
(2019) 12 J&K CK 0055

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 294 Of 2014, IA No. 405 Of 2014, CM No. 4935, 6313 Of 2019

Jamal Ud Din & Ors

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Jammu And Kashmir Casual And Other Workers Regular Engagement Rules, 2017 — Rule 2(j)(iii), 4

Citation : (2019) 12 J&K CK 0055

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : N. D. Qazi, Seema Shekher

Final Decision : Disposed Of

Judgement

Sindhu Sharma, J

1. Petitioners engaged as Night Chowkidars for watch and ward of Government Food Stores in Consumer Affairs and Public Distribution Department, Jammu on monthly honorarium of Rs.30/- per month since 1988 onwards. It is submitted that respondents had assured them that their services would be regularized and they will be paid minimum wages. As no action with regard to the regularization and enhancement of the wages taken been taken, number of writ petitions came to be filed before this Court for the same relief. In terms of the order of this Court, a direction was issued to the respondents to form a committee to consider the regularization of the petitioners to examine the engagement of 98 Night Chowkidars working in various Districts of Jammu Province for their regularization. These recommendations were to be submitted to the Administrative Department within a period of one month. Thus, Government Order No. 110 CAPD of 2009 dated 04.12.2009 came to be issued in this regard but this committee was reconstituted vide Government Order No. 80-CA&PD of

2010 dated 01.12.2010 but till date no recommendations in this regard came to be issued. They further submitted that they have crossed the upper age limit and the delay has affected their recommendations. Therefore, they were constrained to approach this Court by way of the writ petition and vide order dated 10.02.2014, this Court had directed the respondents not to fill up any vacancy of Class-IV unless the case of 27 petitioners for regularization has been considered.

2. In their objections, the respondents have denied the claim of the petitioners on the ground that they were un-authorizedly engaged by the subordinate officials and pursuant to the directions in LPA(S) No. 29/2001 titled Jamal Din & ors. Vs. State of J&K & ors. and in another LPA(S) No. 422/1999 titled Abdul Rehman Bahroo Vs. State of J&K & ors., some Night Chowkidars were allowed to draw their wages under the Minimum Wages Act. They were also directed to submit their relevant documents before the Committee but the Committee was reconstituted vide Government Order No. 110 CAPD of 2009 but till date no recommendation has been made. It is pleaded that the Division Bench of this Court vide judgment dated 09.02.2001 has stated as under :-

"Another aspect of the matter is that the State has engaged some other persons. These appointments have been termed as temporary. If the need was there, then the claims of the appellants should have been considered. It is settled law that when appointments are made to a public service then these should be made by a public notice. The requirement to advertise is statutory. This guarantees invitation to all. It ensures an equality of opportunity to all. It is in conformity with the requirements of Article 14 & 16. It is inconsonance with the principles of fair play. It excludes arbitrariness. It helps in the selection of the best. It is only in this manner the spirit behind Article 14 & 16 i.e equality in the matter of public appointments would be served.

Therefore, a direction is given that as and when the State considers the question of regularization of the services of the employees who have been issued letters of appointment on temporary basis, the claims of the appellants be also considered. It is also held that adhoc and temporary arrangements which have been arrived at without issuing public notice would not be extended beyond the period of six months or the term to which these appointments stand extended, which ever period is latter and during this period the State would issue public notice and then make the appointments. In the meanwhile, the State is directed to pay the minimum wages which are payable to such employees."

3. During the pendency of this petition, the petitioners have moved an application for seeking their regularization in terms of SRO 520 dated 21.12.2007. It is stated that the petitioners were engaged as Night Chowkidars for more than 10 years and are squarely covered by ambit of SRO 520 dated 21.12.2007 in terms of Rule 2 (j) (iii), which reads as under -

(iii) "Left-out Adhoc / Contractual / Consolidated Worker" engaged through an appointment order or proper Government authorization on adhoc/contract or

consolidated basis for rendering service in a Department who does not fulfill the eligibility criteria prescribed under the Jammu and Kashmir Civil Services (Social provisions) Act, 2010 for regularization.

4. The petitioners have also placed reliance on judgment of this Court dated 23.05.2018 in SWP No. 1222/2015 & connected matters and while considering this aspect of eligibility, this Court has observed as under :-

"Another facet of the matter is that respondents do not dispute engagement of petitioners, albeit on stop gap/ad hoc basis, prior to the year 2010 and their continuation for more than ten to twenty years. Once that being the position, respondents, after extracting the work from petitioners for more than a decade, cannot be heard saying that petitioners' engagement was on the basis of stop gap/ ad hoc and therefore, petitioners have no right to claim continuation or regularization on the positions of AWWs and AWHs. Such plea or action of respondents would amount to exploitation of citizens of India/petitioners, who gave their youth in working and discharging their duties in respondent department and when they turned grey, respondents showed them exit. Such act is arbitrary and unconstitutional as well.

Therefore, based on foregoing discourse and reasons, I deem it proper to allow all the writ petitions on hand. Accordingly, the same are allowed and Order No.13-SMD of 2015 dated 22.04.2015 issued by Mission Director, ICDS, J&K, qua the petitioners, is quashed. Respondents are directed to extend the benefit of SRO 520 of 2017 dated 21.12.2017 notifying the Jammu & Kashmir Casual and Other Workers - Regular Engagement Rules, 2017, or for that matter any other Scheme, in favour of petitioners and consider them for regularization of their services against the positions of Anganwadi Workers/Helpers in terms of the eligibility conditions as contained in Rule 4 of Rules of 2017, thereby giving them the effect of regularization from the date each one of them has completed ten years of service as Anganwadi Worker/Helper."

5. In view of the aforesaid, this petition is disposed of with a direction to consider the case of the petitioners in terms of SRO 520 dated 21.12.2007.

6. Interim direction dated 10.02.2014 shall stand vacated.