

(1996) 10 J&K CK 0002

Jammu & Kashmir High Court

Case No: L.P.A (W) No. 207 of 1996

Rabinder Paul

APPELLANT

Vs

Shri Mata Vaishno Devi Shrine
Board

RESPONDENT

Date of Decision: Oct. 18, 1996

Acts Referred:

- Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994 - Rule 4, 8

Citation: (1997) SriLJ 131

Hon'ble Judges: B.A.Khan, J and M.Y.Kawoosa, J

Bench: Division Bench

Advocate: Parmod Kohli, J.S.Kotwal , Advocates appearing for the Parties

Judgement

Khan, J.

Appellant was appointed as Pujari for one month on daily wages of Rs. 25/ by order dated 1.7.1991. He was thereafter engaged

for 89 days on the same terms and conditions and his term was extended from time to time.

2. It appears that respondent Board constituted a screening committee vide Circular dated 27.8.1994 for screening employees to place them in the

graded paystructure. Appellant was also screened but instead of being placed in a graded pay structure was engaged on contractual basis as Pujari

for one year by order dated 1.1.1996 on a consolidated salary of Rs. 3,000 per month. Feeling dissatisfied, he filed SWP No. 848 of 1996 calling

in question this order on the ground that it had changed the conditions of his service and deprived him of the benefit of regularisation under SRO64

of 1994. He accordingly prayed for a direction to the Board to regularise his services against the post of Pujari under the provisions of SRO64 and to continue him till then. The writ court rejected his plea and dismissed his petition vide judgment dated 3.7.1996 on finding that he was not eligible for such regularisation under SRO64 as he had not completed ""7 years continuous period of working.

3. Appellant has filed this appeal to assail the judgment on the ground that the writcourt had failed to appreciate the import of rule 8 of SRO64

which envisaged continuance of daily rated workers and work charged employees till their regularisation in service or completion of 7 years.

4. Two issues that require consideration are:

(i) whether appellant's appointment on contractual basis had changed the conditions of his service; and. (ii) whether it had deprived him of any benefit of regularisation of his service under SRO64 of 1994?

5. It appears to us that appellant's case proceeds on fallacious assumptions and misappreciation of the provisions of Rule 8 of SRO64. He firstly

wrongly assumes that the order appointing him on contractual basis had changed the conditions of his service overlooking his nature of engagement

on wages, he could not treat himself in any service to be governed by any conditions thereof. Therefore, the question of any change in the

conditions of his service did not arise. If he believed that the so called conditions of his service stood breached, he should not have accepted the

contractual appointment. But having accepted that he could not be allowed to turn round and attack the order from which he was receiving benefit.

His case seemingly suffers from gross misconception on this court.

6. Appellant's reliance on the provisions of Rule 8 of SRO64 is also misplaced. It transpires that the Staterespondent passed SRO64 (supra) in

exercise of the powers under proviso of Sec. 124 of the State Constitution to formulate it policy for absorption of daily rated workers and work

charged employees engaged n different Govt. departments. It accordingly provided for the method and manner for such regularisation. Rule 4 of

this SRO laid down the conditions of eligibility. Amongst other things, it provided that such daily rated workers and work charged employees must

have completed 7 years ""continuous period of working"" and their work and conduct should have remained satisfactory for the period they had

worked to become eligible for regularisation. Rule 5 envisaged that all eligible daily rated workers on 31.3.1994, under rule 4, shall be appointed on

the regular payscale of Classiv prescribed in the concerned department from 1.4.1994. Similarly Rule 8, which is at the centre of controversy,

provided that the policy of absorption of daily rated workers and work charged employees would also apply to such of the existing daily rated

workers and work charged employees who may not have completed 7 years as on 31.3.1994 but may complete by the end of subsequent

financial years For facility of reference this provision is reproduced hereunder:

8. Application of rules to existing Daily Rated Worker and Work Charged Employee.

The policy of absorption of Daily Rated Workers and Work Charged employees shall also apply to such of the existing Daily Rated Workers and

Work Charged Employees who may have not completed seven years on 31.3.1994 but may complete by the end of subsequent financial years

and their absorption shall be considered in that financial year in accordance with rules.

Appellant's counsel, Mr. Kotwal, interprets this provision to mean that those existing daily rated workers and work charged employees who had

not completed seven years on 31.3.1994 to become eligible for regularisation, were required to be continued till they would attain these seven

years and would be regularised. The fallacy of the contention is apparent on the face of it.

7. It is true that Rule 8 extends the benefits of the policy of absorption to those daily rated workers and work charged employees who had not

completed 7 years as on 31.3.1994 but may complete by the end of subsequent financial years. But, this benefit is available and accruable subject

to their continuity in engagement. If they remain in engagement for 7 years in subsequent financial years they would be eligible for consideration of

regularisation. But that cannot be stretched to mean that they would have to be continued in engagement necessarily till they could complete 7

years. If that was so, the daily rated workers would enjoy better security of tenure than the regular employees. That could not have been the intent

and purpose of the provisions of rule 8. After all a daily rated worker is living by the day. He cannot be credited with any right to continue to work

against a post or for a specific term. If he carries on for 7 years, he would acquire a right of regularisation and absorption in a regular service on

completion of this period and where he falls short that is the end of the matter. In other words, the completion of 7 years is a precondition and

furnishes a basis for eligibility. Even this is conditioned by the requirements laid in Rule 8 of SRO64 and even when a daily rated worker would

have completed ""7 years of continuous working"" he would still have to satisfy the other requirement to make the grade or face rejection.

8. Rule 8 cannot be interpreted in a manner to lead to absurd results. It was intended only to make provision for accord of consideration for

regularisation even to those existing daily rated workers and work charged employees who had not completed ""7 years continuous working"" on

31.3.1994 but could do so in subsequent financial years. It would be doing violence to its provisions to suggest that such workers and employees

had acquired an indefeasible right to continue in engagement for 7 years or till their regularisation and resultantly could not be ousted or disengaged.

Any such interpretation of the provision would be illogical and clothe such workers with superior rights than the regular employees.

9. As a result, we see no infirmity in the judgment impugned and dismiss this appeal in limine.