

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

Reserved on : 28.05.2024

Pronounced on: 07.06.2024

**LPA No.254/2022
(in SWP No.2065/2012)**

Jammu & Kashmir State Social Welfare Board,
through its Secretary/Executive Director,
1st Floor Block-A, Old Secretariat, Srinagar.

.....**Petitioners**

versus

Through: Mr. Mubashir Malik, Dy. A.G.

1. Hilal Ahmad Khaja,
S/O Abdul Rashid Khaja,
R/O Seelu Sopore.

...Respondent

2. State of Jammu & Kashmir,
through Commissioner/Secretary to Govt.,
Social Welfare Department,
Government of Jammu & Kashmir,
Civil Secretariat, Jammu/Srinagar.

3. Executive Director,
Central Social Welfare Board,
New Delhi.

4. Chairperson,
State Social Welfare Board,
J&K Jammu/Srinagar.

5. Dr. Ghulam Mohi-ud-Din Ganai,
Deputy Secretary,
Legal Cell in Agriculture and Horticulture
Department,
Jammu & Kashmir Government,
Civil Secretariat, Jammu/Srinagar.

...**Proforma Respondents**

Through: Mr. M.A. Qayoom, Adv.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE**

JUDGMENT

(Tashi Rabstan – J)

1. This Letters Patent Appeal is directed against the judgment dated 25.04.2024 delivered by the learned Single Judge in SWP No.2065/2012 (connected with SWP No.486/2010), whereby the learned Single Judge, while allowing the petition, quashed Order No.SWB/J&K/254 of 2010 dated 15.12.2010 with a direction to the writ respondents-appellant herein, i.e., Jammu and Kashmir State Social Welfare Board to release the grade attached to the post presently held by the writ petitioner in terms of Order No.282 of 2009 dated 31.03.2009.

2. The facts-in-brief, as gathered from the file, are that the writ petitioner vide Order No.282 of 2009 dated 31.03.2009 came to be adjusted against the adhoc vacancy of Accounts Assistant in the State Social Welfare Board. The said order shows that the writ petitioner actually had been performing his duties as a Computer Operator in the State Social Welfare Board on consolidated basis. In the year 2010, the writ petitioner filed SWP No.486/2010 seeking release of grade and regularization against the said post. The Court in terms of order dated 12.03.2010 directed the writ respondents to release the grade attached to the post of Accounts Assistant (Adhoc) in favour of writ petitioner. It is submitted that the writ respondents instead of complying with the order dated 12.03.2010, have issued Order No.SWB/J&K/254 of 2010 dated 15.12.2010 whereby the writ respondents rejected the representation of writ petitioner holding the writ petitioner not entitled to the post of Accounts Clerk (Adhoc). The writ petitioner challenged the said order in SWP No.2065/2012. The learned Single Judge vide judgment dated 25.04.2014

allowed the writ petition along with SWP No.486/2010 thereby quashing Order No.SWB/J&K/254 of 2010 dated 15.12.2010 with a direction to the writ respondents-appellant herein to release the grade attached to the post presently held by the writ petitioner in terms of Order No.282 of 2009 dated 31.03.2009. Hence, the present appeal on behalf of Jammu and Kashmir State Social Welfare Board.

3. Learned counsel appearing on behalf of appellant contended that Order No.282 of 2009 dated 31.03.2009 issued by Dr. Ghulam Mohi-ud-Din Ganai, the then Executive Director/Secretary of the State Social Welfare Board, respondent No.5 herein, adjusting the writ petitioner as Accounts Assistant (Adhoc) is a fake order as there is no office logo on the said order and the same has been issued without approval of the competent authority.

4. Heard learned counsel appearing for the parties considered their rival contentions and also perused the file minutely.

5. Admittedly, the file shows that the writ petitioner initially vide Order No.88 of 2008 dated 04.12.2008 came to be appointed as Data Entry Operator for a period of one year on consolidated wages of Rs.6000/- per month. Thereafter, the petitioner claims to have been adjusted as Accounts Assistant on adhoc basis vide Order No.282 of 2009 dated 31.03.2009. The writ respondents claims that the said order is fake one as the same has not been issued by the competent authority nor the competent authority had given approval to the said order. It is claimed by the writ respondents that one Dr. Ghulam Mohi-ud-Din Ganai, the then Executive Director/Secretary of the State Social Welfare Board had issued the said order in independent capacity, against whom in PIL No.696/2010 a coordinate Bench of this Court had

directed the Police Station Vigilance Organization, Kashmir to register a case under the relevant provisions of J&K Prevention of Corruption Act and Ranbir Penal Code. Further, once the writ petitioner came to be appointed as Data Entry Operator on consolidated basis in December, 2008 for a period of one year, then how just within a period of four months he came to be appointed as Accounts Assistant on adhoc basis in the month of March, 2009, that too when the Board-writ respondents claim that there is no post of Accounts Assistant in the State Social Welfare Board, rather the post of Accounts Clerk is existing.

6. Further, as per recruitment rules, a candidate for the post of Accounts Clerk should be Commerce Graduate, but, as per writ respondents, the writ petitioner is not a Commerce Graduate. Even if Order No.282 of 2009 dated 31.03.2009 is a genuine order, even then the writ respondents cannot be directed to regularize the service of writ petitioner against the post of Accounts Assistant without following the regular selection process or without the approval of competent authority, as vide order dated 31.03.2009 the writ petitioner was only adjusted against the post of Accounts Assistant on adhoc basis. Not only this, the judgment under appeal came to be delivered on 25.04.2014 and the appeal against the said judgment came to be filed by the writ respondents on 31.10.2014, wherein it has been specifically averred that the writ petitioner is out of service for the last two years; meaning thereby the writ petitioner is not in service for the last twelve years from the year 2012. Otherwise too, how an adhoc appointee can be directed to be regularized against the post of Accounts Assistant without following the regular selection process, as prayed by the writ petitioner in his writ petition. Learned Single Judge too without considering all these aspects and without deciding the writ petition(s) on merits allowed the same.

7. Viewed thus, we find merit in the appeal. Accordingly, the same is allowed. The impugned judgment passed by learned Single Judge is set aside. Consequently, the writ petitions(s) filed by the writ petitioner is dismissed.

Srinagar
07.06.2024
(Anil Sanhotra)

(M.A. Chowdhary)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?	Yes/No
Whether the order is speaking ?	Yes/No

