

(2019) 07 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1742 Of 2018, CM No. 3081 Of 2019,
IA No. 1, 3, 4 Of 2018, Contempt Petition (CPSW) No.) No 707 Of
2018

Shakeela Andrabi & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21, 23, 226, 309

Citation : (2019) 07 J&K CK 0041

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : R. A. Jan, Suhaib Farooq Banday, S. N. Ratanpuri

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. By medium of the instant petition, the petitioners beseech for the grant of following relief(s) in their favour:

I. Writ in the nature of Mandamus or any other appropriate Writ, directing the respondents not to curtail/ withdraw any bookings from the petitioners

and maintain 29 days bookings per month in favour of the Petitioners;

II. Writ in the nature of Mandamus or any other appropriate Writ commanding the Respondents to treat the Impugned Order dated 07.03.2016 and

16.03.2018 in so far as the Petitioners are concerned non-est in law, be also issued in favour of the Petitioners and against the Respondents;

III. Writ in the nature of Certiorari or any other appropriate Writ quashing the Impugned Order dated 07.03.2016 and 16.03.2018 in so far as the

Petitioners are concerned, be also issued in favour of the Petitioners and against

the Respondents.

IV. Writ in the nature of Mandamus or any other appropriate writ commanding the Respondents to desist, refrain and forbear from giving effect to the

impugned Order dated 07.03.2016 and 16.03.2018 and/ or acting in pursuance thereto in any manner prejudicial to the Constitutionally Guaranteed

Rights guaranteeing the Petitioners the bookings for 29 days a month in fulfilment of promise/ assurance made to the Parliament Standing Committee

on Labour, that the Casual Assignees/ Workers of Radio Kashmir Srinagar, who are/ were getting the bookings for 29 days a month shall continue to

be engaged on contractual basis for the same duration till they attain the age of 60 years, be also issued in favour of the Petitioners and against the

Respondents;

OR IN THE ALTERNATIVE

Writ in the nature of Mandamus or any other appropriate Writ commanding the Respondents to continue to engage the Petitioners on Contractual

Basis for a period of 29 days a month till the Petitioners attain the age of 60 years and be admitted to all the Retiral benefits including pensionary

benefits, be also issued in favour of the Petitioners and against the Respondents;

V. Writ in the nature of Mandamus or any other appropriate Writ commanding the Respondents to Pay and/ or cause to pay the Petitioners salary/

wages at the rate of the 1/30th of the Pay at the minimum of the Pay Scale of the Regular Post with Dearness Allowance being paid to the employees

in the Regular Employment of the Respondent No.2 performing the functions and duties as Announcers and Production Assistants as are being

performed by the Petitioners, be also issued in favour of the Petitioners and against the Respondents;

VI. Any other order, direction, writ which this Honâ??ble Court deems fit and fine in the circumstances of the case be also passed in favour of the

petitioner and against the respondent department and the same will meet the interests of justice.â??

2. The case of the petitioners is that the respondent Public Service Broadcaster (Radio Kashmir), in order to tide over and manage the crises

threatening the very providing of service as a Public Service Broadcaster, engaged the petitioners to run the show and, upon such engagement, the

petitioners were assigned varied duties and responsibilities. It is pleaded that the

