
(1999) 05 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 510/94

Nasir Ahmad Dar and Others

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Citation : (1999) KashLJ 773 : (1999) 2 SriLJ 536 : (1999) SriLJ 536

Hon'ble Judges : M.Y.Kawoosa, J

Bench : Single Bench

Advocate : M.H.Attar, A.Andrabi, Advocates appearing for the Parties

Judgement

1. Petitioners have been engaged on daily wages of Rs. 157 per working day by debit to work charge grants in the year 1988, 1990 and 1992 on different dates. Their engagements were initially made for short periods, but, from time to time, their engagements were extended by various orders. Subsequently, they were engaged as casual labourers and continued till 1994. They are still continuing as such pursuant to interim order dated 22/3/1994 passed by this court. Then prayer is that their services be regularised in terms of Government Order No. 26F of 1994 dated 31/11/1994. The said Government order was substituted by SRO 64 of 1994 which is para metria with Government order No. 26F of 1994. The second prayer they have made in the writ petition is for quashing of two orders: one bearing No. DRDKE/D/74387532 dated 17/02/1994, by virtue of which their engagement was to be discontinued; and the second order No. CS/ Extt/WS/9394/19932005 dated 15/02/1994, by virtue of which services of all casual labourers of the Block to which the petitioners belong, were discontinued. The petitioner have also prayed that the pay

scales of the posts they have been working against, be released in their favour.

2. No counter has been filed despite several opportunities given to the otherside.

3. Heard learned counsel for the parties.

4. Simple point involved in the case is that the petitioners have been engaged as daily wage/casual labourers at Rs. 15/ per day at the time of initial

engagement by debit to the work charge grants. There is no written denial regarding this fact. The only point raised by Mr. Attar, AAG is that the

petitioners have been subsequently appointed as casual labourers who do not come under the purview of SRO 64/94 for their regularisation. He

has contended that SRO 64/94 deals only with daily rated workers and work charge employees. This argument is not an attractive one on two

grounds: firstly, because their daily wages have already been ordered to be debited to work charge grants, by which the intention of the employer

is obvious that the petitioners have been treated as daily wagers. It is only subsequently that nomenclature of the status of the petitioners has been

changed by inserting words ""casual labourers"" against their engagement when their engagements were extended from time to time. Be that as it

may, the damp fact is that they are continuing right from 1988 upto this time, i.e. for periods ranging between 7 to 11 years approximately. But

they have been denied the benefit of SRO 64/94 only on the basis that they are casual labourers. Secondly, Mr. Attar, AAG has admitted the fact

that there is no difference between the wages payable to the daily wagers and casual labourers. Even the Apex Court in case "" State of Haryana

Vs. Piara Singh"" (1992 (4) SCC 118), has observed as under:

So far as the work charged employees and casual labourer are concerned, the effort must be to regularise them as far as possible and as early as

possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is

continued for fairly long spell say two or three years a presumption may arise that there is regular need for his services. In such a situation, it

becomes obligatory for the authority concerned to examine the possibility of his regularisation. While doing so, the authorities ought to adopt a

positive approach coupled with an empathy for the person. Security of tenure is necessary for an employee to give his best to the job.

The aforesaid observations are applicable in the present case on all fours. In the

present case, as I have already mentioned, the petitioners are continuously working for last about 7 to 11 years. So there is no reason to deny them the benefit of SRO 64/94.

5. Coming to the reliefs claimed in the petition, I do not think there is any need to quash the circular dated 17021994 issued by Director Rural

Development Department, Kashmir. However, the order No. CS/Extt/WS/9394/19932005 dated 15021994 issued by Block Development

Officer, Ganderbal ordering the termination of all casual labourers, is quashed insofar as it relates to the petitioners herein. So far as the relief of

equal pay for equal work is concerned, the argument has not appealed me, for, the petitioners at present are craving for their regularisation. They

cannot claim the benefit of a regular employee, when they are not regularised as yet (See 'State of Haryana Vs. Surender Kumar and others' AIR

1997 SC 2129). However, since the petitioners have been continuing to work till now, they are entitled to be regularised under SRO 64/94.

Respondents are, accordingly directed to consider their regularisation in the light of above observations within three months from today.

6. No order as to costs. The petition is allowed to the extent indicated above.