
(2021) 01 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282 Of 2019, CM No. 6766, 6769, 6771, 6772, 6775, 6776, 6777, 6778, 6781, 6782, 6784, 6785, 6787, 6788, 6793, 6794, 6795, 6796, 6797, 6798, 6799, 6800, 6802, 6803,

State Of J&K And Others

APPELLANT

Vs

Abdul Ahad Lone And Connected Matters

RESPONDENT

Date of Decision : 29-01-2021

Acts Referred:

Jammu And Kashmir Daily Rated Workers / Work Charged Employees (Regularisation) Rules, 1994 — Rule 5, 7

Citation : (2021) 01 J&K CK 0014

Hon'ble Judges : Sanjeev Kumar, J;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Bikramdeep Singh, Saima Mehboob, M.A.Wani

Final Decision : Allowed

Judgement

S.No.,Name,Parentage,Residence

1.,Shakir Ahmad Bhat,Gh. Qadir Bhat,"Larnoo Batpora, Kokernag Anantnag

2.,Ab. Ahad Lone,Ab. Rashid,"Soaf, Kokernag, Anantnag

3.,Ajaz Ahmad Ganie,Abdul Ahad,"Soaf Kokernag, Anantnag

4.,Zahid Ahmad Zagoo,Manzoor Ahmad,"Panzgam, Kokernag, Ang.

5.,Farooq Ahmad Mir,Gh. Ahmad Mir,"Bindoo Zalangam, Kokernag

,,,

of withdrawal of the authority, none of the authorized departments including the department of agriculture was left with any authority to engage the",,,,

casual/seasonal labourers in their departments.,,,,

13. Whether Government Order No.43-F of 2015 is prospective or retrospective is not likely to change the position in any manner. Admittedly, the engagement of the writ petitioners, as need base labourers to perform the duties in different Sheep Breeding Farms, was temporary in nature, initial engagement order being only for a period of 89 days, though the engagement of the writ petitioners has been extended from time to time by giving them a break of one day after every spell of 89 days. That being the position, on or after the issuance of Government Order No.43-F of 2015, the appellant-department had no authority to extend their engagements or permit them to continue on need basis for the reason that the authority under which the writ petitioners were being engaged from time to time stood withdrawn by the Government.

14. Undoubtedly, as rightly held by the Writ Court, Government Order No.43-F of 2015 is prospective in operation and would have the effect of taking away the authority of the appellants to extend the engagement of the writ petitioners or to continue their engagements further. The Writ Court has not appreciated the Government Order from this perspective and, has thus, erroneously held that the services of the writ petitioners were not liable to be disengaged or discontinued by application of Govt. Order No.43-F of 2015 dated 17.03.2015. Govt. Order No.384-GAD of 2015 dated 17.03.2015 is clearly not attracted in the case on hand, for, the same pertains to the engagements/arrangements made by different Government Departments, PSUs and other autonomous bodies under schemes against the sanctioned posts and without any selection process. In the instant case, the engagement of the writ petitioners was neither under any scheme nor against any sanctioned post(s) and, therefore, applicability of Govt. Order No.384-GAD of 2015 is clearly ruled out. To the similar effect is the clarification issued by the GAD with regard to the import of Govt. Order No.384-GAD of 2015.

15. That apart, the services of the writ petitioners, as is apparent from the record, stood disengaged on the date the writ petitions were entertained and interim directions were passed by the Writ Court. The mere fact that the engagement of the writ petitioners was on need basis and without following any due process of selection would justify their disengagement by the appellants. The authority delegated to the appellants by the Government in terms of Govt. Order No.239-F of 2005 dated 29.01.2005 stood withdrawn and,

therefore, the appellants were devoid of any authority or competence to",,,
extend or continue the engagement of the writ petitioners further. That being the position, the appellants were well within their powers to disengage",,,
the writ petitioners. The direction of the Writ Court to allow the writ petitioners to continue on a need basis arrangement was not justified in the,,
facts and circumstances of the case.,,,

16. We are, therefore, of the view that having regard to the nature of engagements of the writ petitioners, no right was vested in them to continue in",,,

the department indefinitely, more so, when the authority under which the writ petitioners were being engaged from time to time stood withdrawn by",,,
the Government in terms of Govt. Order No.43-F of 2015 dated 17.03.2015.,,,

17. Mr. M.A.Wani, learned counsel appearing for some of the writ petitioners has raised the issue of applicability of SRO 520 of 2017 and urges that",,,

the writ petitioners having been engaged before 17.03.2015 were entitled to the benefit of regular engagement under the said SRO. This issue has,,,

been raised for the first time during the hearing of these appeals. We could not find any whisper about SRO 520 of 2017 in the pleadings that were,,,

before the Writ Court. Applicability of SRO 520 of 2017 may involve determination of other allied questions of fact and law, which this Court hearing",,,

appeal may not be able to determine in the absence of pleadings. We, therefore, keep this issue open for the writ petitioners to agitate before",,,

appropriate forum by way of appropriate proceedings. Nothing said in this judgment shall prejudice their right to claim the benefit of SRO 520 of 2017",,,

if that is attracted in their case.,,,

18. We are not advertent to judgments relied upon by the learned counsel appearing for the parties, for, they deal with the issue of regularization of",,,

daily wage/need based casual workers. In the instant case, the writ petitioners are only claiming their continuous engagement and are not praying for",,,

the regularization of their services.,,,

19. In view of the foregoing, all the appeals are allowed and the impugned judgment passed by the Writ Court is set aside.",,,