

(2018) 11 J&K CK 0101

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 828 Of 2009

Syed Abdul Wahid @APPELLANT@Hash Service Selection Board And Ors

Date of Decision : 27-11-2018

Acts Referred:

Jammu and Kashmir Daily Rated Workers Work Charged Employees (WCE)
regularization Rules, 1994 — Rule 4, 8
Constitution Of India, 1950 — Article 14

Citation : (2018) 11 J&K CK 0101

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Z.A.Shah, Mir Suhail

Final Decision : Disposed Off

Judgement

1. The petitioner is aggrieved of the forbearance of respondents in regularizing his services though request for the same was made, as pleaded by him. According to him, the services of some similarly situated persons have already been regularized.
2. In terms of the order dated 26.10.2018, Secretary Service Selection Board-respondent No.1 was directed to remain personally present on the next date of hearing along-with the relevant record, but neither respondent No.1 appeared nor record has been produced. However, Mr. Suhail, AAG submits that the case of the petitioner has been forwarded to the Secretary to General Administration Department(GAD) for regularization, who has forwarded the same to the Finance Department.
3. The brief grounds raised in the petition by the petitioner herein are:-
4. That the Service Selection Board in its 64th meeting had decided to adjust the petitioner along-with other similarly situated persons who had served the Board for 7-10 years as Casual Labourers and for that purpose Committee was constituted, which was also sanctioned by the GAD, but the said Committee instead of following the decision of the Board proceeded on altogether different

basis and rejected the adjustment of the petitioner. It is pleaded by the petitioner in the present petition that he has served the respondent-Board for more than 12 years on monthly wages. Furthermore, it is pleaded by the petitioner that the posts of Orderlies were not required to be referred to the Service Selection Board for selection. It is further pleaded that the Committee had failed to differentiate between the 'daily rated worker' and 'casual worker' and applied the instructions of the Government relating to 'daily rated worker' to the case of the petitioner, which in-fact was a case of 'casual labourer'. According to the petitioner, the private respondent Nos. 3 to 5, who were similarly situated persons, were appointed on temporary basis without following due selection process, which is dehors of the rules, copies of the appointment orders of the said respondents are placed on file. It is further pleaded that after rendering 12 years of service, the petitioner cannot be refused regularization/adjustment. The order impugned, rejecting the claim of the petitioner for regularization, according to the petitioner, is unsustainable being discriminatory and contrary to the decision of the Service Selection Board, accordingly seeks quashment of the said impugned order.

5. Respondent-Service Selection Board has filed its reply, contending therein that earlier the petitioner had filed the petition bearing SWP No.1037/2002 on the same subject which was disposed of vide order dated 04.06.2008 passed in the said SWP No.1037/2002, by providing that the respondents would consider the petitioner, who is continuing in service, for regularization under law at par with private respondents, if he is similarly situated with them in all respects, within a period of four weeks and he will be at liberty to re-agitate the matter afresh if his cause subsists. Thereafter, the case of the petitioner was considered and his claim was rejected vide order No. SSB/S-52/183-85/09 dated 08.05.2009, on the following lines:-

"...Whereas, the petitioner was one among the casual labourers engaged by the Board during Special Recruitment Drive, approached the Hon'ble Court and continued on the strength of interim orders of the Hon'ble Court.

Whereas, there is no provision in any Law/Rules which envisages regularization of casual labourers.

Whereas, the private respondents were appointed against the available posts and the petitioner cannot situate himself with the private respondents.

Whereas, the petitioner is not holding any substantive post, his regularization cannot be made as per rules governing the field.

Now in view of the given circumstances the petitioner was considered in compliance with the Hon'ble Court Orders dated 04.06.2008 and his claim is rejected as there is no Rule or Law which envisages regularization of casual labourers."

6. Respondent-Board further contended that the petitioner was engaged as a Casual Labourer after the State Government announced an employment package

and all such posts were referred to the respondent-Service Selection Board for making selection according to the law. Accordingly, advertisement notice was issued and due to tremendous response the work load in the Board increased and consequently the Board was constrained to engage casual labourers in order to sort out and deal with the huge number of application forms received by them. It is further contended that the engagement of the petitioner was purely casual and for a specific purpose i.e. sorting out application forms, which fact has been brought to the notice of the engaged casual labourers including the petitioner herein, therefore, petitioner and all other such persons were to be discontinued after the said job was over. According to the respondent -Board, the Board has no power or authority to consider regularization of the petitioner. Respondent-Board has denied that the services of the private respondents were regularized from casual labourers to class-IV employees, as contended by the petitioner. Further, it is contended that there is no provision in any law/rule or any instructions from the Government which envisages regularization of the casual labourers. The Board only makes selections against the posts which are referred to it by various departments of the Government and has no power to regularize the services of the employees.

