Serial No. 17
Regular Cause list

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

LPA No. 65/2024 in
[SWP No. 2024/2009]

Sheri Kashmir University of Agricultural Sciences and Ors.

….. Appellant/petitioner(s)

Through: -
Mr. Hamza Prince, Advocate

V/s

Riyaz Ahmad Khuroo

….. Respondent(s)

Through: -
Mr. F. A. Bhat, Advocate

CORAM:

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

(ORDER)
28.05.2025

(Oral)

01. In this intra Court appeal, the respondent challenges an order and Judgment dated 05.09.2023, passed by the learned Single Judge of this Court ['the writ Court'] in SWP No. 2024/2009, *titled Riyaz Ahmad Khuroo Vs. Sher-E-Kashmir Institute of Science and Technology.*

02. Before we advert to the grounds of challenge, urged by Mr. Hamza Prince, learned counsel appearing for the appellant Institute in support of appeal, we deem it appropriate to give brief resume of the facts, leading to filing of this appeal.

03. The respondent claiming to have been engaged as daily-rated worker in the appellant Institute in the year 1992, filed SWP No. 1018/2005, praying therein *inter alia* for a direction to the appellant Institute for regularization

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

of his services. The said writ petition was disposed of on 17.02.2006, with a direction to the appellant Institute, to consider the case of the respondent for regularization under rules subject to the genuineness of his engagement order and other documents submitted by him. There was further direction to release the earned wages in favour of the respondent under rules.

03. In compliance with the Judgment supra, the appellant Institute passed a consideration order dated 28th August, 2007, rejecting the claim of the respondent for regularization on the ground that the respondent had filed the writ petition on the basis of fabricated and manipulated certificates. It was observed by the appellant Institute in the consideration order that the respondent was engaged as Seasonal Labour for 89 days, w.e.f. 03.08.1997, vide office memo No. FOA/97-98/4484-86 dated 27.11.1997. The aforesaid order of consideration was not called in question by the respondent. It seems that after rejecting the claim of the respondent for regularization, the appellant Institute dispensed with his services/disengaged him vide order No. FOA/Estt/2009/F,536/4441-42 dated 25.09.2009.

04. It is this order passed by the appellant Institute, which was called in question by the respondent in SWP No. 2024/2009. The respondent prayed for following reliefs:-

> "(i) *A writ in the nature of certiorari be issued in favour of the petitioner and against the respondents for quashing the impugned order No. FOA/Estt/2009/F,536/4441-42 dated 25.09.2009.*
>
> *(ii) A writ in the nature of mandamus be issued in favour of the petitioner and against the respondents commanding the respondents to reinstate and allow the petitioner to continue and pay him all the emoluments and benefits in continuity."*

05. The writ petition was though not contested by the appellant Institute, yet the same came to be disposed of by the writ Court in terms of the order and Judgment impugned in this appeal.

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

06. The appellant Institute is aggrieved of and has assailed the impugned Judgment on the ground that the writ Court has quashed the impugned order dated 25.09.2009 without indicating any reasons and that the writ Court has gone to the extent of directing the appellant Institute to regularize the services of the respondent, despite the fact that no such relief was claimed by the respondent in his writ petition.

06. Mr. Hamza Prince, learned appearing counsel for the appellant Institute would argue that the respondent having accepted the order of 28.08.2007, rejecting his claim for regularization, was not entitled in law to seek direction for his regularization and it is because of this reason, the respondent had restricted his writ petition for quashing of impugned order dated 28.09.2009 only.

07. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the Judgment passed by the writ Court is flawed and, therefore, cannot be sustained.

08. Indisputably, the case of the respondent for regularization was rejected by the appellant Institute vide order dated 28.08.2007, which was passed in compliance with the directions passed by the learned Single Judge in its order dated 17.02.2006 passed in SWP No. 1018/2005. The claim for regularization made by the respondent was rejected on twin grounds, i.e., (i) that the claim was based on forged and manipulated documents (ii) that the respondent being a Seasonal Labour having been engaged in the year 1997, was not entitled to regularization under SRO 64 of 1994. This position was accepted by the respondent. The consideration order dated 28.08.2007, was never called in question by the respondent. SWP No. 2024/2009 came to be filed only when subsequent to the rejection of his claim for regularization,

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

the appellant Institute disengaged him vide order dated 25.09.2009. In the said writ petition, the respondent only sought quashing of the aforesaid order with a direction to the appellant Institute to re-instate him in service.

09. From perusal of the entire petition, we do not find any ground made out for seeking quashment of the order of disengagement dated 25.09.2009. Once it is conceded that the respondent had filed a petition and obtained direction from the learned Single Judge of this Court on the basis of forged and manipulated documents, the appellants had seen good reasons and justification to dispense with services of such employees. Otherwise also, the respondent was only a seasonal employee not even working continuously in the department and, therefore, had no right to continue in the department as seasonal labour for indefinite period. The writ Court ought to have dismissed the petition only on this score. Not only the writ Court quashed the order dated 25.09.2009, but went ahead in directing the regularization of the respondent under SRO 64 of 1994, ignoring the fact that the consideration order dated 28.08.2007, had not been called in question, nor any specific direction had been sought for regularization in the writ petition.

10. For all these reasons, we find merit in this appeal and the same is, accordingly, allowed. The Judgment passed by the writ Court is set aside. As a result, the writ petition filed by the respondent is dismissed.

11. Disposed of along with all connected CM(s).

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
28.05.2025
"Mohammad Yasin Dar"

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

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document