

**HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
SRINAGAR**

Reserved on: 21.03.2025

Pronounced on: 09.04.2025

WP(C) No.2038/2021

SHAHJEHAN RATHER AND OTHERS ...PETITIONER(S)

Through: Mr. R. A. Jan, Sr. Advocate, with
Mr. Murtaza, Advocate.

Vs.

HIGH COURT OF & ANOTHER ...RESPONDENT(S)

Through: Mr. T. M. Shamsi, DSGI, with
Ms. Yasmeen Jan, Adv-for R1.
Mr. S. N. Ratanpuri, Advocate-for R2 to R7.

CORAM:-

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

Per OSWAL 'J'

1. The petitioners in this petition have challenged the judgment/order dated 26.07.2021 passed by the learned Central Administrative Tribunal Bench Jammu (for short "the Tribunal") in T.A No.6519/2020 titled "*Shahejahan Rather and Ors. Vs. Union of India and Ors.*"

2. It is averred that the petitioners along with others were engaged by the respondent-Doordarshan Kendra, Srinagar in early 1990s initially and subsequently as casual workers vide orders dated 05.09.2001 and 12.09.2001 issued by respondent No.7. The petitioners were disengaged in the

year 2004 and thereafter they submitted representation for re-considering their disengagement, but no action was taken by the respondents. SWP Nos.217/2007, 319/2010, 1373/2011 and 140/2012 were filed. The writ petition bearing SWP No.217/2007 was transferred to the Central Administrative Tribunal, Chandigarh Bench for disposal on merits and the said Tribunal decided the same vide its order dated 18th March, 2008, by directing that in case the respondents take a policy decision in future for casual workers, they may consider the case of the applicants also and if found covered and entitled to the benefits under such scheme, extend the same to the petitioners and if need be, by giving relaxation of age limit to them. In writ petition bearing SWP No.319/2010, the learned Single Judge vide order dated 22.10.2011 directed the respondents to consider the case of the petitioners therein for their re-engagement and pass appropriate orders within four weeks.

3. It is further averred that in terms of communiques dated 01/16.12.2011 and 21.12.2011 issued by respondent No.5 for and on behalf of respondent No.3, it was decided that the persons who were disengaged earlier (in 2004) along with the petitioners in SWP No.319/2010

may be given preference as already admitted before various courts by the Department in related matters. Application bearing CMP. No. 2252 in SWP No.1373/2011 was disposed of in terms of the order dated 22.10.2011 in SWP No.319/2010 vide order dated 19.12.2011.

4. During the pendency of SWP No.140/2012, the respondents, in compliance to the orders passed in SWP No.319/2010 and SWP No.1373/2011, passed order dated 18.01.2012, re-engaging the petitioners in the aforementioned writ petitions i.e. SWP No.319/2010 and SWP No.1373/2011. Later, SWP No.140/2012 was disposed of vide order dated 03.02.2012 by directing the respondents to consider the case of the petitioners for re-engagement in accordance with rules.

5. The respondents on being served with the order dated 03.02.2012, turned down the claim of the petitioners in terms of order dated 07.03.2012 which was impugned by the petitioners through the medium of SWP No.892/2012. The aforesaid writ petition was disposed of vide order dated 28th May, 2013, by directing the respondents to accord fresh consideration to the case of the petitioners having regard in particular to (i) policy guidelines framed by the CEO, (ii) that in terms of the order impugned, petitioners

were to be given preference as and when exercise was undertaken to engage casual workers, (iii) that the respondents after order impugned in the petition have engaged as many as 130 casual workers in disregard to the report of the Committee and consequent order.

6. Even after being served with the judgment/order dated 28.05.2013, the respondents did not take any action which prompted the petitioners to file a contempt petition bearing No.458/2013. The respondents filed the statement of facts accompanying an order dated 06.11.2013 in purported compliance to the order dated 28.05.2013. The contempt petition continued to remain pending and various orders were passed by the learned Single Judge from time to time and ultimately, respondent No.4 issued order dated 13/19.11.2018, directing the respondent No.6 to re-engage the petitioners as and when functional need arises at DDK, Srinagar.

