

(2018) 11 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 3034 Of 2017, IA No. 01 Of 2017

Rajesh Kumar Gupta @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 03-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 11 J&K CK 0005

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Rahul Pant, H.A.Siddiqui

Final Decision : Disposed Off

Judgement

1. With the consensus of learned counsel for the parties, this petition is admitted to hearing and is taken up for final disposal.
2. Instant petition has been filed by the petitioner seeking direction to the respondents to regularize his services in terms of SRO 64 of 1994 against the post of Mali retrospectively from the date the other Class IV employees of Kashmir Division were regularized with all consequential benefits including back wages, seniority and further promotions.
3. The facts leading to the filing of instant petition is that in the year 1997, the respondents invited applications for recruitment against Class-IV vacancies in the Forest Department and in pursuance of said Advertisement; petitioner being eligible also submitted his application. The selection process started and interviews were conducted, which culminated into issuance of select list wherein petitioner figured at S.No. 63 out of a list of 97 candidates. It is contended that the respondents without operating the selection that was prepared after a proper selection process, engaged the persons, who had not even responded to the Advertisement Notice and whose names even did not figure in the selection list, thus, forcing the petitioner to approach this Court through the medium of SWP No. 698 of 1999, which was allowed vide judgment dated 25.09.2000. The respondents instead of implementing the judgment of writ Court, preferred a

Letters Patent Appeal, which came to be disposed of vide Order dated 28.03.2001 directing the respondents to appoint the petitioner on adhoc basis. Complying the judgment passed by the learned Single Bench read with that of Hon'ble Division Bench, respondent No.4 appointed the petitioner on adhoc basis vide Order No.CFW/CJ/Estt/22-26/2002-03 dated 17.04.2002. It is contended that in terms of the judgment passed by this Court in SWP No. 698/1999, petitioner has to be treated as an adhoc employee with effect from the year 1998 and, as such, he is also entitled to be considered for regularization with effect from the date similarly situated Class-IV employees were regularized from the date they had been engaged but unfortunately similar benefit has not been granted to the petitioner. It is also contended that non-regularization of the petitioner despite the fact that he has an unblemished service record and having already rendered more than 15 years of active service, is illegal and arbitrary. It is further contended that in case the respondents do not regularize the petitioner, he will not be entitled to get even the pension benefits as the petitioner has already reached the stage where he is left with only eight years of service. It is contended that entire life of the petitioner has been spoiled by the respondents due to their callous and vindictive attitude. Hence, the present writ petition seeking directions to the respondents to regularize the petitioner in terms of SRO 64 of 1994 against the post of Mali retrospectively from the date other Class IV employees of Kashmir Division were regularized with all consequential benefits including back wages, seniority and further promotions.

4. Respondents have not filed the objections, however, they have filed the status report wherein it is contended that petitioner had appeared in the interview in the year 1999, for appointment amongst others against Class IV post on adhoc basis. It is further contended that when petitioner was not selected, he filed SWP No. 698/1999 titled Rajesh Kumar Gupta Vs. State and others, which came to be decided on 25.09.2000 with the directions to the respondents to issue appointment letter in favour of the petitioner and the petitioner has been held entitled to all monetary benefits as allowed to adhoc appointees. The said order of learned Single Judge was challenged in LPA by the Forest Department, which came to be disposed of on 28.03.2001 with the modification that respondent No.1-Sh. Rajesh Kumar Gupta is entitled to monetary benefits as is allowed to adhoc appointees only from the date he has to be appointed on adhoc basis. It is contended that pursuant to the said Court directions, the Conservator of Forests, West Circle on approval from General Administrative Department vide Administrative Department letter No. FST/NG/SWP/136/99 dated 05.04.2002 had issued appointment letter dated 17.04.2002 in favour of the petitioner appointing him as Mali in the pay scale of Rs. 2550-3200 for a period of 89 days against the available vacancy caused due to the promotion of Sh. Jarar Hussain Mali as Forest Guard from Poonch Division.

