

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 11.07.2024

Pronounced on:31.07.2024

LPA No.63/2021

1. State of J&K
through Commissioner/Secretary to Govt.
PHE Department, Civil Secretariat,
Jammu/Srinagar
2. Chief Engineer, PHE Department,
B.C. Road, Jammu.
3. Executive Engineer, PHE Division,
Kishtwar

...Appellants/Petitioner(s)

Through: Mr. Amit Gupta, AAG

versus

1. Vinod Kumar S/o Sh. Faqir Chand,
R/o Sona Bat Palmar, District Kishtwar
2. Ramesh Kumar S/o S. Dev Raj
R/o Sangram Bhata, District Kishtwar
3. Rajinder Kumar S/o Sh. Jia Lal
R/o Hatta District, Kishtwar
4. Krishan Lal S/o Sh. Shadi Lal
R/o Poochal District Kishtwar
5. Shib Ram S/o Sh. Mangat Ram
R/o Sigdi District Kishtwar
6. Murli Lal S/o Sh. Sewa Ram
R/o Hadyal District Kishtwar
7. Mohd Ayub Ganaie S/o Sh. Gh. Mohd.
R/o Trigam, District Kishtwar
8. Braham Dustt S/o Sh. Prem Nath
R/o Sarthal, District Kishtwar
9. Ram Saroop S/o Sh. Sham Lal
R/o Tehsil & District Kishtwar
10. Ashok Kumar S/o S. Bhoop Ram
R/o Lotna, District Kishtwar
11. Mohan Lal S/o Sh. Bhabi Chand,
R/o Mawar, District Kishtwar

12. Gh. Mohd S/o Sh. Mohmdoo Mattoo
R/o Razna Palmar, District Kishtwar
 13. Roshan Lal, S/o Sh. Prem Nath
R/o Sigdi Hindgam, District Kishtwar
 14. Gh. Mohi-ud-Din S/o Sh. Amir Wani
R/o Sigdi, District Kishtwar
 15. Nazir Ahmed S/o Sh. Ab. Hamid
R/o Sigdi Bhatta, District Kishtwar
 16. Abdul Rashid S/o Sh. Gh. Hassan,
R/o Markhal Sigdi, District Kishtwar
 17. Subash Chander, S/o Sh. Sewa Ram
R/o Hadyal, District Kishtwar
 18. Mohd. Amin, S/o Sh. Gh. Qadir Bhawani
R/o Sigdi, District Kishtwar
 19. Roshan Lal S/o Sh. Gusawoom Ram
R/o Mulchitar, District Kishtwar
 20. Mohd. Iqbal S/o Sh. Ahmdoo Hajam
R/o Bhatta Sigdi, District Kishtwar
 21. Bansi Lal S/o Sh. Dumba
R/o Losaini Paddar, District Kishtwar
 22. Jagmat Narboo, S/o Sh. Sant Ram
R/o Hangoo Paddar, District Kishtwar
 23. Imtiaz Ahmed S/o Bashir Ahmed Bagwan
R/o Tehsil and District Kishtwar
 24. Anil Kumar S/o Sh. Sewa Ram
R/o Hadyal, District Kishtwar
 25. Mir Shah S/o Sh. Hissam Din
R/o Sigdi, District Kishtwar
 26. Khursheed Ahmed S/o Abdul Rashid Chopan
R/o Rigdi, District Kishtwar
 27. Bashir Ahmed S/o Sh. Wali Rather
R/o Thakrai Fillar, District Kishtwar
 28. Jagdish Raj S/o Madho Lal
R/o Angral Sarthal, District Kishtwar
- ...Respondent(s)**

Through: Mr. R. Koul, Advocate.

Coram Hon'ble Mr. Justice Tashi Rabstan, Chief Justice (Acting)
Hon'ble Mr. Justice Puneet Gupta, Judge

JUDGMENT

Tashi Rabstan – CJ(A)

1. This appeal is directed against the judgment dated 29.10.2013 delivered by the learned Single Bench in SWP No.838/2010, whereby the writ respondents were directed to pass fresh order for the purposes of regularizing the services of writ petitioners.