7. It is further stated that the contempt proceedings were closed, vide order dated 30.04.2019 with liberty to the petitioners to challenge the consideration order. The petitioners thereafter came up with another writ petition bearing WP(C) No.2174/2019 on various grounds thereby assailing the order dated 13/19.11.2018. The said writ

petition subsequently came to be transferred to the Tribunal and was re-numbered as T.A No.6519/2020. The learned Tribunal after hearing the parties dismissed the application preferred by the petitioners in terms of the judgment/order dated 26.07.2021. It is this judgment/order of the Tribunal which has been impugned by the petitioners in the instant writ petition on the following grounds:

- (I) That the order dated 13/19.11.2018 has been passed to defeat and circumvent the judgment/orders passed by the Writ Court in the above mentioned writ petitions.
- (II) That the learned Tribunal has erred in law in not appreciating the material of clinching effect on record substantiating, not only regular and perennial need for the services of the petitioners against the jobs/work for which the petitioners were initially engaged in early 90s and the step motherly treatment meted out to the petitioners vis-à-vis the treatment given by the respondents to the beneficiaries of order dated 18th January, 2012.
- (III) That the order impugned dated 13/19.11.2018 passed by the respondents is clearly tainted with the vice of malice in law as there is clinching evidence on record in the form of retender notices dated 19.12.2019 and 06.02.2020 issued by the respondent No.6 for hiring

of manpower for cleaning, sweeping and upkeeping of hostel building at DDK, Srinagar.

8. Vide order dated 15th December, 2021, response of the respondents was sought in respect of compliance of order dated 13/19 November, 2018. The requisite response was filed by the respondents, wherein it was stated that Doordarshan Kendra, Srinagar, was not engaging any casual labour(s) in view of the policy decision of the Prasar Bharti Board and in terms of the said policy decision, works are outsourced to private agencies. It was stated that for programme related activities, the respondents are engaging casual assignees on assignment booking basis, as and when required, subject to their possession of requisite qualification and experience. It was also stated that in view of shortage of funds on account of fall in revenue due to introduction of numerous private TV channels, the respondents have reduced the bookings and in some cases, have done away with engagement of casual assignees, which also has resulted in numerous court cases. The respondents have further stated that they are trying to dispense with the existing casual assignees and there is no functional need for engagement of any new casual worker or casual assignee.

9. In terms of order dated 11.07.2023 passed by this court, better affidavit came to be filed by the respondents, thereby narrating the factual aspects of the case and it was stated that the Government of India has taken a policy decision to outsource all kinds of casual assignments through GeM (Government e-marketplace) and all the departments are required to hire the required manpower from the said market. However, in the instant case, the respondents are bound in law to abide by the directions of the Court and undertake to abide by the same in letter and spirit. It was also stated that the case of the petitioners for engagement shall be considered as and when need arises at Doordarshan Kendra, Srinagar, subject to their fulfilling all the requirements as may be prescribed.

10. During the pendency of this petition, the petitioners had filed an application bearing CM No.6060/2023 seeking leave of the Court to place on record the information obtained by them under Right to Information Act to demonstrate that casual workers were working in Doordarshan Kendra, Srinagar. The respondents responded to the said application by submitting that 18 persons mentioned in the communication dated 14.09.2023/18.09.2023 were engaged pursuant to the

directions of this Court passed in SWP No.319/2010 and SWP No.1373/2011 and those 18 persons mentioned in the RTI information were engaged much prior to the filing of writ petition by the petitioners and as on date, the respondents have done away with almost all the casual assignments/engagements except those whose matters are subjudice.

