

(2002) 12 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : LPA No. 131 of 2001

State and Another

APPELLANT

Vs

Bashir Khan

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 4 JKJ 137

Hon'ble Judges : T.S. Doabia, J;B. L. Bhat, J

Bench : Division Bench

Judgement

1. The respondent-writ petitioner came to this Court with a plea that 5 Marias of land has been acquired by the State and he has not been paid any compensation. This was because assurance was given to him that he would be given employment in the State. This aspect of the matter was taken note of by the learned Single Judge of this Court. Writ petition SWP 1406/95 stands allowed. A direction has been given to engage the respondent-writ petitioner. State has come in appeal.

2. The facts that the land of the respondent-writ petitioner was acquired and the fact that he was not paid any compensation is apparent from a communication dated: 14-05-3994. copy whereof is annexure ""p-4"" with the writ petition. For facility of reference, this communication is being reproduced below:-

Subject:- Land compensation case of village Saderkote Bala.

Sir,

Enclosed kindly find Shajra & Khasra of Saderkote Payeen pump station comprising 5 (five) Marias of land for which no compensation has been

paid so far.

The applicant is pressing hard for appointment of his son against land compensation. Yours faithfully,

Sd/-

Executive Engineer. Irrigation Division, Sumbal, Sonawari/Nisar.

3. A perusal of the above would indicate that the respondent-writ petitioner was not paid any compensation; this is because he was to get

employment in the State. If this be the position, then the State was bound either to pay compensation in terms of the Land Acquisition Act or to

give employment to the respondent-writ petitioner.

4. A Division Bench of this Court (Jammu Bench) in Letters Patent Appeal No. 309 of 1996 State of Jammu and Kashmir and others v. Chuni Lal

and others decided on 29-12-1999 has expressed an opinion that the person whose land stands acquired upto the issuance of SRO 214 of 1991

is entitled to employment under the State. While doing so, decision of this Court reported as Hari Ram v. State and others 1993 (3) SCT 87 and

Sudesh Kumar v. State and others SWP No. 799/95 were taken note of. The first decision was with regard to the interpretation of SRO 181 and

214. The second decision was with regard to an agreement entered into between the concerned employee and the Block Education Officer. This

agreement was in line with the terms and conditions stipulated in SRO 181. In both the cases, the concerned employees were held entitled to the

relief. The further question as to whether once a benefit is conferred and can be withdrawn retrospectively was also taken note of. The decision

given by the Punjab and Haryana High Court were taken note of. These decisions are Gurdip Singh v. The Haryana State Electricity Board 1997

(4) SCT 833 (P&H) and Surinder Singh v. State of Haryana and others 1996 (1) SCT 767. It was ultimately concluded:

Therefore, to say that the State Government is not bound to honour the commitment made by it would be laying down a proposition which would

not be in line with the view expressed by the various Single Bench decisions of this Court. Even otherwise, no person can be deprived of his

property except by due course of law. The respondent-writ petitioners were entitled to compensation. It has not been paid to them. Therefore,

they are well within their rights to contend that upto the issuance of notification

SRO 214 any person whose land was acquired was entitled to get

employment with the State. In view of the above, we are of the opinion that so long as the notification in question was in operation and was not

rescinded, the respondent- writ petitioners would be entitled to the benefits of the same

5. Independently of the above, it be observed that on account of various decisions dealing with the claims of regularization of casual employees

seasonal workers and employees employed under Contract Labor (Regulation and Abolition) Act 1970 an employee was entitled to the requisite

relief Reference be made to a Division Bench decision (Jammu Bench) in LPA (SW) 333/2002 decided on 26th July 2002 at Jammu. The issue

regarding regularization was considered. What is said is quoted below:-

i) That an employee who has completed seven years of service before 31st March 1994 is entitled to regularization in terms of SRO 64/94:

ii) That the employee who were engaged before 31st March 94 but have not completed seven years of service are entitled to the benefit of

regularization after completion of this tenure in the later financial year. This becomes apparent from the perusal of Rule 8 and 9 of the Rules

referred to above;

iii) That a further right stands conferred on the employees who have been engaged on daily rated/work charged basis. This right is conferred by

Rule 9. This is to the effect that no direct recruitment is to be made unless and until the claim of the persons already appointed are duly considered

for regularization;

iv) That the case of those employees who were not strictly speaking covered by SRO 64/94 are now to be dealt with in terms of government

order dated: 6th Nov. 2001;

v) That so far as the industrial workers are concerned, they are entitled to the protection of Industrial Disputes Act, 1947, and in case, they have

completed 240 days of service and in case, their services are to be brought to an end, then the provisions of Section 25-F of the aforesaid Act are

required to be complied with;

vi) That the fact that someone has been appointed contrary to the rules is an issue which is to be decided on the facts of each case. In case, it is

shown that there was some collusion between the employees and the person issuing the appointment order something can be said against the

employee, otherwise, the concerned employee would normally be entitled to the benefit of the order passed in his favour;

vii) That so far as the casual employees are concerned, they are not regulated by the rules in question but the fact would remain that an employee

who has completed a tenure of four years and in case, the need is permanent, then the said employee would be protected by the observations

made by the Supreme Court in the case of Piara Singh's judgment (supra). Paragraph 51 stands quoted above.

The State Government would accordingly consider the claims of this category of employees and deal with them individually or frame a scheme in

this regard;

viii) That a Government employee can also fall within the definition of workman;

ix) That even in the case of employee who is working with a contractor under the Contract Labor (Regulations and Abolition) Act, 1970, direction

can be given to the principal employer to bring the employee on its rolls;

x) That even in the case of seasonal employee, direction for regularization of services can be given under circumstances noticed above;

xi) That an employee who is engaged under a scheme can be adjusted in another suitable work if it is possible to do so. However, no vested right

exist in that person;

xii) That an employee working under the court's direction acquires no right to claim regularization;

xiii) That if similar situated employee's services are regularized then direction can be given for regularizing services of other also;

xiv) That an employee who has been appointed de hors the rules or does not possess qualification cannot claim regularization;

xv) That a person can claim compassionate appointment if the deceased employee was entitled to regularization but was not so regularized.

6. No doubt in this petition written agreement is not available, but the communication reproduced above makes it apparent that some assurance

was given to the respondent-writ petitioner. This has to be given due regarded.

7. This appeal is accordingly disposed of with the following directions:-

- i) That the respondent-writ petitioner be given employment in the State;
 - ii) In case condition No. (i) is not to be implemented., then the respondent-writ petitioner be paid compensation in accordance with the provisions of Land Acquisition Act;
 - iii) That the issue be considered and settled within a period of three months from the Date a copy of this order is made available by the respondent-writ petitioner to the State.
- Disposed of as such.