
(1999) 12 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 4238 of 1997

Mohmmad Maqbool Ganai	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 29-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2000) 3 SCT 965

Hon'ble Judges : Syed Bashir-ud-din, J

Bench : Single Bench

Advocate : M.A. Qayoom, Advocates appearing for the Parties

Judgement

Syed Bashiruddin, J.—Petitioners have been engaged on daily wage basis in Agricultural Department in District Budgam from March to

August in 1992, except petitioner No. 12, who has been engaged in January 1994 (Annexure A to Annexure H/2). The petitioners have been

working and rendering their duties as such daily wagers to the satisfaction of the respondents. The petitioners figure at Serial Nos. 39, 40, 46, 47,

53, 54, 58, 64, 66, 78 and 83 in the statement of daily wagers for SubDivision Budgam, prepared by the department and in this list they have been

shown along with other daily wagers in all figuring about 89, working at Plant Protection Stores of the District Budgam. Their engagements have

been shown dating back to different dates of 1992 and January 1994. The list is prepared by Divisional Agricultural Officer, Agricultural Assistant,

and three AEOs Incharge Budgam Surteng and Shogupur. This list shows the position of the petitioners as such daily wagers ending 4/97. During

the last parliamentary and assembly elections after the Govt. announced number of incentives and benefits for those who render election duty under

order No. 355GAD of 1996 dated 30.4.1996, petitioners offered themselves and were deputed for election duty. The petitioners performed the election duty during the parliamentary and assembly elections of 1996. The Divisional Election Officer/Dy. Commissioner Budgam addressed a communication to Chief Agricultural Officer Budgam to show that the petitioners among others have performed the election duty in connection with election of 1996. A duty certificate was also issued by Dy. Commissioner Budgam/ the District Election Officer to petitioners to show that they had performed duty during the last parliamentary election.

Communications (annexure K1 and L) are on record to reveal this position. On the basis of the election duty performed by the petitioners during

the last Lok Sabha/Assembly elections, they were entitled to be regularised by the respondents in terms of the Government order No. 355GAD of

1996 dated 30.4.1996. Subsequently, Circular No. 3GAD of 1997 was issued by the Government on the subject of the regularisation of daily

rated workers in terms of Govt. order No. 355GAD of 1996 dated 30.4.1996 read with another Govt. order No. 639GAD of 1996 dated

9.8.1996. In terms of this circular and Govt. orders, petitioners who had not completed seven years by then, but had completed more than two

years on the date when Lok Sabha/Assembly elections were held in the valley, were entitled to be regularised. Not only so even after receiving the

proposal from different departments and creation of number of posts for the purpose vide Govt. order No. 1723GAD of 1997 dated 24.10.1997,

petitioners were left out and not regularised. Director Agriculture did send for the names of daily wagers who had performed

parliamentary/assembly elections duty in District Budgam. In response to which District Agriculture Officer Budgam forwarded the list which

includes petitioners' names also to him through proper channel. (Annexure N). Even the matter was taken up with Joint Director of Agriculture

Extension Kashmir and with Directorate Agriculture vide annexures O and O1, for regularisation of daily rated workers, who had rendered

parliamentary/assembly election duties and the list included names of petitioners. Despite receipt of the list and availability of posts respondents

who were bound to regularise the services of petitioners slept over the matter and did not regularise them despite eligibility. Respondents have

been corresponding with each other on the subject, but have failed although to regularise the petitioners. The petitioners are entitled to regularise

as their case is fully covered by Govt. order No. 355GAD of 1996 dated 30.4.1996, Circular 3GAD of 1997 dated 30.1.1997, and Govt. order

No. 1723GAD of 1997 dated 24.10.1997. Despite creation of posts vide the above last referred order, and the eligibility of petitioners based on

their performance of election duties in the Parliamentary/Assembly elections of 1996, they have been unjustifiably and without any reason ignored.

Notwithstanding they were merited to be regularised, their claim has been ignored and overlooked. Petitioners approached the respondents

number of times, but by maintaining stoney silence they have not regularised them. After all they promised all the daily rated workers vide above

Govt. orders and circular direction that those who render Parliamentary elections (duty) shall be benefited in terms of the package, but still the

petitioners who rendered the election duty at the cost of their lives, are being refused such regularisation, notwithstanding that the District level

officers of the Department have recommended their case for regularisation long back. Some of the candidates who were similarly situated with the

petitioners and who also rendered election duty, were absorbed and regularised. Petitioners have been discriminated against and the Govt. has

failed to fulfill its obligation towards the petitioners, who rendered the election duty on the promise held out by the Government. In the premise they

have prayed for the writ, order or direction for their regularisation.

2. Respondents have appeared through Additional Advocate General and Govt. Advocate on 13.1.1997. They have failed to appear on 8.7.1998

and thereafter. Reply has not been filed either at initial notice stage or after 2.2.1998 when the case was admitted to hearing. Respondents' failure

to appear has led to the case being heard ex parte.

3. Record is examined in light of the submissions made by counsel for petitioner. Petitioner's case seen through the record is fully covered by Govt.

order No. 355GAD of 1996 dated 30.4.1996, Govt. order No. 1723GAD of 1997 dated 24.10.1997 and Circular 3GAD of 1997 dated

30.1.1997. The engagement of petitioners as daily wagers, their continuance and their being borne on the records of respondents Department of

District Budgam over number of years is fully substantiated on record. The

petitioners cannot be singled out for the discriminatory treatment. Their claim for regularisation cannot be ignored or just rolled under carpet by maintaining silence or resorting to inaction. The Govt.'s action has to be fair and reasonable. It has to reach every aggrieved person so as to redress his genuine grievance and to give him relief which he merits on eligibility. The State cannot bypass its statutory duty and the concerned officials/competent authority cannot refuse to discharge their legal duty towards the citizens who claim entitlement based on the promise held out to them. In the facts and circumstances of this case by nonregularisation petitioners are discriminated against and not treated similarly as other regularised persons who were equally situated and circumstanced as the petitioners. In this case equal protection and treatment as envisaged by Articles 14 and 16 of the Constitution is violated. Petitioners 1 to 11 reportedly are working as such daily wagers to date. Obviously, they have completed more than seven years. They are also entitled, subject to eligibility, to regularisation under SRO 64 of 1994 dated 21.3.1994. Their case even merit to be considered within the ambit and on terms of this SRO.

4. As the respondents have failed to file counter the allegations of the writ petition have remained uncontroverted and intact. Respondents have chosen not to reply, controvert or defend the case. By the rule of pleadings, respondents will be deemed to have admitted the petitioner's case.

5. In result, for the aforesaid reasons respondents Competent authority are/is directed to accord regularisation to the service of petitioners within the ambit and terms of Govt. order No. 355GAD of 1996 dated 30.4.1996 read with Circular No. 3GAD of 1997 dated 30.1.1997. The posts created vide Government order No. 173GAD of 1997 dated 24.10.1997 if available may be utilized for the purpose or the posts lying unfilled may be utilized to regularise the services of petitioners. The respondents/Competent authority shall find ways and means to regularise the petitioners and for the purpose if need be, steps shall be taken to create the required posts. The Government may also consider the case of petitioners for regularisation in terms of SRO 64 of 1994 dated 21.3.1994.

6. Petition disposed of.