5. Feeling aggrieved, the petitioner again approached this Court through the medium of present writ petition with the prayer to regularize the service of petitioner in terms of SRO 64 of 1994 against the post of Mali retrospectively. It

is contended by the learned counsel for the respondents that petitioner has been regularized vide Forest Order No.82 of 2018 dated 24.04.2018. It is also contended that petitioner has been regularized since 2002 in terms of direction dated 28.03.2001 passed in LPA No.496/2000 titled State of J&K and others v. Rajesh Kumar Gupta and others.

6. Heard learned counsel for the parties and perused the record.

7. In the status report filed by the Respondent No.6, it has been admitted by the Respondents that the services of all the 99 employees appointed to various posts of Class IV in the Forest Department in Jammu Division including that of the petitioner have been regularized by virtue of Forest Order No.82 of 2018 dated 24.04.2018 issued in compliance to the Judgment dated 20.02.2018 passed by the co-ordinate Bench of this Court. In the said order, the services of petitioner have been regularized with effect from 17.04.2002. However, the contention of Ld. Counsel for the petitioner is that in terms of judgment of writ Court passed in SWP 698/1999, the services of petitioner were required to be regularized w.e.f 27.02.1998, the date on which the services of adhoc appointees against whom the petitioner was appointed were regularized, so the petitioner is deprived of the benefits which have been extended to the similarly circumstanced persons, which amounts to violation of his fundamental rights.

8. Learned Sr. AAG has contended that as per the judgment of Division Bench of this Court in LPASW No. 496/2000, the services of the petitioner are to be reckoned from the date of his appointment. On the other hand, Ld. Counsel for the petitioner has argued that this contention of Mr. Siddiqui is not only ill-founded but also legally not tenable for the reason that the only challenge made by respondent-State to the judgment of Single Judge in SWP No. 698/1999 by way of filing LPA was with regard to grant of monetary benefits to the petitioner. Hon'ble Division Bench on the basis of statement of learned counsel for the appellants-state that he would not like to pursue the appeal provided it is made clear that respondent-writ petitioner shall be entitled to monetary benefits from the date he is appointed, had modified the order of Writ Court to the extent of dis-entitling the petitioner of monetary benefits whereas the entitlement of the petitioner to all other reliefs as were granted to the private respondents, in the said petition, was upheld. Rather the judgment of writ Court with regard to entitlement of the petitioner to the same reliefs as were provided to the private respondents in that writ petition, attained finality.

9. After the issuance of Forest Order No.82 of 2018 dated 24.04.2018, the only question that remains to be considered by this Court in the present writ petition is as to from which date the Services of the Petitioner/employee are to be reckoned for regularization. This Court has already held in SWP No. 698 of 1999 that the petitioner would be entitled to the same relief as has been granted to the private adhoc respondents, namely, Kuldeep Sharma and Pawan Kumar which had attained finality by way of judgment of Division Bench. In the Forest Order No.82 of 2018 dated 24.04.2018 both the private adhoc respondents, who

figured at Serial No. 53 & 54 have been regularized w.e.f. 26th Feb. 1999 and 27th Feb. 1998 respectively. No explanation has been put forth on behalf of the respondents as to why similar benefit has not been extended to the petitioner even though the same was granted to him by this Court. Thus, the petitioner has been subjected to hostile discrimination without any justification and depriving the same benefit to the petitioner would amount to violation of Articles 14 and 16 of the Constitution of India.

10. In view of the above, the writ petition is disposed of with a direction to the respondents (competent authority) to issue order of regularization in favour of the petitioner by giving retrospective effect from the date the other adhoc employee, namely, Pawan Kumar is given the benefit, against whom the petitioner was appointed as his claim was far superior than him, along with all the consequential benefits of service viz. preparation of service book, leave, release of annual increments, seniority, in-situ promotions, etc. Let the aforesaid exercise be carried out by the respondents within a period of one month from the date of receipt of a certified copy of the order passed today.

11. Disposed of as above along with connected IA(s).