

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

SWP No.1611/2016
IA No.1/2016

Reserved on : 14.03.2024
Pronounced on: 19.03.2024

Ghar Singh, age 56 years
S/o Shri Thoru Ram,
R/o Village Danpur, P.O.Jourian,
Tehsil Akhnoor, District Jammu
At present C/113. Behind A.G.Office, Shiv
Nagar, Jammu.

....Petitioner(s)

Through :- Mr. Gourav Goswami, Advocate

V/s

1. University of Jammu, Jammu
2. Financial Advisor, Universities,
Commissioner-cum-Secretary to Government)
Finance Department, Jammu and Kashmir,
Government, Civil Secretariat, Jammu/Srinagar
3. Registrar,
University of Jammu, Jammu

....Respondent(s)

Through :- Mr. Ajay Abrol, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. A short grievance projected by the petitioner in this petition is that, though, services of the petitioner were regularized vide order dated 25th March, 2010 with immediate effect, yet in terms of the provisions of SRO 64 of 1994 adopted by the University of Jammu, he was entitled to be regularized immediately after the completion of seven years of service.

2. Briefly stated, the facts leading to the filing of this petition are that the petitioner came to be engaged as Casual Labourer on 7th July, 1997 and was posted as Security Guard against an available vacant post. The petitioner continued in service for long but was not regularized. The petitioner claims to have represented before the authorities time and again, but there was no positive response from the University authorities. The further case of the petitioner is that he along with thirteen others came to be regularized vide order dated 25th March, 2010. Insofar as the petitioner is concerned, his services were regularized as Security Guard and he was placed in the regular pay scale with immediate effect. The petitioner claims that he represented against his regularization with prospective effect and claimed that he was entitled to be regularized in terms of SRO 64 of 1994 immediately on the completion of seven years' continuous service as Security Guard. The petitioner made a representation to the Vice Chancellor of the respondent-University on 19th July, 2016 claiming his regularization as Security Guard retrospectively w.e.f. 8th July, 2004, when the petitioner completed his seven years' continuous service. The representation of the petitioner was not considered and, therefore, the petitioner filed the instant petition.
3. On being put on notice, the respondent-University has filed objections and has taken a plea that the writ petition filed by the petitioner after six years of the cause of action is highly belated and hit by delay and laches. Apart from taking the aforesaid preliminary objection, the respondent-University has also tried to meet the case of the petitioner on merit. It is submitted that the petitioner was engaged on casual basis in the year 1997 and as per the policy of the University his

services were regularized vide order dated 25.03.2010. It is submitted that since the petitioner was not strictly speaking a daily wager but was engaged on casual basis, as such, he was not covered by SRO 64 of 1994. His regularization was, however, made by the University as per its policy decision taken to regularize the daily wagers/casual labourers, who had been working for pretty long time. Reliance is also placed by the respondent-University on the opinion tendered by the Financial Advisor.

4. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the petitioner is entitled to be regularized as Security Guard w.e.f. 1st April, 2005 i.e. first day of the financial year next after the petitioner completed seven years continuous service as Security Guard as daily rated worker.
5. Mr. Ajay Abrol, learned counsel appearing for the respondents has seriously objected to the maintainability of the petition on the ground that the same is highly belated and hit by delay and laches. It is submitted that the order impugned was passed in the year 2010 and the first representation agitating the issue was made only in the year 2016 in a run up to the filing of the petition. He would submit that the petitioner accepted the regularization order dated 25th March, 2010 regularizing his services with immediate effect without any objection, protest or demur and, therefore, shall be deemed to have acquiesced in the terms and conditions of the said order. He would further submit that the petitioner raked up the controversy only in the year 2016 for the first time.

6. Indisputably, the petitioner had completed his seven years continuous service rendered by him as Security Guard on 8th July, 2004 and, therefore, acquired requisite eligibility to be regularized w.e.f. 1st April, 2005 that is in the financial year next after he completed seven years service. It is also indisputable that the University of Jammu had not framed any policy for regularization of daily rated workers and rather had adopted the policy of Government of Jammu & Kashmir promulgated vide SRO 64 of 1994 in terms of University order No.Estab/95/5487-5607 dated 16th August, 1995. It is in pursuance of the policy of regularization framed by the Government and adopted by the University of Jammu vide Order dated 16.08.1995, several daily wagers working in the University were regularized from time to time on completion of seven years' continuous service.
7. Mr. Abrol, learned counsel appearing for the University, could not show any other order or policy decision of the University taken for regularization of the daily rated workers in the University. That being so, the plea of the petitioner that he was entitled to be regularized as Security Guard immediately on the completion of seven years' continuous service cannot be held to be without substance. It is, however, true that the petitioner accepted the order of his regularization dated 25th March, 2010 and did not raise any objection or protest. He mustered courage to claim the aforesaid relief only in the year 2016.
8. The fact that the petitioner was working as a daily rated worker/casual labourer in the University since 7th July, 1997 and was regularized after more than twelve years cannot be ignored. In a case where a petty daily labourer, who after rendering long services has been regularized

