.f 01.04.2001 though they were entitled to such regularization under the rules of 1994 which prior to said date. It is true that only the petitioners two in number, have approached this Court with their grievance but there is huge delay of about 8 years since the petitioners made last representation in this regard and 10 years from the date, the order of regularization in their favour was passed. This delay has also not been adequately explained by the petitioners except taking the plea that the petitioners being daily wagers/Class-IV employees were legitimately waiting for the consideration of their representation moved on 27.01.2008. They waited and waited and ultimately, filed the instant petition in the year 2016.

7. It is well settled that the law does not assist a person who is inactive and sleeps over his rights by allowing them to remain dormant without asserting them in time in a Court of law. The principle which forms the basis of this rule is

expressed in maxim which is *vigilantibus, non dormientibus, jura subveniunt*, which means the law gives help to those who are watchful and not to those who sleep.

8. While there is no dispute with regard to the proposition of law that the delay defeats equity and the person who slumbers over his right for long, cannot be permitted to invoke the equitable jurisdiction of the constitutional Court, that too, without tendering any explanation for such huge delay. The condonation of the delay and entertaining of the petition filed belatedly is always in the discretion of the Court and it depends on the facts and circumstances of each case. In the instant case, indisputably there is a delay of 8/10 years in approaching this Court. The petitioners got the cause of action way back in the year 2006 when order of regularization in their favour was issued by the respondents from 01.04.2001 and not from the dates it was due to them. The petitioners resented and filed two representations in the year 2008. Thereafter, there was complete lull for 8 years and the only explanation tendered by the petitioners is that they were waiting for the respondents to decide their representations so that they could accordingly work out their remedy but the representations were not decided for all these years. Although the explanation tendered for such a huge delay is not convincing but keeping in view the background that these petitioners have come from and the attitude of the respondents who though entertained their representations but chose not to consider and decide the same for long, I feel the petitioners deserve relief in this petition. The only question which is boggling the mind of this Court is how to safeguard the interests of those who because of their regularization w.e.f 01.04.2001 and before and, otherwise rank senior to the petitioners. Sending the petitioners back on the plea of delay and laches, in the given facts and circumstances, may not be fully justified but at the same time no relief can be granted to the petitioners which would impact the rights of those who are not before this Court.

9. Having been placed in this predicament, I have tried to find a way out so that the justice is done to the parties whether or not they are before the Court. Accordingly, I propose to dispose of this petition by providing as under:-

i) That the petitioners, in view of the specific provisions of rule 5 read with rule 8 of the rules of 1994 shall be entitled to regularization w.e.f 01.04.1997 and 01.04.1998 and not from 01.04.2001 as has been provided in the Forest Order No. 48 of 2006 dated 28.08.2006.

ii) That the regularization of the petitioners from the aforesaid dates shall have notional effect and no arrears on account of such regularization shall be paid.

iii) That the affected candidates whose names find mentioned in the Forest Order No. 48 of 2006 dated 28.08.2006 who may be affected in their seniority on account of retrospective regularization of the petitioners shall be heard in the matter before finalizing the seniority of the petitioners, vis-à-vis other Helpers of

the Social Forestry Division, Ramban.

iv) To safeguard the interest of the Helpers of the Social Forestry Division, Ramban, who were also regularized along with the petitioners w.e.f 01.04.2001 or prior thereto, the respondents shall accordingly give their regularization also retrospective effect w.e.f the dates they two had completed seven years and had become entitled to regularization in terms of rule 5 read with rule 8 of the rules of 1994. This retrospective regularization too shall be on notional basis and would not qualify for payment of any arrear or pecuniary benefits.

v) Ordered accordingly.

vi) Let the respondents No. 1 and 2 consider the matter in the light of observations made above and pass appropriate order within a period of three months from the date certified copy of this order is made available to them.