
(2022) 07 CAT CK 0030

In the Central Administrative Tribunal

Case No : Transfer Application No. 4100 Of 2021

Pathan Majid Khan & Others

APPELLANT

Vs

State Of Jammu And Kashmir & Others

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Citation : (2022) 07 CAT CK 0030

Hon'ble Judges : Anand Mathur, Member (A);D.S. Mahra, Member (J)

Bench : Division Bench

Advocate : Surinder Singh, R.A. Bhat, H. A. Ali

Final Decision : Allowed

Judgement

D.S. Mahra, Member (J)

1. The applicants have prayed for the following reliefs in the present TA :

“(i) CERTIORARI; for quashing the impugned inquiry report bearing No. Camp-Sgr-04/2015 dated 28.9.2015 together with communication bearing No. DHK/LIT/WP/013(23)/10301-304 dated 3.10.2015 and also the impugned Government order No. 337-Agri of 2- 15 dated 20.10.2015.

(ii) MANDAMUS; commanding the respondents to forbear and refrain from acting upon the impugned inquiry report and impugned communication dated 3.10.2015 and the impugned Government order No. 337-Agri of 2015 dated 20.10.2015 by any method, mode or manner against the rights and interests of the petitioners;

(iii) MANDAMUS; commanding the respondents to forebear and refrain from causing any interference or impediment to the petitioners in discharge of their duties as dailywagers till such time consideration is accorded to their regularization of services in tune with the judgment passed by this Hon'ble Court dated 29.4.2013 and 5.3.2015; and

(iv) Any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the present circumstances of the case may also be issued in favour of the petitioner and against the official respondents along with the costs."

2. The facts of the case in brief are that the applicants after completion of seven years' daily wage service requested the department for regularization. However, the respondents did not consider their claim, and the applicants approached the Hon'ble High Court of J&K at Srinagar in SWP No. 1093/2012. The said writ petition was disposed of on 29.4.2013 with a direction to the respondents to consider the case of the applicants for regularization under SRO 64/1994 within a period of six weeks. The respondents did not consider the case of the applicants and issued an advertisement notice dated 22.5.2013 for making appointment against 33 Class IV posts. Being aggrieved by the said inaction of the respondents, the applicants approached Hon'ble High Court of J&K at Srinagar again by filing SWP No. 1107/2013. In this writ petition Hon'ble High Court by its order dated 5.3.2015 directed the respondents to reserve 05 posts which are still lying vacant in the department. Since the respondents did not comply with the order passed in SWP No. 1093/2012, the applicant filed a contempt petition No. 349/2013. The respondents then issued an order dated 29.7.2013 wherein the claim of the applicants had been rejected. The applicants challenged this rejection order in SWP No. 1502/2013. Hon'ble High Court clubbed SWP No. 1107/2013 and 1502/2013 and vide order dated 5.3.2015, quashed the order dated 29.7.2013 with a direction to respondent No.1 to consider the case of the applicants in terms of order passed by Hon'ble High Court in SWP No. 1093/2012 within a period of three months. The respondent No.2 constituted a committee to consider the case of the applicants in terms of SRO 64/1994 and vide order dated 3.10.2015 held that the applicants are not covered under SRO 64/1994 and rejected their claim. The applicants are aggrieved by the committee's report dated 28.09.2015, the communication dated 3.10.2015, and the Government order dated 20.10.2015. Hence the present TA.

3. Learned counsel for the applicants has submitted that in pursuance of RTI information dated 15.12.2006, the applicants are working as daily wagers. He further submits that there are some more documents which are sufficient enough to prove that the applicants are working as daily wagers and deserve to be regularized in terms of SRO 64/1994 read with Govt. order 640-GAD of 2001 dated 14.6.2001 which provides that any daily rated worker who has completed 07 years of service by or before 2001, deserves to be regularised in terms of SRO 64/1994.

4. The respondents have stated in their counter that they are not denying the appointment of the applicants, but the applicants are casual/seasonal labours and not daily wagers. Learned counsel for the respondents further submitted that the applicants have approached this Tribunal on the same grounds and averments as averred in the writ petition before the Hon'ble High Court in earlier round of litigation. Learned counsel for the respondents further submits that

after thorough examination of the case of the applicants as per the records available with the respondent department, the case of the applicants were rejected vide order dated 20.10.2015. It is further submitted by the respondents that since the matter has already been considered by the respondents and the claim of the applicants for regularization under SRO-64 has been found devoid of merit, their claim was rejected. It is also submitted that the applicants were engaged at different spells as Casual/Seasonal Labours purely on need basis as and when required by the respondents to carry out time bound operations in the Departmental Orchards/Nurseries. The then Horticulture Development Officer, In-charge Sundri Nursery vide his letter dated 24.7.2012 also reported that none of the applicants have reported the Nursery. Furthermore the legally earned wages of the applicants were cleared by the Chief Horticulture Officer, Baramulla (Sopore) who were engaged as Casual Labours at different spells on need basis, but they refused to receive the cheques which were issued in their favour for the amount due to them as legally earned wages. The respondents have therefore prayed for dismissal of the present OA.

5. The applicants have filed rejoinder reiterating the facts stated in the OA.

6. Heard learned counsels for both sides and perused the materials on record.

7. Documents provided by learned counsel for the applicants through RTI state that the applicants are working regularly from 1994 till 2015 and the department has provided the salary also. As per the documents of the respondents the applicants were working as permanent daily labour/daily wager/casual labour. Learned counsel for the applicant submits that if in case the applicants are working as casual labour from 1.4.1994, they were entitled to be regularised in terms of SRO 64/1994 as per the order of Hon'ble High Court of J&K in Hussain Ali v State [2017 (1) JKJ 26 (HC)] and the order of Hon'ble Supreme Court in the case in Nihal Singh & others v State of Punjab & other [(2013)14 SCC 65 : AIR 2013 SC 3547] while considering a similar claim of regularization held that the Public Sector Undertakings or the Governmental organizations cannot exploit the rights of the labourers over a period of decades and it was further held that judgment in Uma Devi's case cannot become a licence for exploitation by the State and its instrumentalities. In this judgment Hon'ble Supreme Court has directed to regularise the services of appellants within three months.

8. In view of the above settled legal position we find that the applicants are working from 1994 regularly as permanent daily labour/daily wager/casual labour. In the original records also the attendance of applicants are marked with the stamp of competent officer of the respondent department. This Tribunal is not the competent authority to verify whether the signature and attendance of the applicants are fake or not. The respondents have also not taken any steps for making enquiry into the matter. Moreover, they have regularly paid salary to the applicants on the basis of same attendance sheet which is verified by the competent officers of the respondents.

9. Therefore the TA is allowed. Respondents are directed to regularise the services of the applicants in the light of the judgment of Hon'ble High Court and Hon'ble Supreme Court as mentioned above. This exercise shall be completed within six weeks from the date of receipt of the copy of this order. Till such exercise is completed, five posts of Class IV in Horticulture Department, District – Baramulla shall not be filled up.

10. There will be no order as to costs.