

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No. 2176/2013
c/w CPSW No. 163/2016

Reserved on: **12.12.2024**

Pronounced on: **21.12.2024**

Mohammad Yousuf Bhat

...Petitioner(s)/Appellant(s)

Through: Mr. Omais Kawoos, Advocate.

Vs.

Moulana Azad National Urdu University & Ors.

...Respondent(s)

Through: None.

CORAM:

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner herein is aggrieved of alteration of his 'casual' status into 'contractual', after five years continuous service and was compelled to accept the contractual status involuntarily. The grievance of the petitioner is that the similarly situated casual labourers have been regularized in the Government service and the benefit of Central Schemes was also given to them but the petitioner has been left out and discriminated.
2. Through the medium of the instant Writ Petition, the petitioner has challenged the impugned Orders No. MANUU/Admn.III/F 210/2010-2011/3283 dated 24.02.2011 and No. MANUU/Admn.III/F 2010/2012 dated 25.05.2012. In terms of

the first impugned Order No. MANUU/Admn.III/F 210/2010-2011/3283 dated 24.02.2011, the respondent- University engaged the petitioner on contractual basis to work as Night Watchman at Regional Centre, Srinagar for a period of 89 days, with the terms and conditions stipulated in the said order. And in terms of the second impugned Order No. MANUU/Admn.III/F 2010/2012 dated 25.05.2012, the services of the petitioner, earlier engaged as Night Watchman on contractual basis, was terminated with immediate effect.

3. Brief facts of the instant case as stated are that the petitioner came to be engaged as **Causal Labour** on 17-04-2006, in the respondent-University with the assurance that he will be brought into regular establishment in the near future; that the petitioner resumed his duties with utmost dedication, sincerity and honesty that also without any break; that in several departments, the employees having causal status, have been brought into regular establishment after completion of one year causal service and their salary was also enhanced; that the petitioner represented before the respondent-University authorities and sought regularization of his services and enhancement of wages; that the University, instead of redressing grievance of the petitioner, surprisingly passed order bearing No. MANUU/Admn-II/F- 210/2010-2011/3283 dated 24-02-2011, changing the casual status of the petitioner and passed order having effect of engaging him afresh on contractual basis to work as Night Watchman for the period of 89 days with certain stipulations i.e. **contractual service** is

terminable without assigning any reason and his monthly wages were shown as Rs.4000/-, which period was thereafter extended from time to time by the respondent-University; that the petitioner filed a detailed representation to the higher ups of the respondent-University requesting them to continue him as casual Night Watchman instead of contractual watchman so that his future chance of getting regularized is not marred, nevertheless the petitioner being under compulsion joined as contractual Night Watchman; that in pursuance of the Order No. MANUU/Adm-II/F-2010/2012-13/257 dated 25-05-2012, the services of the petitioner were terminated and the petitioner was ordered to be relieved.

4. It was alleged that in several departments, the casual labourers have been regularized after one year service and were bestowed service benefits provided under several Government schemes. Further, the University authorities were under obligation to regularize the services of the petitioner as well after completion of his 240 days continuous service with the respondents.
5. The petitioner has challenged the impugned orders on the following grounds:-
 - i) That the petitioner has been engaged as casual labour and the order is absolute therefore the respondents cannot change his status and convert his casual employment into contractual one. The action of the respondents in such an eventuality is against the law

and the Constitution and the petitioner deserves protection and the impugned orders deserve to be set aside.

- ii) That the petitioner had joined the casual employment in the University because a casual employee is entitled for regularization and no such concession/scheme is provided for a worker working on contractual basis. The respondents have appointed the petitioner as casual employee and as such are under an obligation to confer all the benefits to the petitioner which are being given to the casual labours in other departments.
- iii) That it is well enacted policy that a casual worker who puts 240 days work in the department is entitled for regularization. The petitioner has put more than five years service as casual Labour in the University, therefore, the University authorities were under obligation to regularize his services after completion of 240 days continuous service and furthermore in several departments the casual Labourers have been and are being regularized after one year service and the petitioner is also entitled for the same benefit.

6. The respondents have filed their response to the petition, stating therein that the allegations leveled against the respondents are baseless, false and frivolous and are not applicable to the facts and circumstances of the present petition. It is submitted that as per the timely requirement at the Regional Centre, the petitioner was engaged as Night

Watchman as there was no post of Night Watchman sanctioned by the UGC, therefore, the petitioner was engaged on purely temporary/casual basis. It is further stated that the respondent-University at any point of time, neither in writing nor through any order, has given any assurance to the petitioner that he will be brought in the regular establishment in near future, as pleaded by the petitioner in his petition; that the petitioner has left the services and was later on re-engaged on contractual basis to work as Night Watchman at Regional Centre, Srinagar for a period of 89 days, and the petitioner also joined the contractual services; that in the order of his contractual engagement it is specifically mentioned that on termination of engagement, the petitioner shall not be entitled to any service benefits and that the contractual engagement shall not entitle him for any claim, whatsoever, for a regular appointment in the University.

7. Mr. Omais Kawoos, learned counsel appearing for the petitioner, argued that the petitioner has been subjected to invidious discrimination with regard to his right to regularization, inasmuch as, the petitioner was engaged as Night Watchman, initially on casual basis, which later on was converted into contractual, however, the case for regularizing the services of the petitioners was delayed willfully and intentionally by the respondents, whereas the cases of similarly situated employees of different departments were considered and finalized. Learned counsel urged that the petitioner's petition be allowed, with a direction to the

respondent-University to regularize the services of the petitioner with effect from the date of his engagement on casual basis.