2. The facts-in-brief are that the writ petitioners came to be appointed as Daily Wagers/Daily Rated Workers between the years 1986 to 1994. The writ respondents vide Government Order No.138-PW(Hyd) of 2006 dated 17.02.2006 regularized the services of various daily rated workers of various divisions of Jammu, Doda, Reasi etc. after completion of seven years of their services, but the petitioners and other similarly situated persons were left out though they had also completed seven years of service. Feeling aggrieved, the writ petitioners filed SWP No.838/2010. In the said petition, learned AAG sought disposal of the petition on the ground that the writ respondents be directed to consider the case of writ petitioners for regularization in case they were eligible under rules. Accordingly, the said writ petition came to be disposed of on 28.12.2010 with a direction to the writ respondents that if the writ petitioners have completed seven years of service as provided under SRO 64 of 1994, regularization orders would be issued in their favour within a period of one month. Compliance report was directed to be filed on 01.04.2011, for which the index of the case was directed to maintained and listed on 01.04.2011.

3. Compliance report came to be filed by the writ respondents on 15.04.2011 in SWP No.838/2010 thereby rejecting the case of writ petitioners

for regularization of their services on the ground that they were engaged as part time workers for a limited period of two to six hours and were never brought on the Muster Roll and paid consolidated wages from out of imprest on Hand Receipt. The other ground for rejection of petitioners' matter was that they were not engaged by any formal order by the competent authority.

4. The learned Single Judge was of the opinion that the writ petition came to be disposed of on 28.12.2010 only on the basis of a statement made by the Additional Advocate General of the State that the writ respondents be directed to consider the case of writ petitioners for regularization of their services, which presupposed their status and entitlement for consideration in terms of the relevant SRO 64. However, since the writ respondents took a contradictory stand, as such, as per the opinion of learned Single Judge, the writ petitioners were not required to challenge the consideration order dated 15.04.2011 by filing a separate writ petition, as the index of the case had already been directed to be maintained and listed on 01.04.2011.

5. Accordingly, the learned Single Judge after considering the matter afresh and hearing learned counsel for the respective parties held that the consideration order dated 15.04.2011 was not in consonance with the spirit of judgment and order dated 28.12.2010. Consequently, the learned Single Judge disposed of the writ petition on 29.10.2013 with a direction to the writ respondents to pass a fresh order within a period of four weeks for the purposes of regularizing the services of writ petitioners. Hence, the present appeal on behalf of appellants-writ respondents.

6. It is averred in the appeal that the judgment dated 29.10.2013 delivered by the learned Single Judge is contrary to law and facts of the case as well as

the legal position applicable to the matter. The only and the lone ground taken in the appeal is that the writ petitioners were engaged as part time workers for a period of two to six hours and were never brought on the Muster Roll and paid consolidated wages from out of imprest on Hand Receipt. Further, the petitioners were not engaged by the competent authority by issuance of any formal order of engagement.

7. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file.

8. Admittedly, the writ respondents vide Government Order No.138-PW(Hyd) of 2006 dated 17.03.2006 regularized the services of various daily rated workers of Jammu, Doda, Reasi Divisions etc. after completion of seven years of their services. The writ respondents have also not denied that number of persons in the said list, whose services were regularized, were being paid by hand receipt; meaning thereby such persons who were being paid wages from out of imprest on hand receipt were also regularized by the writ respondents. And, for this very reason the writ respondents while filing an affidavit before the Writ Court did not specifically indicate as to how the cases of writ petitioners were different from those persons who were regularized in District Doda despite the directions from the Writ Court. Therefore, the argument of learned counsel for appellants/writ respondents that the writ petitioners were engaged as part time workers for a period of two to six hours and were never brought on the Muster Roll loses its significance and is not sustainable; more particularly, when in the present appeal too, the appellants/writ respondents have failed to specify as regards the distinction between the cases of writ petitioners, categorized as hand receipt workers, from those working in the

PHE Division Doda, regularized subsequently by the State. Further, nothing is spelled out from the present appeal that on what grounds the appellants/writ respondents have assailed the order/judgment of learned Single Judge.

