

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**LPA No. 132/2021 In SWP No. 264/2016
c/w LPA No. 133/2021**

(i) LPA No. 132/2021:-

**1. Mohammad Amin Wani
S/O: Ghulam Mohammad Wani
R/O: Dooru Verinag.**

**2. Mohammad Sultan Mir
S/O: Abdul Ahad Mir
R/O Ishber Nishat Srinagar**

**3. Abdul Hamid Sheikh
S/O: Ghulam Mohi-ud-din Sheikh
R/O: Kulgam**

...Appellant(s)

Through: - Mr. Mian Tufail, Advocate

Vs.

**1. State Ellaquai Dehati Bank, through its Chairman, 3rd
Floor Nirmaan Complex, I.G. Road, Barzulla Srinagar.**

**2. State Ellaquai Dehati, Bank through its General
Manager, 3rd Floor Nirmaan Complex, I.G. Road, Barzulla
Srinagar.**

3. Manager Ellaquai Dehatib Bank, Khag Budgam

4. Manager Ellaquai Dehati Bank, Bidder Kokernag

**5. Manager Ellaquai Dehati Bank, Gupt Ganga Ishber Nishat,
Srinagar.**

6. Manager Ellaquai Dehati Bank, Tarigam Kulgam

...RESPONDENT(S)

Through:- Mr. Shakir Haqani, Advocate with
Mr. Asif Wani, Advocate

(ii) LPA No. 133/2021:-

1. Mohammad Sultan Mir

S/O: Abdul Ahad Mir

R/O Ishber Nishat Srinagar

2. Mohammad Amin Wani

S/O: Ghulam Mohamma Wani

R/O: Dooru Verinag

3. Abdul Hamid Sheikh

S/O: Ghulam Mohi-ud-din Sheikh

R/O: Kulgam

4. Basharat Ahmad Lone

S/O: Late Mohammad Shafi Lone

R/O: Chandergee, Kulgam

5. Aamir Nazir Mir

S/O: Nazir Ahmad Mir

R/O: Kanjikulla, Kulgam

6. Abid Shamsu-Din

S/O: Shamsu-Din Mir

R/O: Kanjikulla, Kulgam

7. Abdul Rouf Wani

S/O: Feroz Ahmad Wani

R/O: Pahlloo, Kulgam

8. Firdous Ahmad Lone

S/O: Mohammad Shafi Lone

R/O: Chandergee, Kulgam

9. Waseem Ahmad Zargar

S/O: Nazir Ahmad Zargar

R/O: Devsar, Kulgam

10. Shabir Ahmad Bhat

S/O: Abdul Rashid Bhat

R/O: Khiram Anantnag



11. Sameer Ahmad Khan
S/O: Ghulam Mohammad Khan
R/O: Zalangam Kokernag, Anantnag

...Appellant(s)

Through: - Mr. Mian Tufail, Advocate

Vs.

- 1. State Ellaquai Dehati Bank, through its Chairman, 3rd Floor Nirmaan Complex, I.G. Road, Barzulla Srinagar.**
- 2. State Ellaquai Dehati, Bank through its General Manager, 3rd Floor Nirmaan Complex, I.G. Road, Barzulla Srinagar.**
- 3. Manager Ellaquai Dehati Bank, Gupt Ganga Ishber Nishat, Srinagar.**
- 4. Manager Ellaquai Dehati Bank, Khag Budgam**
- 5. Manager Ellaquai Dehati Bank, Bidder Kokernag**
- 6. Manager Ellaquai Dehati Bank, Tarigam Kulgam**
- 7. Manager Ellaquai Dehati Bank, Sader Bazar, Kulgam**
- 8. Manager Ellaquai Dehati Bank, Yaripora Kulgam**
- 9. Manager Ellaquai Dehati Bank, Harman, Shopian**
- 10. Manager Ellaquai Dehati Bank, Pahloo, Kulgam**
- 11. Manager Ellaquai Dehati Bank, Khull, Kulgam**
- 12. Manager Ellaquai Dehati Bank, Devsar Kulgam**
- 13. Manager Ellaquai Dehati Bank, Kanilwan, Anantnag**
- 14. 14. Manager Ellaquai Dehati Bank, Wailoo, Anantnag.**

...RESPONDENT(S)

Through:- Mr. Shakir Haqani, Advocate with
Mr. Asif Wani, Advocate

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGMENT
23.07.2025.**

Per: Sanjeev Kumar-J: (Oral)

(i) LPA No. 132/2021:-

1. Learned counsel appearing for the appellants submits that he does not want to press this appeal and the same be **dismissed** as such.

2. Statement of learned counsel for the appellants is taken on record and the appeal is **dismissed** as not pressed.

(ii) LPA No. 133/2021:-

3. In this appeal filed by as many as eleven persons, an order and judgment dated 01.10.2021, passed by the learned Single Bench of this Court ["the writ Court"] in SWP No. 173/2018 and three other clubbed matters is under challenge.

4. At the outset Mr. Mian Tufail, learned counsel appearing for the appellants, made a statement at the bar that other than appellant No. 1-Mohammad Sultan Mir, in LPA No. 133/2021, the other appellants are not interested to pursue their appeal. On the statement made by the learned counsel for the appellants, the appeal, insofar as it pertains to appellants 2 to 11 in LPA No. 133/2021 is dismissed as not pressed.

5. Before we advert to the grounds of challenge urged by Mr. Mian Tufail, learned counsel for the appellant-Mohammad Sultan Mir, we deem it appropriate to take note of a few admitted facts.