8. Heard, perused and considered.

9. Learned counsel for the petitioner while arguing the matter submits that the petitioner was initially engaged as Night Watchman on casual basis and had represented before the respondents for his regularization vide his representation dated 10.12.2010, however, to his dismay his status was changed from 'casual' into 'contractual' in terms of the impugned order dated 24.02.2011 was thereafter, he suffered termination from services vide another impugned order dated 25.07.2011, without issuing prior notice to the petitioner. He further submits that several enactments / schemes were framed with regard to bring the employees of the different departments, having casual status, under regular establishment, however in the year 1993 a Central scheme known as "GRANT OF TEMPORARY STATUS AND REGULARIZATION SCHEME GOVERNMENT OF INDIA" came to be framed which came into force w.e.f. 10-09-1993, in terms whereof the casual labourers were being accorded several service benefits viz. regularization after completion of at least 240 days casual continuous service, enhancement of wages and leave benefits etc. Even otherwise it is enacted law that a labourer who completes 240 days continuous service acquires the status of permanency, is entitled for grant of permanent employment status. Learned counsel further

argued that the petitioner has put more than five years service as casual labour in the respondent-University and as such, is entitled to be regularized.

10. Petitioner, through the medium of this petition, has raised threefold grievances, firstly, that his status from **casual** into **contractual** could not have been ordered by the respondent-University; secondly that his services could not have been dispensed with as a Night Watchman, engaged on contractual basis without adopting due course of law and, thirdly that he was entitled to be regularized as Night Watchman.
11. It is the admitted fact that the petitioner had been initially engaged on '**casual**' basis as Night Watchman by the respondent -University on 17.04.2006 and that his status from that of casual was changed into contractual Night Watchman by the respondent- University with effect from 24.02.2011, after a period of almost five years.
12. It is the settled position of law that such recourse is not available to an employer to dispense with the services of a casual employee. A casual employee can only be removed from his position by holding an enquiry after affording due opportunity of being heard to the said employee and his services could only be removed if he is found to have mis-conducted himself.
13. In the instant case, the respondent- University adopted a novel procedure, firstly, petitioner's status from **casual** was changed into **contractual** and then almost after a year his services were terminated with immediate effect. It is not out of

place to mention that the respondent-University, while changing the status of the petitioner, had threatened him by a written communication that he should accept the contractual appointment or in the alternative he shall be terminated, therefore, accepting of contractual engagement as Night Watchman, cannot be stated to be voluntary on the part of the petitioner and it was only under the directions and coercion by the employer i.e. respondent-University. The respondent-University has thus, passed both the orders, whereby the status of the petitioner from **casual** Night Watchman was changed into **contractual** Night Watchman, arbitrarily and illegally, and also his termination from the position of contractual Night Watchman, without conducting any enquiry, was also illegal, as such, both these orders are not sustainable and are liable to be quashed.

14. The third contention raised by the petitioner and urged by his counsel that the petitioner was entitled to regularization, as he had worked with the respondent- University for over a period of five years against the minimum requirement of 240 days in a year as per the Regularization Scheme announced by the Central Government on 10.09.1993.

15. A Division Bench of the Calcutta High Court in a writ petition **CT No. 86/1999** titled **T.Rajakili & Ors. Vs. Union of India & Ors.**, held that Clause 7 of the Scheme must be read in a manner in which it does not render it unconstitutional. The employers cannot at their whim, dispense with the services of the casual labours who have acquired “temporary” status. The

entire object of the 1993 Scheme was to regularize all casual workers.

16. Hon'ble Supreme Court, however, in **Union of India & Anr. Vs. Mohan Pal & Ors.**, reported as **(2002) 4 SCC 573**, had observed that the Scheme of 10-09-1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). It was further observed that those who have already been given "temporary" status on the assumption that it is an ongoing scheme shall not be stripped of the "temporary" status pursuant to this decision.

17. In view of the decision of the Apex Court in the case (supra), wherein it has been held that the Regularization Scheme of 1993 of the Government of India was not an ongoing scheme and the condition for regularization was that a person should have the status of a casual employee on the date this Scheme was issued. The petitioner claims to have been engaged on 17.04.2006, whereas, the Scheme came into force way back on 10.09.1993, cannot be regularized in terms of the Scheme in question. In such a situation the services of the petitioner having been engaged on 17.04.2006, who was not on casual roll as on the date when

the afore-stated Regularization Scheme came into force on 10.09.1993. Moreso, when the Scheme in question was also held to be not ongoing scheme by the Hon'ble Apex Court.

- 18.** Having regard to the foregoing discussion and the reasons stated hereinabove, this petition is **disposed of**, quashing both the impugned orders dated 24.02.2011 and 25.05.2012. The respondent-University is directed to take back the petitioner on the status of **casual** Night Watchman, from the date he was removed arbitrarily and illegally, within a period of four weeks from the date a copy of this judgment is made available to the respondent-University and shall also consider his regularization, if he is found entitled, in view of any scheme, in vogue now. The petitioner for not having worked after his removal, on dispensation of his services, shall not be entitled to any monetary benefits, for the period till he is accepted back on the establishment of the respondent-University, on **casual** basis.
- 19.** Disposed of as above along-with connected contempt petition.

(M. A. CHOWDHARY)
JUDGE

Srinagar
21.12.2024
Muzammil. Q

Whether the Judgment / Order is Reportable: Yes / No