petitioners, being fully qualified for the assigned jobs, have been performing the same for the past more than two decades and that the work being performed by the petitioners is regular and perennial in nature. It is stated that, thereafter, the competent authority, in recognition and appreciation of the exemplary services rendered by the petitioners and all those casual assignees, who while on casual basis had crossed the upper age limit prescribed for Government employment/ jobs, took a policy decision wherein it was provided that all other casuals, who have already attained the age which is over and above the maximum age required for Government service, may also be engaged for periods upto maximum of 29 days in a month on existing fee structure for assignments, depending upon programme requirements. In pursuance of the aforementioned policy decision, the petitioners, as stated, claim to have been continuously booked on regular basis for a period of 29 days a month, but paid only at the rate of Rs.1,000/-per day when by reason and by virtue of the Policy Decision of the respondent No.1 on the payment of wages, to the Casual Assignees/ Workers like the petitioners are entitled to payment of wages at the rate of 1/30th of the pay at the minimum of pay scale of the regular post + DA payable to the Daily Rated Workers/ Casual Assignees performing the work/ job as is being performed by a regular employee of the respondent No.2. It is contended that the engagement of the petitioners for a period of 29 days a month owes its genesis to the action taken by the respondent Nos. 1 and 2 to the Parliament Standing Committee on Labour that the Casual Assignees/ Workers of Radio Kashmir Srinagar who are/ were getting the bookings for 29 days a month shall continue to be engaged on contractual basis for the same duration till they attain the age of 60 years. Thereafter, by virtue of communication No.15/2/2012-P-VI New Delhi dated 7th of March, 2016, the respondents are stated to have reduced the period of bookings from 29 days to 06 days a month, however, the said communication, as stated, the petitioners continued to be booked for a period of 29 days a month until August, 2018, when the respondent Nos. 2 to 6, on the basis of the aforesaid communication read with Programme Inspection Report of March, 2018, reduced the period of bookings of the petitioners from 29 days to 06 days a month. Subsequently, the respondents in terms of order dated 16th of March, 2018, have decided not to accept the recommendations of the Parliament

Standing Committee on Labour for regularization of Casual Workers/ Artists of Radio Kashmir, CBS Radio Kashmir and Doordarshan Kendre,

Srinagar. Aggrieved thereby, the petitioners have filed the instant writ petition for the above stated relief(s).

3. Mr Jan, the learned Senior counsel, representing the petitioners, pleads that the impugned order dated 16th of March, 2018 has no application to the

facts of the present case as the petitioners have to their credit a continuous service rendered over a period of time spanning over about two decades.

The learned senior counsel further submits that the order dated 16th of March, 2018, insofar as it relates to the case of the petitioners is concerned is

grossly misconceived and misplaced, but also misdirected in point of law in view of well settled legal position that under our Constitutional scheme it is

the Executive that is accountable to the Parliament and not vice versa and that the Department related Parliamentary Committees are constituted by

Parliament to oversee the functioning of the Ministries/ Department of the Government with a view to exact the accountability of the Executive. It is

further pleaded that the recommendations of the Parliament Standing Committee on Labour have mandatory import and binding on the Executive and,

therefore, it was not legally permissible or open in law for the Ministry of Information and Broadcasting to pass the impugned order dated 16th of

March, 2018 in violation of the stand taken before the Parliament Standing Committee on Labour. The learned senior counsel has further proceeded to

contend that the action of the respondents in denying and depriving the petitioners the wages due and payable in law at the rate of 1/30th of the pay at

the minimum of pay scale of the regular post + DA is also totally arbitrary, violating with impunity the constitutional guarantees, guaranteed to the

petitioners under Articles 14, 16, 21 and 23 of the Constitution of India and, thus, illegal and unconstitutional, therefore, unsustainable in law.

4. Mr Ratanpuri, the learned counsel, appearing on behalf of the respondents, submits that the petitioners were never employed by the respondents,

but were, in fact, working in various programmes aired from Radio Kashmir, Srinagar, on booking basis. The learned counsel further submits that the

perusal of the petition of the petitioners clearly indicates that the petitioners have been booked on assignment basis for various programmes from time

to time, as and when required and that new contracts are executed every month which may, sometimes, result in an assignee not being booked even

for a single day due to non-availability of work. It is pleaded that with effect from 1st August 2018, in view of non-availability of work, the petitioners are being booked for six assignments per month and may not be booked altogether in view of non-availability of suitable work, coupled with acute paucity of channels in India, particularly in the State of J&K. It is also contended that since the revenue generation at Radio Kashmir, Srinagar has fallen drastically as a major share of the market has been captured by the private FM Channels, therefore it was impossible for the respondents to continue with the earlier arrangement, as such, the bookings were reduced to six per month, which practice is being followed by all the All India Radio Stations across the country. In that backdrop, the learned counsel pleads that the Radio Kashmir, Srinagar cannot be an exception to the general rule being applied in other All India Radio Stations across India. The learned counsel for the respondents has further proceeded to state that the report of the Standing Committee on Labour, as relied upon by the petitioners, was not having any statutory force and, as such, is not binding upon the respondents unless accepted by the competent Authority. It is averred that since the petitioners have never been the employees of the respondents, but were only engaged on need basis, as such, the petitioners cannot claim any benefit of regularization, that too, when no scheme for their regularization exists. In the end, the respondents have prayed that the petition of the petitioners be dismissed.

5. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

6. At the very outset, what requires to be stated is that the petitioners are not working on any post on casual basis, but they are simply put on the panel for airing programmes from the respondent Radio Kashmir, Srinagar on booking basis, as and when required, and, therefore, the petitioners cannot claim parity with other similarly placed persons working with the respondents. The petitioners are only casual presenters with the respondent

Department and they were not appointed to any post by the respondents or selected on the basis of any competition as they were simply empaneled to

be offered bookings, as and when required as per the requirement of the respondents with the prescribed fee as per rules. The petitioners were only

appointed as casual assignees. Initially, the petitioners, admittedly, were required to perform for a period of 29 days in a month, however, as stated by

the respondents, the petitioners are now being booked for only six assignments per month in view of non-availability of work coupled with drastic decrease in the revenue generation at the respondent Department owing to the fact that a major share of the market has been captured by the private FM channels.

7. A Division Bench of the Bombay High Court in case titled *â??Vedavati Mohan Gokhale & Ors. v. Programme Executiveâ??*, rendered in *â??WP*

No. 8941/2018â??, while dealing with an issue similar to the one involved herein this case, has observed as under:

â??Hence, the terms and conditions of empanelment disclose that the same would not be an employment with Prasar Bharati and that the assignment

was to be granted to the empaneled candidates as and when required basis and the maximum assignment which an empaneled candidate was entitled

to is 6 days in a month and 72 days in a year. The said terms and conditions are therefore a pointer to the fact that the empanelment of the petitioners

does not create any right in them for continuance as such and to assert the said right by way of any judicial proceedings.

â?|.

Having regard to the aforesaid facts, we do not deem this a fit case to exercise our writ jurisdiction under Article 226 of the Constitution of India. The

above Writ Petition is accordingly dismissed.â??

8. Looking at the petition of the petitioners from yet another perspective, it has not been disputed that those who are empaneled as Casual assignees

were free to take employment on other days and in their spare time even on the day when they perform in the respondent Radio Kashmir. It is also

not in dispute that they used to be given a fixed fee for each programme. In that situation, it is evident that the petitioners were not even appointed on

casual basis as the employees who could be rendering regular and continuous services to the respondents and, as such, no scheme for their

regularization can be evolved having regard to the provisions of Article 309 of the Constitution.

9. A scheme of regularization can be evolved or a Statute or Statutory rules framed for regularization of the casual employees, who would answer the

criteria of holding a civil post in terms of Article 309 of the Constitution. A person who renders service on 29 days a month, and presently 6 days a

month, cannot be a holder of a civil post. It is beyond controversy that the petitioners have been working with the respondents on assignment basis and that they are, at present, being engaged for six days in a month. The services of the petitioners were never utilized by the respondents for any continuous period, but they were being engaged only as and when such services were required. In fact, it is clear that the services of the petitioners were being utilized for different forms of work to cope up with temporary increase of work, as it was not at all feasible for the Department to keep regular staff which may incur huge expenditure. At the present moment, due to non-availability of work, the respondents are well within their rights to curtail the number of bookings with regard to the petitioners as per their requirement strictly in terms of circular dated 9th of June, 2010.

10. Coming to the recommendations of the Parliamentary Standing Committee on Labour, as relied upon by the petitioners, the same stand already rejected by the competent authority, i.e. the Government of India and, therefore, the said recommendations cannot come to the aid or rescue of the petitioners.

11. For all what has been said and done above, I am of the considered view that there is no merit in the petition of the petitioners. Accordingly, the same fails and shall stand dismissed alongwith all connected CMs. Interim directions, if any, subsisting as on date, shall stand vacated.

12. As a corollary to the order passed hereinabove, the connected contempt petition shall also stand closed.