9. Further, the writ respondents have not disputed that the writ petitioners came to be engaged in the PHE Department between the years 1986 to 1994. Communication No.JS/HDK/2714-15 dated 13.07.2024 written by Executive Engineer, Jal Shakti Hydraulic Division, Kithtwar, placed on record, also reveals that the writ petitioners came to be engaged between the period 1987 to 1994; meaning thereby the writ petitioners have been working in the department for the last more than 30 years without any break and still they have been clamouring for regularization of their services in terms of SRO 64 of 1994, whereas services of many of their counterparts have already been regularized since the year 2006.

10. Further, the present appeal came to be filed on 05.03.2016 and in paragraph-(d) thereof it has been specifically averred that the writ petitioners were never brought on Muster Roll nor were engaged by any formal order by the competent authority and they were being paid consolidated wages. Whereas, communication dated 13.07.2024 (supra) clearly reveals that the writ petitioners were converted as Daily Rated Workers from April, 2011. Once the writ petitioners were not engaged by any formal order, then how they could be converted as Daily Rated Workers without the approval of competent authority. Also, Communication No.JS/SDD/326-30 dated 01/12/2023, also placed on record, reveals that three persons, namely, Vinod Kumar-writ petitioner, Irshad Ahmed Mattoo and Krishan Lal were directed to regulate the water supply of Panchayats in addition to their own duties; meaning thereby

many of the writ petitioners were doing additional work too in addition to their own duties. Then how the writ respondents could claim that the writ petitioners were engaged as part time workers for a limited period of two to six hours. Thus, it itself belies the claim of writ respondents. Further, Certificate dated 01.09.2023 under No.JS/SDD/93 issued by the Executive Engineer, Jal Shakti PHE, Sub Division Dachhan, placed on record, reveals that writ petitioner Vinod Kumar, a daily rated worker, is being paid Rs.9330/- per month, i.e., at the rate of Rs.311/- per day.

11. Not only this, even the writ record reveals that the Muster Roll of writ petitioners Khursheed Ahmed and Rajinder Kumar was placed on record before the Writ Court which the writ respondents had not denied.

12. Therefore, we are in complete agreement with the learned Single Judge that what is important to see is as to whether the writ petitioners have been working continuously or not and that nomenclature of the engagement and mode of payment would not defeat the rights of the writ petitioners for regularization. In fact, for all intent and purposes, the petitioners are similarly situated with those employees, who subsequently stood regularized.

13. This Court in *Ashok Kumar vs State of J&K*, 2003 (II) SLJ 475, has held that any casual labourer, who has continued for a fairly long spell, a presumption would arise that there was a regular need for his services and in such a situation, a person cannot be deprived of right of regularization, which he has earned by serving the Department for more than seven years on the plea that he was only a casual labour and not a daily rated worker entitled to be regularized in terms of SRO 64 of 1994.

14. What is held by the Apex Court in case, titled as, The State of Madhya Pradesh & others vs Shyam Kumar Yadav & another, Special Leave to Appeal (C) No.25609/2018, decided on 22.07.2024, is relevant to reproduce hereunder:

“4. We are constrained to observed that the affidavits or the documents filed on behalf of the petitioner-State from time to time, particularly the affidavit of the Commissioner, Technical Education, Bhopal, in purported compliance of our order dated 22.04.2024, are vague, evasive, and misleading.

5. It is true that an employee engaged on daily wages has no legally vested right to seek regularization of his services. However, if the competent authority takes a policy decision within the permissible framework, its benefit must be extended to all those who fall within the parameters of such a policy. Authorities cannot be permitted to pick and choose in such circumstances.

6. The fact that respondent No.1 has worked as a daily wager from 2005 to 2009 is not in dispute. The eligibility for the post he holds has also not been controverted. The fact that he initially entered through the process in conformity with Articles 14 and 16 of the Constitution is also not a serious issue. That being so, we see no reason to interfere with the impugned order passed by the High Court directing the petitioners to confer the status of a regular employee on respondent No.1.

15. Viewed thus, we are not inclined to take a view other than the one taken by the learned Single Judge. Accordingly, the appeal is dismissed and the judgment/order of learned Single Judge is upheld. Appellants/writ respondents to regularize the services of writ petitioners on the analogy of persons who came to be regularized in March, 2006 in terms of SRO 64 of 1994. Connected miscellaneous MP, if any, accordingly, stands disposed of.

Jammu
31.07.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Chief Justice (Acting)

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No