

(2019) 08 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 371 Of 2018

Muni Devi

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Jammu And Kashmir Civil Services (Special Provisions) Act, 2010 Andmdash; Section 2(c), 5, 10, 10(2), 10(3)

Citation : (2019) 08 J&K CK 0002

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.S.Thakur, Vishal Bharti

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. Having regard to the qualification of the petitioner and on her application, she was appointed as Craft Teacher in the Department of Social Welfare and posted in the Social Welfare Centre, Batote for a period of 60 days w.e.f. 27.11.1991 and was thereafter continued for another spell of 60 days purely on stop-gap arrangement with a break of one day till the selection was made by the competent authority whichever was earlier. This was done by the District Development Commissioner, Doda vide his Order No.DD/91-92/231/B dated 22.01.1992. The petitioner claims and which claim is not refuted by the respondents that ever since her initial appointment on ad hoc basis, she has been continuously performing the duties of Craft Teacher and has been receiving the salary admissible to the post. The petitioner further claims that despite the fact that she had been continuously performing her duties of Craft Teacher on ad hoc basis and had completed a continuous service for more than seven years, yet, the respondents did not consider her case for regularization in terms of the Govt. Order No.1285-GAD of 2001 dated 06.11.2001. The petitioner submits that in terms of the aforesaid Govt. Order, she was entitled to be regularized w.e.f.

27.11.1998. The petitioner also claims that she waited and waited for her regularization, but, nothing was done by the respondents till the State Legislature enacted an Act known as Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 (hereinafter referred to as 'the Act of 2010'). The petitioner asserts that her case was fully covered under the provisions of the Act of 2010 as well, but, the respondents took almost seven years to consider the case of the petitioner and order her regularization. This was ultimately done by the respondents vide Order No. 260-SW of 2017 dated 17.08.2017 and the services of the petitioner as Craft Teacher were regularized prospectively, though at the time of promulgation of the Act, she had completed more than seven years continuous service on ad hoc basis and was fulfilling all other requirements of the Act of 2010. The petitioner has accepted the order of her regularization, but, is aggrieved of the prospective effect given to her regularization, i.e., w.e.f. 17.08.2017. The grievance of the petitioner is that in terms of the Govt. Order No.1285-GAD of 2001 dated 06.11.2001, she was entitled to be regularized immediately on completion of seven years of service or at least with effect from promulgation of the Govt. Order No.1285-GAD of 2001 dated 06.11.2001. Relying upon the judgment of the Division Bench of this Court in the case of State of J&K Vs Mushtaq Ahmed Sohail and others (LPA No. 33/2010), the petitioner claims that she having been appointed upto the date of the issuance of Govt. Order No.1285-GAD of 2001 dated 06.11.2001 and having completed seven years on ad hoc service was entitled to be regularized on permanent basis in terms of SRO 64 of 1994. Alternatively, the petitioner submits that even if she is not found entitled to regularization in terms of Govt. Order No.1285-GAD of 2001 dated 06.11.2001, she is certainly entitled to her regularization w.e.f. a date 150 days posterior to the appointed date. To bolster her claim, the petitioner relies upon the Division Bench judgment of this Court in case titled Rabia Shah v. State of J&K and others, reported in 2017 (1) JKJ [HC] 490.

2. The respondents have not filed their objections, but, have produced the record of the petitioner. From the perusal of the record produced by Mr. Vishal Bharti, learned counsel appearing for the respondents, it clearly transpires that the contention of the petitioner that she came to be appointed as Craft Teacher on ad hoc basis in the year 1991 initially for a period of 60 days is factually correct. She continued as an ad hoc appointee till she was regularized under the Act of 2010. There is also no dispute that the engagement of the petitioner made in the year 1991 was against a clear vacancy and it is because of this reason, she was held entitled to regularization under the Act of 2010. In view of the admitted factual scenario obtaining in the matter, the only question that calls for determination in this petition is as to whether the petitioner is entitled to her regularization as Craft Teacher in the Department of Social Welfare from retrospective date and if so from which date?

