S. No.16
Regular List

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

WP(C) No.700/2021

MIR BASHARAT AHMAD

... Petitioner(s)

Through: -Mr.B.A.Tak, Advocate.

Vs.

UT OF J&K AND OTHERS

…Respondent(s)

Through: -Mr.Mubashir Majid Malik, Dy.AG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

Dt:23.12.2024

1. The petitioner has sought a direction upon the respondents for regularization of his services in terms of SRO 520 of 2017 notified on 21.12.2017 (The Jammu and Kashmir Casual and other Workers, Regular Engagement Rules, 2017).

2. According to the petitioner his land was acquired by the Respondent Department for construction of Sump cum Pump House and Production Well at WSS Quil Muqam, Bandipora and in lieu thereof he was engaged as a casual labourer in terms of Order No.PH-1112 dated 16.01.2013. It has been submitted that the petitioner has been in continuous engagement with the respondents against monthly wages of Rs.6975/-. It has been also submitted that

the respondents have not released the wages in favour of the petitioner and in this regard the respondents have exchanged a number of communications inter-se. It has been further submitted that the petitioner is eligible for linking of his Aadhar for online registration for Aadhar Based Biometric identification and Skill Profiling, which is mandatory under SRO 520 dated 21.12.2017 and in this regard the petitioner approached the respondent department a number of times. As a result of inaction of the respondents, the wages are not being paid to the petitioner despite performing his duties. It has been claimed that the petitioner is entitled to regularization of his services in terms of SRO 520 of 2017 dated 21.12.2017.

3. The respondents have filed their reply to the writ petition in which they have submitted that a piece of land measuring 12 Marlas situated in village Quil Muqam, Bandipora has been donated by father of the petitioner for construction of Sump cum Pump House and Production Well at WSS Quil Muqam. It has been submitted that the land owner has donated his proprietary land to the respondent Department and in lieu thereof has sought engagement of his son, the petitioner herein. The respondents have admitted that the petitioner has been engaged as a casual labourer in PHE, Sub Division, Bandipora in terms of Order No.1112 dated 16.01.2013 in lieu of the land donated by him. According to the respondents the scheme was shifted to languishing project and since then the wages, which are yet to be paid to the petitioner, have been suspended.

According to the respondents since the petitioner had donated only 12 Marlas of land, as such, he did not fulfill the minimum criteria for engagement as Labourer in lieu of the donated land. It has been submitted that minimum land donation qualifying for benefit under SRO 520 of 2017 is one kanal of proprietary land. The respondents have, however, submitted that the case of the petitioner for monetary compensation can be processed.

4. I have heard learned counsel for the parties and perused the record of the case.

5. There is no dispute to the fact that the respondents have taken over the land measuring 12 Marlas belonging to father of the petitioner for construction of Sump cum Pump House and Production Well at WSS Quil Muqam, Bandipora. It has also not been disputed that in lieu thereof the petitioner was engaged as casual labourer in terms of communication dated 16.01.2013. The contention of the respondents is that because the petitioner does not fulfill the eligibility criteria of donation of minimum one kanal of land, as such, he cannot be granted the benefit of SRO 520 of 2017. Learned counsel for the respondents has further argued that even otherwise SRO 520 of 2017 stands repealed now and, as such, there is no question of considering the case of petitioner for regularization of his service in terms of the said SRO. The respondents have not denied that the petitioner is on their rolls as a casual labourer and in-fact they have admitted that his wages have been suspended as the scheme was shifted to languishing project.

6. Once the respondents have admitted that they have taken over 12 Marlas of land belonging to the petitioner/his father, either they have to honour their commitment to engage the petitioner in terms of SRO 520 of 2017 dated 21.12.2017, which according to the respondents stands repealed, or they have to pay compensation to the petitioner for the acquired land in accordance with law. The respondents cannot deny the employment to the petitioner and at the same time refuse to pay land compensation to him. Right to property is a constitutional right and the said right of the petitioner cannot be taken away by the respondents, except in due course of law, meaning thereby, that the respondents have either to pay compensation to the petitioner for the land taken over by them or they have to provide employment to him. The respondents are also obliged to pay to the petitioner the wages for the period for which he has actually worked with them.

7. Since the respondents have expressed their inability to appoint the petitioner on account of repealing of SRO 520 of 2017 and also on account of fact that the petitioner is not eligible for being granted benefit of SRO 520 of 2017, the only option available with the respondents is to acquire the land in question in accordance with law and pay compensation to the petitioner/land owner.

8. Accordingly, the writ petition is **disposed of** by directing the respondents to initiate steps for acquisition of the land in question and conclude the same by paying compensation to the petitioner in accordance with law relating to land acquisition which is in vogue at

present. The needful shall be done by the respondents within a period of six months from today. It is further directed that the respondents shall pay the wages due to the petitioner for the period for which he has worked with them and not to disengage him till the land compensation is paid to the petitioner/land owner.

(SANJAY DHAR)
JUDGE

SRINAGAR
23.12.2024
Sarveeda Nissar

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

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Sarveeda Nissar
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authenticity of this document
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