

Ashaq Hussaln and ors. Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : Jul-30-2008

Reported in : 2008(3)JKJ84

Judge : K.S. Radhakrishnan, C.J. and; Mohammad Yaqoob Mir, J.

Appellant : Ashaq Hussaln and ors.

Respondent : State of J and K and ors.

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, C.J.

1. The question that arises for consideration in this case is whether a daily rated worker, who was engaged after January 31,1994 in violation of Government Order No. 26-F of 1994 dated January 31,1994, is entitled to the benefit of SRO 64 of 1994 dated March 24,1994

2. Petitioners admittedly were engaged as daily rated workers after January 31,1994 but before March 31,1994. Government Order No. 26-F of 1994 restricted engagement of daily wager/daily rated workers in government service, in any form, after March 31,1994. Operative portion of Government Order No. 26-F of 1994 reads as follows:

The practice of engagement of daily wager/daily rated worker in the Government in any form is hereby withdrawn retaining only the concept of casual labour/seasonal labour for specified development departments. The engagement of such casual/seasonal labour shall be on the muster roll for payment of wages and no engagement/appointment orders shall be issued. Further modalities for the purpose shall be worked out as part of the scheme to be issued in statutory form. The existing delegation of powers for engagement of daily wager/work charged employees available to field officers is also withdrawn. For future, the work charged post should be created only by the Government in consultation with the Finance/Planning Departments.

3. Later, the Government in exercise of powers conferred on it under Section 124 of the Constitution of Jammu and Kashmir issued Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994. The Rules came into effect from April 1, 1994. Rule 4 of the Rules lays down the eligibility criteria for regularization. Rule 4(f) is extracted below:

4. Eligibility for Regularization. - A daily rated worker/work charged employee shall be eligible for regularization on fulfillment of the following conditions:

(a)...

(f) that he has completed seven years continuous period of working as daily rated worker or work charged employee or partly as daily rated worker and partly as work charged employee.

4. Emphasis is on completion of 7 years' continuous service. Rule 5 deals with regularization of daily rated workers. It says that all the daily rated workers who on 31.3.1994 are eligible under rule 4 for regularization shall with effect from 1.4.1994 be appointed on regular pay scale of class iv category of posts in the scale of Rs. 750-940. Therefore, those daily rated workers who are eligible under Rule 4 of the Rules can be regularized with effect from April 1, 1994. Rule 7 deals with restriction on engagement of daily rated workers/work charged employees and says that with effect from the commencement of these rules, no field/subordinate officer shall have the power for engagement of a daily rated worker or work charged employee.

in the department and the existing delegation, if any, in this regard is withdrawn. Rule 8 deals with application of Rules to existing daily rated worker and work charged employees. The said provision is extracted below:

8. Application of rules in existing daily rated worker and work charged employee: charged 'employees shall also apply to The policy of absorption of daily rated workers and work such of the existing daily rated workers and work charged employees who may not have completed seven years on March 31,1994 but may complete by the end of subsequent financial years and their absorption shall be considered in that financial year in accordance with the rules.

5. Rule 10 deals with repeal and saving. It says that all the existing rules, regulations and orders excepting government order No. 26-F of 1994 dated 31.1.1994 relating to the matters covered by these rules are hereby repealed.

6. Learned Counsel for the appellants submitted that statutory rules replaced all rules and regulations and executive orders and that even though the petitioners were engaged as daily rated workers after January 31,1994, they are still entitled to get the benefit of the statutory rules for regularization under rule 5 of the Rules. In other words, the learned Counsel submitted that petitioners are also covered by Rule 5 and they are also entitled to regularization. Learned Counsel for respondents submitted that the question raised in this case is fully covered by a Division Bench judgment of this Court in Ali Mohd Dar v. Najam-u-Saqib 2003 (II) SLJ 475.

7. We have gone through the judgment and we are in agreement that the point raised has already been settled by the Division Bench of this Court which clearly lays down that the daily rated workers who were engaged before March 31,1994 but had not completed 7 years' continuous service are entitled to be regularized after completion of their tenure in the later financial year. This is apparent from Rule 8 of the Rules. Petitioners cannot claim regularization only under Rule 5 of the Rules. For claiming regularization a daily rated worker has to satisfy the criteria laid down in Rule 4 of the Rules which specifically says that only those daily rated workers who have completed seven years' continuous service shall be eligible for regularization. Daily rated workers who were eligible on March 31,1994 could

claim regularization with effect from April 1, 1994. Petitioners were engaged as daily rated workers after January 31, 1994 in violation of Government Order No. 26-F of 1994. In other words, they had not completed 7 years' service on March 31, 1994 or in the subsequent financial year. In such situation, in our view, petitioners are not entitled to the benefit of Rule 4. Division Bench Judgment in Ali Mohd Dar v. Najam-u-Saqib (supra), in our view, fully applies to the points raised by in this case both on law as well as on facts. In such circumstances, we find no error or infirmity in the judgment of the learned Single Judge.

8. Appeal lacks merit and is, therefore, dismissed.

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