11. Despite the fact that the affidavit pursuant to the order dated 11th July, 2023, was filed by the respondents, another affidavit in terms of the order dated 1st October, 2024 came to be filed by the respondents wherein it was stated that 18 persons are working pursuant to the court orders passed more than a decade back. In SWP No.1373/2011, now TA No.1031/2021 pending before the Central Administrative Tribunal, Srinagar Bench, out of 09 petitioners, 08 are working in terms of High Court order dated 19.12.2011. In SWP No.319/2010, now TA No.1532/2021, 07 petitioners are working in terms of the court order dated 22.10.2011. Tabasum Bashir Makhdoomi, was allowed to work in terms of court order dated 25.01.1999 passed in SWP No.2492/1998. Mohammad Ramzan Rather was initially allowed to work pursuant to order dated 09.12.1998 passed by Forest

Magistrate, Srinagar and Shabir Ahmad Punjabi was allowed to continue pursuant to interim direction issued in SWP No.1526/1999 and final order dated 20th March, 2006 passed in his petition bearing TA No.81/JK/2003. It was further stated that no need arose for engaging of casual labourers at DDK, Srinagar.

12. Heard learned counsel for the parties and perused the record of the case. We have also perused the written submissions submitted by the parties.

13. It is evident from the record that the case of the petitioners was considered by the respondents pursuant to the directions of the Court and vide order dated 13/19.11.2018, it was decided that the petitioners would be engaged as and when the functional need arises at DDK, Srinagar. An attempt has been made by the learned senior counsel for the petitioners to persuade us that the work for which the petitioners were employed as casual workers was perennial in nature and they have been discriminated against the beneficiaries of order dated 18th January, 2012. The writ petition preferred by the petitioners bearing SWP No.892/2012 was disposed by the Writ Court, vide order dated 28.05.2013 in terms of the following directions:

“In totality of the circumstances, the petition is disposed of with a direction to the respondents to accord fresh

consideration to petitioners case having regard in particular to (i) policy guidelines framed by the CEO (ii) that in terms of the order impugned, petitioners were to be given preference as and when exercise was undertaken to engage Casual Workers (iii) that the respondents after order impugned in the petition have engaged as many as 130 Casual Workers in disregard to the report of the Committee and consequent order.

The respondents shall do well to re-consider the matter and pass order warranted in the facts and circumstances of the case, within eight weeks from the date of receipt of this order."

14. The learned Writ Court directed the respondents to reconsider the matter and pass order warranted in the facts and circumstances of the case. The learned Single Judge vide order dated 30.04.2019 closed the contempt proceedings arising out of order dated 28.05.2013 leaving the petitioners free to assail the consideration order.

15. It is the case of the respondents that 130 casual workers allegedly engaged by the respondents were not causal workers, but casual assignees and they were booked purely on an assignment basis as per requirement of different sections and the number of casual assignees increases or decreases from time to time depending upon requirement of the programme. The causal assignees have the know-how of the specific jobs. The respondents have demonstrated before this Court that 18 persons stated to have been booked regularly on casual basis, have been

booked on the basis of court directions. The respondents, in their affidavit filed in compliance to order dated 1st October, 2024, have mentioned the details of 18 persons working pursuant to the court orders and the number corresponds to the information brought on record by the petitioners through the medium of information obtained under Right to Information Act.

16. The respondents are candid in their stand that at present there is no requirement of any casual worker. The requirement of work force can be assessed by the employer only and once the respondents do not have any requirement of casual workers, this court cannot force the respondents to engage the petitioners as casual workers, thereby causing un-necessary financial burden upon the respondents, particularly when the respondents have pleaded the poor financial health of Doordarshan Kendra, Srinagar.

17. Once the respondents have been able to demonstrate before this court that no necessity has arisen for engaging any other casual worker, as such this court is of the considered view that no direction can be issued to the respondents to engage the petitioners as casual workers. It needs to be noted that the petitioners have been disengaged

for the last more than two decades. No right is vested in the petitioners for their engagement as casual workers and, as such, we do not find any illegality in the order dated 13/19.11.2018.

18. We have also examined the judgment passed by the learned Tribunal and we do not find any reason to show indulgence. Accordingly, the present petition is dismissed being bereft of any merit. Interim direction, if any, shall cease to be in operation.

(MOHD. YOUSUF WANI) (RAJNESH OSWAL)
JUDGE JUDGE

Srinagar
09.04.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No