

(2019) 12 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 101 Of 2018

Shakeel Ahmad Sheikh

APPELLANT

Vs

State Of Jammu And Kashmir & Ors

RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Citation : (2019) 12 J&K CK 0027

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : B. A. Dar

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

1) Petitioner, aggrieved of order No.345 of 2015 dated 28.08.2015, whereby his claim for regularization has been rejected, has filed the instant petition.

2) Before this Court proceeds to deal with the controversy involved in this petition, it would be necessary to take note of contextual facts leading to the filing of this petition

I) In terms of Government order No.639-GAD of 1996 dated 09.08.1996, sanction was accorded to the grant of certain incentives to the State Government Employees including Daily Wage Earners to be deployed on election related work in the Valley during the forthcoming State Legislative Elections. It was, inter-alia, provided in the Government Order aforesaid that the daily wagers working in Government, who have not yet completed the prescribed daily wage service of seven years for regularization on 31.03.1996 and who satisfactorily perform election duty in the Valley, would be considered for regularization in relaxation of condition of 7 years' service, after completing only two years of such service.

II) On such representation in the Government Order (supra), the petitioner claiming to be working as casual labourer, volunteered to perform election duty

and was deputed as such at Polling Station 23/12 Amira Kadal Constituency.

III) Thereafter, petitioner represented to the respondents for regularization of his services in terms of Government Order aforesaid. When no decision was taken on the representation, the petitioner filed SWP No.3809/1997. The writ petition was disposed of with the direction to the respondents to accord consideration to the petitioner's entitlement for regularization of services in terms of

Government Order No.639-GAD of 1996 forthwith. In the meanwhile, the petitioner was directed to be allowed to continue, if in position on date.

IV) The direction (supra) was not complied with by the respondents and the petitioner was again forced to file SWP No.44/2006, which was disposed of on 30.01.2006 with the direction to the respondents to process petitioner's case further in light of the communications of District Election Officer, Srinagar, within three months.

V) Non-compliance of the direction aforesaid compelled the petitioner to file contempt Petition No.144/2006. This Court, on 12.12.2006, disposed of the contempt petition while observing as under:

"In the circumstances, I do not find due compliance of the judgment of this Court by the respondents. However, in the interest of justice before initiating the proceedings against the respondents for non-compliance of the direction of the Court, another opportunity is given to the respondents to comply with the direction of this Court. Let the case of the petitioner be processed within one month and the necessary orders issued by the respondents in compliance to the direction of this Court passed on 30.01.2006."

VI) The respondents filed a Letters Patent Appeal which was registered as LPA No.12/2007. The Division Bench of this Court, after hearing the counsel for the parties, disposed of the appeal with the observation that the order of the learned Single Judge coming under appeal is not to be construed as a direction to the State authorities to issue an order of regularization of service of the petitioner. The order of the learned Single Judge only directs the concerned authorities in the State Government to re-consider the case of the petitioner in light of the Communication of the Assistant Election Officer dated 07.11.2005 and in terms of the relevant statutory rules.

VII) The respondents issued a consideration order bearing No.352-D of 2007 dated 28.09.2007 whereby claim of the petitioner for regularization was rejected. Confronted with this position, the petitioner filed another petition which was registered as SWP No.849/2008. This Court after noticing the factual position of the case disposed of the writ petition in terms of judgment dated 08.07.2015.

The consideration order No.352-D of 2007 dated 28.09.2007 was set aside and the respondents were directed to consider the case of the petitioner afresh in light of the observations made in the judgment dated 08.07.2015 and in accordance with Government order No.639- GAD of 1996 dated 09.06.1996 and

to pass appropriate orders thereon under rules within a period of six weeks from the date copy of the order is served upon them. Petitioner was given right to re-agitate subject to survival of cause.

VIII) The petitioner, in view of non-compliance of the judgment supra by the respondents, filed contempt petition No.209/2017. The respondents filed their statement of facts along with consideration order bearing No.345 of 2015 dated 28.08.2015 whereby claim of the petitioner for regularization has again been rejected. It is this order which has been assailed in this petition.

3) The respondents have contested this petition by pleading, in their objections, that the petitioner does not fulfil the criteria prescribed in Govt. order No.639-GAD of 1996. The petitioner though performed election duty but has not completed two years of service as a daily wager, as provided in Government order in question, for being eligible to be regularized. The petitioner was engaged on 10.07.1995 and continued to work as casual labourer up to 31.03.1996, thus rendering only 11 months service. It is further urged that the respondents are duty bound to implement the legal provisions as these are, but the case of the petitioner is not covered by the Government Order (supra), as such, his case has been rejected after meticulous examination of the facts of the case and the rules governing the subject.

