

(2013) 07 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : LPA No. 127 of 2011

State of J. and K. and Another	Vs	APPELLANT
Ghulam Hassan Bhat		RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) LabIC 893

Hon'ble Judges : M.M. Kumar, C.J;Dhiraj Singh Thakur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, C.J.—The instant appeal has been taken up on board with the consent of the learned counsel for the parties for final disposal.

The appeal has been filed under Clause 12 of the Letters Patent by the State of Jammu and Kashmir and its officers challenging the judgment and

order 03.08.2009 rendered by a Learned single Judge of this Court holding that the writ petitioner-respondent was entitled to be considered for

regularization. Feeling aggrieved, the State and its officers have challenged the view of the learned single Judge.

2. Few facts may first be noticed for deciding the controversy at hand. The writ petitioner was engaged as a daily rated worker on 27.04.1982.

He was suspended on account of his nefarious activities in connivance with one Storekeeper, Sh. Ali Mohammad Lone, who was posted at

Charsoo Sale Centre. There were charges against them of blackmailing/black-marketing of food grain. The Storekeeper, Sh. Lone was borne on

the regular establishment and was reinstated on 01.07.1988. In pursuance of the directions issued in SWP No. 1022/1988, he was re-engaged

vide order dated 25.07.1991. He preferred another petition registered as SWP No. 19/1991. Accordingly, as per the directions his re-

engagement order was given effect from 01.07.1988. It is conceded that the service of the writ petitioner-respondent were regularized w.e.f.

01.04.1994 after the Government created adequate number of posts for the Daily Rated Workers vide order No. 71-FST of 1994 dated

10.10.1994.

3. The writ petitioner-respondent became greedy and started entertaining an ambitious object. Eventually he filed SWP No. 18/1999 relatable to

the instant appeal. In the petition filed by the respondent, it was highlighted that the case of the writ petitioner-respondent was entirely on different

footing than that of Storekeeper, Sh. Ali Mohammad Lone, who was borne on the regular establishment of the department. He was entitled to hold

the post on substantive basis. He was governed by service rules, which provided for payment of subsistence allowance to employees placed under

suspension. Such a regular employee was also entitled to a regular departmental enquiry. The aforesaid procedure of payment of subsistence

allowance, suspension and holding of regular departmental enquiry was not applicable to a daily rated worker like the petitioner-respondent.

Despite that his services were regularized w.e.f. 01.04.1994. However, the writ petition has been allowed by the learned single Judge by observing

as under:--

Learned counsel for the petitioner submits that petitioner was brought on regular temporary establishment in the year 1997. The petitioner was

placed under suspension as a daily wager and by way of legal fiction continued to be in the engagement of respondent but would not get any

monetary benefit as he was not rendering any service to the respondents. The respondents have not terminated his service and an order of

suspension does not bring to an end the relationship of master and servant or the employer and employee. The petitioner could not be placed

under suspension for an indefinite period as that would tantamount to inflicting punishment on the petitioner. The so-called re-engagement of the

petitioner as daily wager w.e.f. 25th July, 1991 would in the facts and circumstances of the case tantamount to reinstating the petitioner as daily

wager. The petitioner was entitled for counting of his service for making him

eligible for being brought on regular temporary establishment in the same manner in which the other employees who were engaged along with him were brought on regular temporary establishment. This petition is accordingly disposed of with direction that the respondents will reconsider the case of the petitioner for his regularization of service in view of the observations made in this judgment and given him all consequential benefits, strictly in accordance with law. Disposed of.

4. We have heard learned counsel for the parties at considerable length and are of the view that the learned Writ Court had fallen in grave error by

issuing directions for consideration of the case of the writ petitioner for his regularization w.e.f. 25.07.1991. It is conceded as a fact that the writ

petitioner-respondent was engaged as daily wager on 27-04-1982. On account of his involvement with the Storekeeper, Sh. Ali Mohammad

Lone, who was borne on the regular establishment, an order of suspension was issued. The expression suspension has no meaning for the writ

petitioner-respondent, which in fact was applicable to the Storekeeper alone. It appears that his name has been mistakenly incorporated in the

suspension order. The writ petitioner-respondent has never been paid any subsistence allowance on account of suspension nor any such claim has

ever been made by him. There was no regular departmental enquiry held against him. Therefore, for all practical purposes he is deemed to be

relieved from his engagement as daily wager on 23.08.1982. He had rendered less than four months of service. He has already been given benefit

of regularization w.e.f. 01.04.1994, yet the learned single Judge has successfully been persuaded to issue direction for consideration I of his case

for regularization w.e.f. 25.07.1991 adopting the rational that it was not re-engagement of the writ petitioner-respondent but was re-instatement as

daily wager. There is no concept of suspending a daily wager because a daily wager is engaged on every day basis. The contract of employment

commences in the morning which comes to an end in the evening. There cannot be any suspension of a daily wager particularly when such a daily

wager has neither been paid nor he had ever claimed subsistence allowance, which is always paid to an employee borne on the regular

establishment. Moreover, there was no enquiry initiated against the writ petitioner-respondent. Despite the aforesaid facts, the writ petitioner-

respondent has been given the benefit of regularization w.e.f. 01.04.1994 and he cannot thus further claim that he is entitled to be regularized from an earlier date.

5. We are further of the view that the specific stand taken by the appellants before the Writ Court is that he was regularized on account of the fact

that adequate number of posts for the daily rated workers were created vide order No. 71-FST of 1994 dated 10.10.1994. Earlier to that date

there could not have any post against which the writ petitioner-respondent could have regularized. In any case there would be no legal right

accruing to the writ petitioner-respondent to claim regularization in the absence of any regular available post. Viewed thus, there was no merit in

the claim made by the writ petitioner-respondent.

6. As a sequel to the above discussion, we set aside the impugned judgment and order dated 03.08.2009 rendered by the learned single Judge

and hold that the writ petitioner-respondent is not entitled to issuance of any mandamus directing the appellants to consider his claim for

regularization from an earlier date. It is trite to observe that for issuance of mandamus there has to be existence of a legal right in favour of the writ

petitioner and corresponding legal duty on the part of the State. The Writ petitioner-respondent does not have any legal right to seek a direction for

his regularization and therefore no direction could be issued. Accordingly, the appeal is allowed. The view taken by the learned single Judge is set

aside and the Writ Petition is hereby dismissed.