3. Heard learned counsel for the parties and perused the record. Admittedly the petitioner is qualified and eligible to hold the post of Craft Teacher in the Social Welfare Department. She was engaged as Craft Teacher on ad hoc basis for a

period of 60 days w.e.f. 27.11.1991. She was thereafter continued in the said arrangement till her case was considered for regularization under the Act of 2010 and she was regularized prospectively w.e.f. 17.08.2017, i.e., the date when order of her regularization was issued by the respondents. The regularization was ordered in relaxation of her age of 14 years 03 months and 21 days. The petitioner claims that she was entitled to the benefit of Govt. Order No.1285-GAD of 2001 dated 06.11.2001, which inter alia provided that all ad hoc appointees to non-gazetted posts recruited from time to time beyond 29.12.1988 till the date of issue of the order, i.e., 06.11.2001, who were in service, were entitled to be considered for regularization after completing seven years of continuous service from the date of appointment provided they fulfilled the requirements as laid down in the Govt. Order No.1285-GAD of 2001 dated 06.11.2001. The petitioner rightly submits that she having been appointed in the year 1991 and being in service on 06.11.2001 was entitled to be regularized on completion of seven years continuous service from the date of her initial appointment. Her contention that she was entitled to regularization under the Govt. Order No.1285-GAD of 2001 dated 06.11.2001 w.e.f. 01.12.1998 may not be fully incorrect. Going by the provisions of Govt. Order No.1285-GAD of 2001 dated 06.11.2001, the petitioner who had completed seven years' service as on 06.11.2001 was at least entitled to regularization w.e.f. 01.04.2002, i.e., the financial year following the date of promulgation of the Govt. Order No.1285-GAD of 2001 dated 06.11.2001. It may be pertinent to take note that the aforesaid Govt. order remained in force only till 09.02.2004 when it was superseded by Govt. Order No.168-GAD of 2004 dated 09.02.2004. While it is not in dispute that the petitioner on coming into force of Govt. Order No.1285-GAD of 2001 dated 06.11.2001 and on his completion of requisite service of seven years was eligible to be considered for regularization, yet, this Court cannot lose sight of the fact that the petitioner never staked her claim for regularization and remained quiet for almost seventeen years. The claim of the petitioner for his regularization in terms of the Govt. Order No.1285-GAD of 2001 dated 06.11.2001 is, thus, highly belated and cannot be entertained at this point of time. It may also be pertinent to note that hardly any employee was given the benefit of Govt. Order No.1285-GAD of 2001 dated 06.11.2001, which came to be superseded by the Govt. Order No.168-GAD of 2004 dated 09.02.2004. The claim of the petitioner, if accepted at this belated stage, would create administrative chaos as in the event petitioner would rank senior to all those entire Craft Teacher appointed in the Department during the interregnum. It is for the aforesaid reasons I am not inclined to entertain the claim of the petitioner for her regularization in terms of the Govt. Order No.1285-GAD of 2001 dated 06.11.2001. However, the claim of the petitioner for her regularization under the Act of 2010 with effect from the date, i.e., 150 days posterior to the appointed date, is well founded and cannot be denied to the petitioner. The Division Bench judgment of this Court in the case of Rabia Shah Vs. State of J&K and others (supra) applies to the facts of the instant case on all fours. The petitioner, as held by the Division Bench in the aforesaid case, is entitled to regularization from the

date, i.e., 150 posterior to the appointed date. The appointed date as defined in Section 2 (c) of the Act 2010 means "the date of commencement of this Act". Admittedly, the Act was published in the Govt. Gazette on 28.04.2010 and came into force with immediate effect. The petitioner would be, thus, entitled to her regularization w.e.f. 27.09.2010, the first proviso to Section 5 of the Act of 2010 notwithstanding. It is true that in terms of the first proviso to Section 5 of the Act of 2010 eligible ad hoc, contractual or consolidated appointee is entitled to regularization only with effect from the date of regularization irrespective of the fact that such appointees may have completed more than seven years of service on the appointed date and thereafter, but, before his/her regularization. This first proviso to Section 5 of the Act of 2010 was taken note of by the Division Bench in the case of Rabia Shah (supra) and the same was read down to provide that a person who has completed seven years continuous service as ad hoc, contractual or consolidated appointee on the appointed date shall be entitled to regularization of his/her service w.e.f. 150 days posterior to the appointed date. What was held by the Division Bench in the aforesaid judgment is very precisely summed up in Paragraph No.20 of the judgment, which for facility of reference is reproduced as under:-

"20. Now, since the petitioner had completed the prescribed seven years' service on ad hoc basis much prior to the appointed day, her case for regularization would have to be considered immediately, after the appointed day in terms of Section 10 of the 2010 Act. As held above, the period of accord of such consideration could not be unreasonably stretched beyond 75 days to complete the processes under Sub-section (2) and (3) of Section 10 of the 2010 Act and then a maximum of further equal period would be required for completion of the remaining part of the processes under Sub-sections (4) and (5) of the said Section. In that view, the writ petitioner would be entitled to regularization from a date, say, at least, 150 posterior to the appointed day, which would fall somewhere towards the end of September, 2010, to be precise 26/27.09.2010."

4. For the foregoing reasons, the petitioner is held entitled to regularization of her services w.e.f. 27.09.2010 with all consequential benefits. The writ petition is, accordingly, allowed in the above terms.

5. Disposed of as above along with connected CM(s).