

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

SWP No. 2429/2002

Pronounced on:- 19th .05.2020

Ishar Dass

...Petitioner(s)

Through: Mr. Abhimanyu Sharma, Advocate
vice
Mr. Abhinav Sharma, Advocate

vs.

State of J&K and others

...Respondent(s)

Through: Mr. K. D. S Kotwal, Dy. AG

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

JUDGMENT

1. Petitioner seeks quashing of order No. IFCJ/12168-72 dated 10.09.2002, whereby his claim for regularization of his service in terms of SRO 64 of 1994 has been rejected.
2. Briefly stated facts which arises for consideration in this petition are as, that the petitioner was appointed as a Dak Runner in the year 1992 for a period of 59 days vide order dated 28.08.1992 his engagement was extended from time to time by respondents. Claim of the petitioner is that he has discharged his duties as daily wager with the respondents for more than 10 years, as such, he was entitled to regularization of his service. He, thus, approached this Court by filing a petition i.e., SWP No. 27/2002 seeking his regularization in terms of SRO 64 of 1994.
3. This petition was disposed of vide order dated 22.03.2002 holding as under:-

These petitions are accordingly disposed of with a direction to the respondent-authorities to consider the claims of the petitioners for regularization. They would also take notice of the observations made by the Division Bench of this Court reproduced above. Let the claims of the petitioners be considered and a decision within a period of three months from the date a copy of this order is made available by the petitioners to the respondent-authorities and also to the counsel who has put in appearance today. The claims of the petitioner for release of salary be also considered.

Disposed of as such.

4. The case of the petitioner is that pursuant to the directions of this Court for regularization, the respondents vide order dated 10.09.2002 have rejected the claim of the petitioner holding that he was not entitled to regularization.
5. Aggrieved his rejection, the petitioner has challenged the same in this writ petition. Respondents submit that the petitioner is not entitled to regularization as he was engaged on casual basis in July, 1992 for 31 days, in August, 1992 for 31 days, in September 1992 for 30 days and re-engaged after several months. It is further submitted that since the petitioner has worked from July 1995 to 2001 but as his engagement was in violation of SRO 64 of 1994 and in terms of Government Order No. 144-GAD of 2001 dated 02.02.2001 and after imposition of ban in the department, therefore, they have rightly rejected his. It is also submitted that the petitioner has not completed requisite period in terms of SRO 64, therefore, his service cannot be regularized.
6. *Per contra*, learned counsel for the petitioner submits that the respondents have not accorded consideration to the petitioner's case as

directed in SWP No. 27/2002. In fact, his rejection is on the ground that his engagement in 1995 was in violation of the said SRO.

7. This issue was considered by Hon'ble Division Bench of this Court in **State of J&K & ors. v. Mushtaq Ahmad Sohail & others, 2012 (4) JKJ 1051**, wherein while considering order No. 144-GAD of 2001 dated 02.02.2001, it has been observed as under:-

“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 all 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 31st 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 (4) SLJ 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 2033. 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 31st January, 1994, as modified by Notification dated 6th 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. In this very judgment, this Court while considering casual employees it was also observed as under:-

“CASUAL EMPLOYEES’

The cases of casual employees be also examined. In this regard, it would be apt to note the dictionary meaning of

the work 'casual'. In Black's Law Dictionary, Sixth Edition, the meaning of word 'casual' has been defined as "occurring without regularity", "occasional", "impermanent" and "as employment for irregular periods". A perusal of above meaning would indicate that where an employee has continued to work for sufficiently long period, the, it would not be pat to call him having been appointed on casual basis. As a matter of fact, this aspect of the matter was considered in Piara Singh's case (supra). The relevant observations made in para 51 of the judgment stand already noticed above. For facility of reference, the relevant observations made in this paragraph are being quoted again:-

"...If a casual labourer is continued for a fairly long spell say two or three years a presumption may arise that there is a regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization, while doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person...."

9. Thus, the petitioners' contention is right, his rejection is without considering the judgment in **Ashok Kumar vs. State of J&K, 2003 (II) SLJ 490**.
10. In **Ved Parkash Sharma v. State of J&K and others**, in LPASW No. 99/2017 decided on 27.09.2017, this Court while considering the same issue held that in view of the judgment of Mustaq Ahmad Sohail and others (supra), this issue has no mere *res integra* has held as under:

"7. The learned counsel vehemently urged before us to take a view contrary to he 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.”

11. The petitioner’s case is also squarely covered by both these judgments as the petitioner was working and had acquired a right to be regularized in terms of the notification vide order No. 1285/GAD/2001 dated 06.11.2001 which was in operative at the relevant time, therefore, in terms of the said order dated 06.11.2001, the right of the petitioner could not be taken away.
12. In view of the aforesaid, petition is **allowed**. Impugned order dated 10.09.2002 is quashed. The respondents are directed to accord consideration to the claim of the petitioner for regularization. The consideration accorded to the petitioner would be in light of the judicial pronouncements in **Ashok Kumar, Mushtaq Ahmad Sohail and Ved Parkash Sharma (supra)**. Respondents shall do the needful within a period of three months from the date certified copy of the order is made available to them.

\

(Sindhu Sharma)
Judge

JAMMU
19th.05.2020
SUNIL-II

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