4) Having heard learned counsel for the parties and perused the record, it would be necessary to first set out Government Order No.639-GAD of 1996 dated 09.08.1996, which reads as under:

Government of Jammu and Kashmir

General Administration Department

Sub:- Grant of incentives to the State Government Employees to be deployed on Election related duty.

Ref:- State Administrative Council Decision NO. 96 dated 25th of July 1996.

Government Order No. 639 GAD of 1996

Dated 09.08.1996

Sanction is accorded to the grant of following incentives to the State Government Employees including Daily-Wage Earners to be deployed on election related work in the Valley during the forthcoming State Legislative Assembly Elections: -

i. Honorarium equivalent to one month's pay and allowances and Daily allowance at the rate of one and a half times the normal rate, as may be paid to all officials deputed for election duty from outside the State.

ii. Ex-gratia relief of Rs. 5.00 lakhs may be paid in case of demise of an Officer/ Official whether on poll duty or any other duty in connection with the maintenance of essential supplies anywhere in the state in the event of breakdown of these services of any other election related work like counting of Votes.

In addition, an appropriate job will be provided to the dependent of the deceased's nominee, at a place of his/her choice.

iii. Daily Wagers working in the Government who have not yet completed the prescribed daily wage service of seven years for regularization as on 31.03.1996 and who satisfactorily perform election duty in the Valley would be considered for regularization, in relaxation of condition of 7 years' service after completing only two years of such service.

iv. In order to organize training of the polling staff in the security camps and for other election duties the Deputy Commissioners, are authorised to engage, purely on contract basis upto five persons for each Assembly Segment on a consolidated amount of Rs. 5000/- per month for a period not exceeding 60 days.

By order of Government of Jammu and Kashmir"

5) From the reading of Government Order (supra) in conjunction with circular of General Administration Department issued vide No.3-GAD of 1997 dated 30th January, 1997, it is beyond any pale of doubt that the Government had provided incentives to the State Government employees including daily wage earners, who would be deployed on election related work in the Valley during the State Legislative Assembly Elections, 1996, subject to fulfilment of certain conditions. So far as daily wagers working in government departments were concerned, they were given the benefit of regularization of their services without even completing the requisite service of seven years as envisaged in SRO 64 of 1994. It is so provided in para (iii) of the Government Order (supra) that a daily wager, who has performed the election duties satisfactorily, shall be entitled to the benefit of regularization even if he has not completed the mandatory service of seven years as on 31.03.1996, provided he has to his credit two years of such service as on 31.03.1996. The petitioner having been engaged on 01.07.1995, had, thus, not completed the said service of two years. The petitioner was, thus, not eligible for regularization.

6) The respondents have also disputed that the petitioner being a casual labourer was not covered by Government order dated 09.08.1996. This aspect, however, has already been considered by this Court in SWP No.849/2008 along with clubbed matters, in which a Bench of this Court, vide its judgment dated 8th July, 2015, has held that a casual labourer would be included in the term

"daily rated earner" as used in Govt. Order dated 09.08.1996. This ground, however, is not available to the respondents to deny the benefit of regularization to the petitioner. However, I am in agreement with the respondents that the petitioner not having completed mandatory two years' service as on 31.03.1996, is not eligible for regularization in terms of Government Order of 1996 (supra). The date 31st March, 1996, for having two years' service has been fixed by the Government with a purpose because in terms of SRO 64 of 1994, there was a complete ban on engagement of daily wagers with effect from 31st of March, 1994 and the Government never intended to put premium on the illegal

engagements made despite specific ban contained in SRO 64 of 1994. However, there is one aspect which the respondents have not considered while passing the impugned order dated 28th of August, 2015. District Election Officer has, vide his letter dated 09.06.2003, recommended the case of the petitioner for relaxation so that the benefit of Government order dated 9th August, 1996, could be extended to him. There appears to be no decision taken by the competent authority on the aforesaid aspect of the matter.

7) Keeping in view the totality of the circumstances, I am of the view that strictly speaking, the case of the petitioner is not covered by Government order dated 09.08.1996 as he was not possessing two years mandatory service as on 31.03.1996 yet I find that the respondents have failed to address the issue of granting relaxation in favour of the petitioner on account of his having satisfactorily participated in the election duty in 1996. It is not out of place to mention here that several employees similarly situated with the petitioner who were daily wagers have been conferred the benefit of regularization.

8) While I do not find any merit in the submissions made by learned counsel for the petitioner that the petitioner is entitled to regularization of his services in terms of Government order dated 9th of August, 1996, yet I would like the respondents to consider giving relaxation to the petitioner and regularize his services as a one time exception, if the same is permissible in law.

9) With the aforesaid observations, the writ petition is disposed of.