

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

SWP No. 2057/2002

Pronounced on:- 19<sup>th</sup> .05.2020

Soom Bhadur and another ....Petitioner(s)

Through: Mr. Karman Singh Johal, Advocate

**vs.**

State of J&K and others ....Respondent(s)

Through: Mr. Raman Sharma, AAG

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

**JUDGMENT**

1. Petitioners who were working as daily wagers have assailed Order No. 518/2002 dated 30.07.2002 to the extent their services have been disengaged. They further prayed to allow them to continue in the said post and regularize their services.
2. Briefly stated facts which arises for consideration in this petition are as, that the petitioners were engaged daily wager w.e.f 21.12.1996 and 31.01.1997 and have been working continuously with the respondents. They filed a writ petition bearing SWP No. 474/1998 seeking their regularization to the said post alongwith 14 other persons. This petition was decided vide judgment dated 20.04.2001 and the respondents were directed to consider the claim of the petitioners taking into consideration the observations made by this Court in case titled, 'Udham Singh V. State and others, 1998(2)SCT 223, and a decision in this regard would be taken within three months and till such time, the petitioners would be allowed to continue on the said posts.

3. The respondents vide order No. 518/2002 dated 30.07.2002 have disengaged the service of the petitioners on the ground that they were engaged as Daily wagers after 1994 at time when the government has placed ban on engagement of Daily wager vide Government Order No. 26-F of 1994 dated 31.01.1994, therefore, their engagement being illegal would have been disengaged in terms of directions of this court.
4. The petitioners are aggrieved of order on the ground that they are entitled for regularization in terms of Government Order No. 1285-GAD of 2001 dated 06.11.2001. Since those petitioners who had not completed 07 years of service would be allowed to continue and complete 07 years of service and thereafter their case to be considered.
5. Reliance is also placed on the views expressed by this court in case titled, 'Nifat Ara and others v. State of J&K and others'. Respondents have further categorically stated that they have not been continuing till date. Respondents have objected to the averments of the petition by stating that since primarily they had been engaged after the imposition of ban on the engagement of Daily wagers vide order No. 26-F of 1994 dated 31.01.1994, as such, the engagement of the petitioners were found to be illegal and as such order of their disengagement was passed on 30.07.2002.
6. It is further that only those daily wager workers engaged prior to 31.01.1994 would be eligible for regularization after completing 07 years of service and since petitioners do not fall into that category, as such, their services cannot be regularized.
7. Regarding those who are engaged as Daily wager in contravention to Government order No. 26-F of 1994 has been considered by this court in judgment titled, State of J&K and others v. Mustaq Ahmad Sohail and

others and while considering the same has held:

“12. Confronted with the same position, Govt. order NO. 144-GAD of 2001 dated 02.02.2001 was issued, wherein, after reference to Govt. Order No. 26-F of 194 dated 31.01.1994, it has been observed that it has come to the notice of the Government that a number of daily rated works have been appointed even after the imposition of ban in the department in total disregard of the Govt. Order No. 26-F and the rules by some officer who had no jurisdiction or authority to do so, then reference is made to Cabinet Decision No. 131 dated 31.01.2001 followed by Govt. Order No. 144-GAD of 2001 dated 02.02.2001 to the effect that the appointments unauthorisedly made after ban, if they are performing duties, shall be paid their salary up to 31.01.2001 after which their services shall be terminated as their appointments being unauthorized. Then it is mentioned that the daily rated workers who have been appointed after imposition of ban i.e. 31.03.1994 and are still performing their duties shall be paid wages up to 31<sup>st</sup> of January, 2001 and thereafter they shall be disengaged.

13. As against order No. 144-GAD of 2001 dated 02.02.2001, the daily wagers/work charged employees, who were aggrieved, filed number of writ petitions. Finally the judgment passed in those writ petitions were challenged by medium of bunch of LPAs with lead case Ashok Kumar Vs. State of J&K and ors. Which have been decided vide judgment dated 26.07.2002, reported in 2003(S.L.J 475. In the reported judgment, position vis-à-vis right of casual labour/daily wagers/adhoc employees, has been taken note of and as many as 15 directions were issued as contained in Para 45 of the judgment. It may not be out of place to mention here that the cut-off date has also been extended to 06.11.2001 in terms of Govt. order No. 1285-GAD of 2001 dated 06.11.2001 which has been issued in pursuance to Cabinet Decision No. 135/11(B) dated 10.09.2001. The above referred judgment

was challenged before the Hon'ble Apex Court by medium of Civil Appeal No. 9298 of 2003 and Civil Appeal No. 9299 of 2003. While disposing of Civil Appeal No. 9299 of 2003, the following order has been passed:-

“Our attention has been drawn to the judgment of the Constitution Bench of this Court in Secretary, State of Karnataka and others vs. Umadevi and others(supra). In our view, this judgment has no application in view of the fact that the respondents are employed by the State Government and are claiming the benefit of a scheme formulated by the Notification dated 31<sup>st</sup> January, 1994, as modified by Notification dated 6<sup>th</sup> November, 2001. The High Court is perfectly justified in its judgment.

We are satisfied that the impugned judgment of the High Court needs no interference at our hands.

In the result, the Appeal is dismissed. No costs.”

8. This issue came up for consideration in **Ved Parkash Sharma v. State of J&K and others**, in LPASW No. 99/2017 decided on 27.09.2017, while considering the issue in Para-7 of the judgment, it held as under:-

“7. The learned counsel vehemently urged before us to take a view contrary to the one taken by the Division Bench of this Court in Mushtaq Ahmed Sohail's case (supra). We, however, are not inclined to do so for the simple reason that the appellant in the instant case as stated above, acquired the right of regularization with effect from 25-11-2002 and at the relevant point of time, the Government Order NO. 1285/GAD/2001 dated 06-11-2001 was in operation. The rights which had accrued to the daily wagers including the appellant in terms of Government Order No. 1285/GAD/2001 could not have been taken away by the subsequent Government Order issued on 09.02.2004, strongly relied upon by the learned counsel for the respondents.”

9. The petitioners' case also covered by this judgment and resultantly the benefit of regularization as available to the petitioners in terms of Government Order dated 06.01.2001 cannot be denied to them.
10. In view of the above, this petition is allowed and order impugned dated 30.07.2002 is set aside. Respondents are directed to accord consideration to the case of petitioners for regularization in light of the observations made in judgment State of J&K and others v. Mushtaq Ahmad Sohail & others.

**(Sindhu Sharma)**  
**Judge**

**JAMMU**  
19<sup>th</sup> .05.2020  
SUNIL-II

Whether the order is speaking:  
Whether the order is reportable:

Yes/No  
Yes/No

