

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

WP(C) No. 4288/2019
CM No. 7771/2021

Pronounced on 27.12.2021

Muzaffar Ahmad Bhat and
others

.... Petitioner/Appellant(s)

Through:- Mr. Yasir Shameem Mir,
Advocate

V/s

Chairman & Managing
Director IRCON Ltd. and
others

.....Respondent(s)

Through:- Mr. P. C. Sharma, Advocate
Mr. Anchit Sharma, Advocate

**CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT**

01. The petitioners were engaged in IRCON International Limited on the post of Site Supervisors/Civil on contract basis initially for a period of one year on the dates as given in Para-3 of the petition. After the completion of the initial term, their orders of engagement were extended from time to time and, as such, it is submitted that they are continuously working/discharging their duties at USBRL Rail Link Project Banihal, J&K till date.

02. The case set up by the petitioners is that they have been continuously discharging their duties for more than six years and, as such, are eligible to seek regularization. The respondents have regularized the services of similarly situated 18 employees after completion of two years

of service vide order dated 20.08.2008. The petitioners, who are similarly situated, therefore, made a representation for regularization of their services to the respondents. Their representation was not considered by the respondents and even the dearness allowance given to the petitioner was stopped. The petitioners again moved a representation for release of the same, but the respondents instead of regularizing their services have issued a reminder that the period of contract of contractual employees will come to an end on 31.12.2019.

03. The petitioners, it is submitted, have continuously rendered their services for almost six years in difficult working conditions, as such, are entitled to regularization. More so, when services of similarly situated employees have been regularized after completion of two years of their contract by the respondents. The petitioners submitted that they are on a better footing and the respondents have discriminated against them by not regularizing their services. They are, thus, entitled to be regularized by the respondents as their services are still required by them and non-regularization of their services is violative of Articles-14 & 16 of the Constitution of India. It is also submitted that the petitioners have been rendering uninterrupted services without any break in difficult working conditions with the respondents, therefore, respondents should regularize their services as has been done in case of similar employees whose services have been regularized only after two years of their services.

04. In their objections, the respondents submit that the petitioners were engaged on contractual basis initially for a period of one year in a

particular PMGSY project and, thereafter, extensions were also granted to them till the project was completed. The nature of the appointment was 'project basis contracts' under the Policy and the engagement would come to an end on expiry of projects undertaken by the answering respondents. The petitioners were granted extension of their services as per requirement/exigency of the project and after completion of the particular project their engagement was to come to an end. Since project for which their services were required has come to an end, therefore, their services cannot be regularized and the same are liable to be rejected.

05. The petitioners at the time of their engagement were also made aware that no right of regularization would vest with them. They accepted terms and conditions in the offer letter and joined their posts. The respondents submit that the petitioners have been informed that the respondents being project based commercial arrangement requires highly fluctuating manpower on commercial basis. The petitioners also engaged on contractual staff for specific arrangement.

06. Reliance is also placed on IRCON Recruitment Rules, 2014. The classification of Employees is (a) Regular (b) on contract basis (c) on service contract basis (d) Deputationist.

07. The petitioners, admittedly, are contractual employees who have been engaged on contract basis which was extended from time to time. It is well settled law that the court in exercise of judicial review cannot issue directions for absorption, regularization, permanent continuation unless recruitment itself was made in terms of the

constitutional scheme. Merely because of the employees who have been continued, petitioners are not entitled right for absorption or made them permanent has been held by Hon'ble the Supreme Court in 2017 SCC Online J&K.

08. The Hon'ble Apex Court while considering the similar preposition in **Union of India and others V. Ilmo Devi and another** has set out following well settled principles relating to regularization and parity holding that:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two

years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.”

09. In view of the law laid down in Para-7 as well as the judgments of Hon’ble Apex Court in **Saraswati Industrial Syndicate Ltd. V/s Union of India, (1974) 2 SCC 630; Mohd Dar V/s State of J&K, 2017 SCC Online J&K 59; State of J&K and others V/s District Bar Association Bandipora, (2017) 3 SCC 410 and Secretary, State of Karnataka and others V/s Umadevi and others, (2006) 4 SCC 1**, the contractual employees are not entitled to seek any regularization against the post which are not sanctioned, as such, petitioners cannot seek their regularization on parity with those employees whom they are not impleaded as party respondents. The petitioners had continued only on the strength of interim orders, their case is squarely covered under the principles set out in **Union of India and others V. Ilmo Devi and another** as stated above.

10. In view of the aforesaid discussions, there is no merit in this petition and the same is, accordingly, **dismissed** alongwith connected application(s).

(Sindhu Sharma)
Judge

JAMMU
27 .12.2021
SUNIL-II

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

