
(2011) 05 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 620 of 2006 and CMP No. 1448 of 2011

Kuldeep Raj and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2011) 2 JKJ 482

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Hussain Attar, J.—The claim of the Petitioners is that Petitioner No. 1 was engaged as Class IV employee on daily wage basis in

the Respondent-department on 1st April 1995; Petitioner No. 2 was similarly engaged on 1st January, 1995; Petitioner No. 3 was also similarly

engaged on 1st April, 1995 and Petitioner No. 4 was also engaged as Class IV employee on daily wage basis in the year 1995. Further claim of

the Petitioners is that ever-since their engagement they have been discharging their duties regularly and are being paid wages also. The grievance of

the Petitioners is that their services are not being regularized, even though they are entitled for such regularization.

2. On notice issued, Respondents have filed objections/reply affidavit in which it is stated that Petitioners have been engaged after 31.01.1994,

thus are not entitled for being considered for being brought regular temporary establishment.

3. Heard learned Counsel for the Petitioners. Considered the matter.

4. Learned Counsel for the Petitioners submitted that Petitioners are entitled for consideration of regularization in terms of Government order No.

355 - GAD of 1996 dated 30-04-1996 issued by the General Administration Department. Learned Counsel further submitted that Petitioners'

claim for regularization requires to be considered under the provisions of J&K Civil Services (Special Provisions) Act, 2010. Learned Counsel

also submitted that Petitioners have been discharging their duties ever-since their engagement from 1995 onwards and Respondents have been

taking work from them for which they are being paid wages also.

5. The claim of the Petitioners that they have been engaged as Class IV employee on daily wage basis is controverted by the Respondents in their

objections/reply affidavit. It is claimed by the Respondents that Petitioners are working as laborers on need basis, thus, are not entitled for being

brought on regular temporary establishment.

6. Petitioners are undisputedly working from the year 1995. It is also admitted that Respondents are taking work from the Petitioners. Petitioners

whose rights are governed by provisions of Constitution, more particularly, Articles 14 and 21 thereof cannot be denied consideration for being

brought on regular temporary establishment.

7. Our State is a welfare State and is creature of Constitution. Article 14 of the Constitution of India provides for equality before the law and equal

protection of law and Article 21 of the Constitution of India provides that no person shall be deprived of his life and personal liberty except in

accordance with the procedure established by law. Petitioners' fate cannot be kept in such a state where no guarantee is available to them of their

future status. No State governed by Rule of law can be said to have power to take work from its citizens without affording them the guarantee of

protection to their tenures. The State Government is duty bound to take a policy decision to accord consideration for regularizing the services of

the Petitioners and the persons who belong to the said class. It is a duty which is enjoined upon the State and its authorities by the constitution to

which it owes its existence.

8. For the above stated reasons this petition is disposed of along with all connected CMPs in the following manner:

Directed to consider the claim of the Petitioners for being brought on regular

temporary establishment or their absorption on Class IV posts.

Respondents to consider the claim of the Petitioners and take a decision within a period of three months from the date copy of this order is served

upon them. Petitioners be allowed to continue till decision is taken and be paid their wages regularly.