7. To controvert the contentions raised in the objections filed by the Service Selection Board, the petitioner has filed the rejoinder on 23.08.2011, wherein it is stated that as on the date the rejoinder affidavit was filed, the petitioner continues in the service of the respondents and has not been discontinued, as contended by the respondents. It is pleaded that the private respondents, who were similarly situated persons, were not appointed in accordance with the procedure, which fact is obvious from the communication No. SSB/Adm/RTI-176/2011/956-58 dated 17.08.2011, copy of which has been annexed with the rejoinder affidavit as Annexure-A, whereby the information received by the petitioner through RTI reveals that neither any advertisement notice was issued nor any application forms were received by the Service Selection Board. It also reveals that no any such interview notification was issued also no final selection list was prepared, however appointment orders of individual Orderlies have been issued. Petitioner has also annexed copies of some appointment orders. It is denied by the petitioner that he was not been paid for the holidays and Sundays or for the days when there was no work, which fact is borne from the certificate issued by the Deputy Director Employment and Counseling Centre, Pulwama, (copy annexed as Annexure-B). Furthermore, the petitioner has annexed a copy of the communication dated 09.01.2010(Annexure-C) addressed to the Commissioner/Secretary to Government, GAD by the Chairman, SSB, J&K, Jammu, wherein information of Casual Workers/labourers engaged by the Board from time to time was furnished to the General Administration Department. The said communication further reads that in case of the three persons including the petitioner herein, a recommendation has already been sent to the Government for their regularization, which is awaiting approval.

8. Heard learned counsel for the parties.

9. Mr. Shah, learned senior Advocate, appearing on behalf of the petitioner submitted that the plea taken by the respondents about the status of the petitioner being that of a casual labourer, is devoid of merit. A person who works continuously with the employer(an instrumentality of the State herein), discharges the normal functions which a public servant appointed in terms of the rules has to perform, cannot be treated as the casual labourer. In this regard he referred to the plea taken in the writ petition and also the observations made by the learned Division Bench of this Court in the case State & ors. Vs. Anuradha reported in JKJ(HC)(1) 2011 870. Their lordships in the said judgment have observed as:-

"...that in case the worker is allowed to continue for sufficiently long time without his engagement being dependent upon chance or actual requirement of his service and is transferred from one position to another position, such worker, notwithstanding nomenclature used by the authority engaged, is to be taken as a daily wager and not a casual worker and accordingly dismissed the appeal filed by the State providing therein that the writ court order to the extent it relates to regularization of service of the respondent in terms of SRO 64 of 1994 does not call for any interference. The appellants however, shall order regularization of the service of the respondent in accordance with Rule 4 and Rule 8 of Jammu and Kashmir Daily Rated Workers/Work Charged Employees (WCE) regularization Rules 1994...."

10. One more plea taken by Mr. Shah is that the objections taken by the Board about the discrimination meted out by the petitioner is unfounded, as the documents produced by the petitioner including those procured in terms of the information sought under RTI Act do suggest that the counterparts of the petitioner, recruited under the special recruitment drive, either have been engaged initially as daily wagers or later appointed on regular vacancies or otherwise appointed on substantive vacancies directly without taking recourse to invitation of the candidature for appointment.

11. While replying to the contentions raised by the petitioner, Mr. Suhail, AAG submits that the case of the petitioner has been forwarded to the General Administration Department for regularization and further follow up is awaited by the respondent-Board.

12. On the evaluation of the merits of the respective contentions, it is noteworthy that the denial by the respondent-Board about the contention raised in the petition that the similarly situated persons were absorbed on the substantive posts, is not stemmed in the factual position as emerges out from the record.

13. Order No. 139 of 1997 dated 31.12.1997 reveals that two daily wagers namely S/Shri Farooq Ahmad Shah and Mool Raj have been appointed in the pay scale of Rs.750-940 against the regular vacancies. Perusal of the said order also reveals that the said appointees have been absorbed in the service for discharge

of duties in connection with the special recruitment drive launched by the Government. S/Shri Sansar Singh, Arshad Hussain Mir, Bivish Kumar and Subash Chander, have also been assigned the job on account of exigency relates with special recruitment drive in the capacity of Orderlies pursuant to appointment order Nos. 30-SSB of 1997 dated 29.04.1997, 28-SSB of 1997 dated 29.04.1997, 24-SSB of 1997 dated 29.04.1997 and 27-SSB of 1997 dated 29.04.1997. No applications had been sought from desirous candidates at the relevant time, so that the merit could be examined. Thus, the case of the petitioner is pleaded in the same terms that his engagement too came for doing the job to meet the exigency in connection with special recruitment drive launched by the Government. The information sought under RTI Act referred in Annexure-A also bring-fore that no advertisement notice was issued by the respondent-Board or any applications received by them for considering the respective merits of various candidates for being absorbed on the posts meant to be hold in substantive capacity. The appointees, referred above in order dated 31.12.1997, have been absorbed at the time when the petitioner had been discharging duties in the Board, as the material on record makes it amply clear that the petitioner was engaged in April, 1997.

14. No reply has been filed on behalf of the General Administration Department. Thus, the petitioner has been able to substantiate the contention that he has been discriminated without any legal basis and same being violative of the rights guaranteed under Article 14 of the Constitution of India.

15. The plea taken about the status of the petitioner being the casual worker is also turned down in the light of the observations made in the above referred judgment of the Division Bench of this Court.

16. Viewed in the above backdrop, the writ petition is allowed and the respondents are directed to take all necessary steps for absorption/regularization of the petitioner on the analogy of other similarly situated persons, as referred above. The exercise be undertaken and completed preferably within a period of six weeks from the date a copy of this order is served upon them.

17. Resultantly, the writ petition is disposed of.