

Sr. No.

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

LPA No. 201/2019

CM No. 5826/2019

CM No. 5825/2019

Reserved on: 15.03.2024.

Pronounced on: 27.03.2024.

1. Lal Hussain, Aged 45 years S/O Noor Hussain
R/O Nova Bandi, Tehsil Haveli District Poonch
2. Mohd. Fareed, Aged 42 years S/O Mohd. Latief
R/O Jandrola Tehsil Haveli District Poonch
3. Mohd Qadeer Aged 46 years S/O Gh. Hussain
R/O Saral, Tehsil Haveli District Poonch
4. Abdul Hamid Aged 43 years S/O Ali Mohd
R/O Nova Bandi, Tehsil Haveli District Poonch
5. Mohd. Rashid Aged 46 years S/O Hussain Din
R/O Nova Bandi, Tehsil Haveli District Poonch
6. Mohd. Iqbal Aged 43 years S/O Mohd. Hussain
R/O Guli Nar Tehsil Haveli District Poonch

Petitioner(s)/Appellant(s)

Through :- Mr. M. R. Qureshi, Advocate with
Mr. Haroon Rashid Qureshi, Advocate

V/s

1. Principal Secretary to Govt., Public Works
Department, Civil Secretariat, Jammu/Srinagar
2. Chief Engineer, Public Works Department,
Jammu.
3. Executive Engineer, PWD(R&B)
Division Poonch.
4. Assistant Executive Engineer, PWD(R&B), Sub
Divisional Mandi, District Poonch
5. Azmat Hussain Shah S/O Mir Hussain Shah
R/O Nona Bandi Tehsil Haveli District Poonch

....Respondent(s)

Through :- Mr. Ravinder Gupta, AAG

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT**TASHI RABSTAN,J:-**

1. This intra court appeal has been filed by the appellants praying setting aside of the judgment passed in SWP No.315/2003 dated 09.04.2019 in case titled '*Lal Hussain and others v. State and others*', whereby the learned Single Judge had dismissed the writ petition filed by the petitioners being bereft of any merit.

2. The case set up in the writ petition by the writ petitioners briefly was that they were working as Gang Coolies/Daily Wagers and had completed more than 9 years continuous service. According to the petitioners, they were engaged prior to the year 1994. It is on record that petitioners had moved an application before the Chief Engineer, PWD(R&B), Poonch, that since they were working in the Department for the last 10 years, but they had not been declared as permanent employees in terms of government order governing the field; that every casual labourer who has completed 07 years of service must be confirmed. The said application was duly endorsed by the concerned MLA. Petitioners further case was that since they worked more than 240 days continuously in a calendar year, they should have been given the benefit of judgment of Division Bench of this court in case titled *Abdul Rehman Bahroo v. State of J&K and others*, 2001 (3) SCT 531 (J&K). It was further pleaded by the petitioners that they remained continuously working up to January 2004, their services were not terminated but in pursuance of Govt. Order No.144 GAD of 2001 dated 02.02.2001, they were ordered to be disengaged pursuant impugned communication dated 23.12.2002, but in fact their services were not terminated. It is alleged by the petitioners that the proforma respondent who was one of the writ petitioners namely Azmat Hussain Shah as petitioner no.8 is still working

continuously with the respondents. Writ petitioners have annexed certain official documents including Muster Roll showing the continuous working of the petitioners up to the year 2004.

3. The respondents in the writ petition have taken a specific stand that the writ petitioners were engaged as special laborers on different works against the sanctioned estimates for specific period. They have alleged that the writ petitioners were engaged as special laborers that too after the year 1994, so they were discharged/disengaged in terms of Government order No.144-GAD of 2001 dated 02.02.2001. It is submitted by the respondents that this appeal is sans merit and be dismissed out rightly with heavy costs.

4. It is apparent that the petitioners were engaged for sometime as Special Labourers pursuant to which they were issued identity cards. There is no documentary proof or otherwise from the record to show that they have been engaged prior to 1994 and have been continuously working on the said post to entitle them for any confirmation. The documents produced before the learned Single Judge by the writ petitioners/appellants itself show that they were without date and dispatch number and which show no proof of having worked in the department prior to the year 1994.

5. The appellants, in support of their case, placed reliance on application MP No. 01/2018, which accordingly to them, escaped notice of learned Single Judge. A perusal of the aforesaid MP would show that it contains muster roll showing working of the appellants in the year 2002 and in 2004, which in the considered opinion of this court cannot be taken to prove that the appellants were continuous working prior to the year 1994.

6. Admittedly, the appellant/writ petitioners are not working with the department at present. In that view of the matter, this court cannot direct their consideration for regularization.
7. This court, in a catena of decisions, observed that courts cannot encourage appointments which are made outside the constitutional scheme and it is improper for the courts to give any direction for regularization of a person who has not been appointed by following the procedure laid down in Articles 14 and 16 of the Constitution. (See: **State of J&K v. District Bar Association, Bandipora, AIR 2017 SC 11**).
8. In view of the aforesaid discussion, the impugned judgment does not call for any interference as the impugned judgment is a well reasoned judgment which cannot be find fault with viewing from any angle. The impugned judgment is thus upheld. As an upshot, the appeal is dismissed sans merit.
9. No order as to costs.

Jammu:
27.03.2024
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking? :Yes.

Whether the order is reportable? :Yes