6. The appellant who was 10+2, came to be engaged in the Respondent-Bank at Gupt Ganga, Ishber Nishat, Srinagar, in the year 2006. As per the Respondent Bank, the engagement of the appellant-Mohammad Sultan Mir, was only part time and for performing the duties of Safai Karamchari/Sweeper. The appellant continued to perform the aforesaid duties and was paid a meager amount of Rs. 1500/- in the beginning, which amount came to be raised from time to time. It was only in the year 2016 when the Respondent Bank decided to engage the services of Safai Karamchari and other menial workers from outsourcing. The appellant approached this Court by way of SWP No. 671/2015, claiming *inter alia* a direction to the Respondent-Bank to regularize his services against the post of Sweeper held by him for the last about two decades.

7. The writ petition was resisted by the Respondent-Bank. In their reply affidavit filed before the writ Court, it was submitted that in the absence of any policy of regularization framed by the Bank, the appellant cannot claim the regularization of his services. The engagement of the appellant and his continuation in the Bank was not

specifically denied by the respondents. However, it was submitted that he had been working, like many others, without any formal order of engagement for upkeeping the cleanliness and sanitation of the branches. It was also the stand of the Respondent Bank before the writ Court that the appellant was being hired by the concerned Branch Manager for contingency work i.e., sweeping and cleaning the branch premises from time to time, and was paid remuneration against the work done.

8. The respondents in their reply affidavit also did not dispute the fact that for making regular engagements/appointments of the Sweepers and other menial workers, the Respondent Bank had initiated a process of recruitment, but submitted that process of recruitment was not connected with the engagement of the appellant directly or indirectly. It is, however, not pleaded by the respondents anywhere as to what happened to the process of recruitment which was undertaken. However, from the record, it seems that the process of recruitment was abandoned in view of the decision of the Management of the Bank to engage such staff through outsourcing.

9. The writ petition was considered by the writ Court in the light of the contentions raised by the learned counsel appearing for the parties and also the material available on record. The writ Court came to the conclusion that the

appellant, being a part time temporary worker, had no right to seek regularization in the absence of a policy of regularization framed by the Bank. The writ Court also observed that it is not within the scope of judicial review to issue a mandamus to the Respondent-Bank to frame a policy for regularization. The judgment passed by the Hon'ble Supreme Court in the case titled **"State of Jammu & Kashmir and Ors. Vs. District Bar Association, Bandipora, AIR 2017, SC11, 2017"**, was relied upon by the writ Court. This is how the writ Court, vide judgment impugned, dismissed the writ petition of the appellant. It is this judgment of the writ Court which the appellant is aggrieved of and is assailed before us in this appeal.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment of the writ Court insofar as it pertains to the appellant who, alone is aggrieved, deserves to be set aside. Indisputably, the appellant has been performing the menial job of sweeping in the Bank branch for about the last nineteen years. It is true that the services of the appellant were utilized by the Bank to perform the duties of a Safai Karamchhari/Sweeper without there being any formal order of engagement issued by any Competent Authority. The appellant was engaged by the Incharge of the Branch to cater to the specific need of maintaining

cleanliness and hygiene in the Branch and the appellant was remunerated for the aforesaid work by paying him wages at different rates from time to time. The Bank account appended by the appellant with this appeal fortifies the aforesaid factual position.

11. It cannot be denied that the job of maintaining cleanliness and sanitation in the branch is required to be performed by a Sweeper recruited directly by the Bank after following a due process of law. It also needs to be taken note of that a regular Sweeper in the Bank would not receive a salary less than fifty thousand per month. It seems that with a view to save the expenditure and take the benefit of rampant unemployment in the valley, the respondent-Bank decided to exploit the services of an educated youth. This is how the services of the appellant came to be utilized in the branch concerned.

12. The Bank acted very smartly and extracted the services from the appellant without even handing over to him any formal order of engagement. We could understand that such illegality or irregularity might have been committed by the Branch Head alone, but there is nothing on record to show that the Management of the Bank ever initiated any action against the heads of such branches where such menial workers were engaged out of contingency funds/local funds of the branches. No such circular issued by the Management

advising the Bank branches not to continue with such engagements was brought to our notice by the learned counsel appearing for the Bank. It is a case of sheer exploitation of labour, which is prohibited by the Constitution of India.

13. The instant case projects an altogether different fact situation which was not even comprehended by the Hon'ble Supreme Court in the Case titled as ***"State of Karnataka Vs. Uma Devi", 2006(4), SCC1***. We are persuaded to take the view similar to the one taken by the Hon'ble Supreme Court in the case titled as ***"Jagoo Vs. Union of India" reported as 2024 INSC 1034***, wherein, under similar set of circumstances, the Hon'ble Supreme Court came to the rescue of persons engaged as sweepers on part time basis, who continued to perform their duties for decades together. It is also worthwhile to mention here that the job which the appellant has been performing in the Bank for the last several years is the job which is supposed to be performed by a regularly appointed sweeper. It is not the case of the Respondent Bank that the post of sweepers or similar equivalent posts are not available in the Bank. The decision to make engagement on a temporary basis to maintain cleanliness and hygiene in the branches was taken by the Incharges of the branches only with a view to save the expenditure and get the same job done for a meager

amount. This is, on the face of it, an exploitation of labour, which cannot be permitted.

14. For the foregoing reasons, we allow this appeal and set aside the judgment *qua* the appellant, and direct the respondents to consider the case of the appellant for regularization against the post of sweeper or any other equivalent post in the Bank.

15. Let the consideration be accorded and appropriate order passed in the light of the observations made in the judgment within a period of three months from the date a copy of the judgment is served upon the respondents. We make it clear that the judgment which we have passed is confined to the peculiar facts and circumstances of the case and shall not be treated as a precedent for future cases.

16. **Disposed of.**

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
23.07.2025
"Mir Arif"

Whether the judgment is reportable? Yes/No.

Whether the judgment is speaking? Yes/No.