

(2011) 05 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 342 of 2005

Mohammad Ahsan Wani

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Citation : (2011) 2 JKJ 588

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—By the medium of present writ petition, the Petitioner has landed in third round of litigation without the desired

results. Precisely the case of the Petitioner is that he was engaged as daily-wager by the Respondents in the month of April, 1993 and worked as

such continuously for more than seven years and is entitled for regularization in terms of SRO 64 of 1994 (Full). The consideration order passed in

pursuance to a representation filed by the Petitioner in this behalf is not in accordance with law is also one of the contentions raised by him in the

writ petition in hand.

2. Respondents have resisted the petition on the grounds taken in the counter, filed in this behalf by them to meet the pleas of the Petitioner.

3. Petitioner along with other two persons namely Gh. Hassan Mir, and Abdul Rehman Ganai had filed a writ petition before this Court bearing

SWP No. 1084/2000 and sought a writ of mandamus commanding the Respondents to regularize their services against the post in terms of SRO

64 retrospectively and release the unpaid wages. In the said petition, Petitioners

have specifically averred in Para 3 that they were appointed as

Casual labours by the department of the Respondents in April, 1993 and were discharging the duties but Respondents only paid wages till

December, 1999 and thereafter stopped it.

4. This writ petition of year 2000 received consideration by this Court and came to be disposed of vide judgment and order dated 14th of August,

2000. It would be apt to reproduce Para 3 & 5 of the said writ petition besides the operative part of the judgment herein:

3. That the Petitioners came to be appointed as Casual Labourers in the Respondent department in the year April 1993. And the Respondent

department issued Identity Cards to this effect in favour of the Petitioners. Photostat copies of the Identity Cards are placed herewith this petition

and marked as Annexure A respectively.

5. That the Petitioners have been regularly paid their daily wages by the Respondents, and the wages have been received by the Petitioners

regularly till the month of Dec. 1999, but thereafter despite the fact that the Petitioners are discharging their functions regularly, and attending their

duties have not been paid the wages by the Respondents.

(Operative Part of the Judgment)

Accordingly the petition is disposed of with the direction to the Respondents to consider the case of Petitioners for regularization of their services

under the provisions of SR064/1994 provided the Petitioners have worked uninterruptedly for over a period of seven years and are presently

working in the said arrangement and subject to the genuineness of the documents annexed with the petition.

5. The above quoted material in unambiguous terms carries only one impression that the case was projected in the capacity of a casual labour and

not in the capacity of a daily rated worker. It appears that Petitioners' case was rejected after its consideration by the Respondents in terms of the

judgment supra. The said consideration order was questioned by the said writ Petitioners in another writ petition bearing SWP No. 958/2001,

came to be disposed of vide judgment and order dated 10th of March, 2004. Here the narrative is altered; in this writ petition claim for

regularization is laid as daily wagers instead of casual labours.

6. The Respondents considered their case again and rejected it by an order dated 10th of July, 2007 which is subject matter of the present writ petition.

7. By receiving the distasteful result again, the other two persons-Petitioners in the earlier two writ petitions lost faith and the battle was left to Le pursued by the present Petitioner-Mohammad Ahsan Wani alone, which implies that the consideration order dated 10th of July, 2007 has been accepted by them as it is.

8. The grievance projected by the Petitioner is no different than the one highlighted in SWP No. 958/2001. It is again being pleaded that Petitioner is a daily-wager of April, 1993 and worked as such continuously for seven years but despite of that his services have not been regularized in terms of SRO 64/1994. The Respondents have also not taken into consideration the letter issued by Respondent No. 5.

9. Respondents have resisted the petition on the grounds that the Petitioner and the other two persons were never engaged-appointed and the documents relied upon are outcome of fraud and Respondent No. 5 on gunpoint was forced to sign the document dated 9th of February, 2001; FIR was lodged and a mention is made of a fact, in the reply, that the said document was obtained from the field staff out of duress and is outcome of fraud.

10. No rejoinder has been filed by the Petitioner.

11. The only finding required to be returned is, whether the Petitioner's case falls within the ambit of SRO 64 of 1994?

12. Since the SRO 64 of 1994 governs the daily-rated workers/Work charged Employees (Regularization) Rules, 1994 only, therefore, the history of the case needs to be rewinded to find out in what capacity the Petitioner stands appointed/engaged.

13. In the first writ petition the Petitioners specifically pleaded that they have been engaged as Casual labours, but later on the stand was changed and second petition reflects the Petitioners as daily-rated workers. Whether the Petitioner is appointed as a casual labour or as a daily rated

worker is a disputed question of fact. Respondents have also taken a definite stand that Petitioner has never been appointed and the documents on

which the reliance is placed are outcome of fraud and an FIR to this effect stands

lodged before the police concerned. There is nothing on the file

to prove the documents to be genuine or otherwise. The said disputed question of fact cannot be gone into by the writ court. One more assertion

of the Petitioner of not having been paid the wages since 1999 and he being in position till today, is also a disputed question of fact.

14. In the given circumstances, this Court cannot decide the disputed questions of fact; therefore, the petition merits dismissal and is accordingly

dismissed. However, Petitioner is at liberty to seek appropriate remedy, if any, available.

15. Writ petition along with all CMPs is dismissed. Record called for perusal be sent back.