as a Security Guard, is pitted against a University, a mighty statutory body, it is the University with all bargaining power that will be in a dominating position. In such situation, a petty employee like daily wager or Security Guard shall be left with no option but to accept the terms and conditions of employment dictated by his employer. Where the employer is in a dominating position and pitted against it is a petty employee like the petitioner, it is very difficult for such employee to muster courage and challenge the terms and conditions of the employment offered to him at the time of appointment.

9. In the instant case, the petitioner was no doubt regularized on 25th March, 2010 but he was put on probation for a period of two years. His services came to be confirmed by the competent authority vide order No. Estab./12/1689-96 dated 01.05.2012. There is another aspect, which is pertinent to take into account that while the petitioner was working as Security Guard on daily wages/casual basis, he came to respond to an advertisement notification issued by the University dated 22nd August, 2005 for seeking his appointment on regular basis against a permanent post of Orderly. The petitioner faced the interview but was not selected on the ground that he had crossed the maximum age limit prescribed for employment in the University. The University did not take into account the fact that the petitioner was an ex-serviceman and, therefore, could have been within age till the completion of forty years of age. It is only after the petitioner faced dejection in the hands of the University, he agitated the issue of retrospective regularization with effect from the date of completion of seven years to some extent in the year 2014 followed by his representation moved on 19th July, 2016.

10. It is not the case of the respondent-University that the petitioner came to the Court to challenge the denial of regularization from retrospective effect after his retirement. It is true that it took some time for the petitioner to gather courage and lodge his claim for retrospective regularization and there was considerable delay in doing so. Ordinarily, a writ petition seeking service benefits after so many years of the accrual of cause of action is not entertained by the Writ Court. However, having regard to the peculiar facts and circumstances of this case, I am of the considered opinion that the delay and laches would not come in the way of this Court to grant the relief prayed for by the petitioner in this petition. The retrospective regularization given to the petitioner, at this stage when the petitioner has retired from service, would not adversely affect the service rights of any of the employees of the University. It is not a case where, upon petitioner's retrospective regularization, seniority is to be re-fixed of that the petitioner is to be considered for promotion. In such a situation, it would have been justified for this Court not to entertain the plea as that would have been tantamount to unsettling the rights of other employees. At this stage, I deem it relevant to reproduce a passage from a judgment of Hon'ble Supreme Court of India in the case of **Somesh Thaplial and another v. Vice Chancellor, HNB Garhwal University and another, (2021) 10 SCC 116**, which reads thus:-

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the

employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

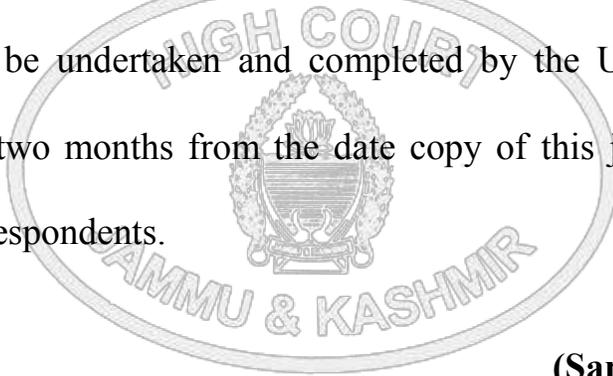
43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”

11. In view of the aforesaid, I am not inclined to accept the plea of delay and laches raised by Mr. Abrol, learned counsel for the University and the same is, accordingly, overruled.

12. Now coming to the merits, suffice it to say that the petitioner, who had been rendering services as Security Guard since 7th July, 1997 continuously and without any break, cannot be terms as “casual labour”. ‘Casual Labour’ refers to labour whose employment is intermittent, sporadic or extends over short period or continued from one work to another, whereas a ‘daily rated worker’ or ‘daily wager’ is a person, who is engaged for rendering continuous nature of service and is paid wages on daily basis. The distinction between causal labour and the daily rated worker has been very aptly brought out in State of **J&K and others v. Anuradha, (2011) 1 JKJ 870 [HC]**. It is, thus, beyond cavil of any debate that a person who is engaged temporarily and is paid wages at the rates sanctioned by the Government from time to time and continued to perform his duties for a continuous period of more than seven years cannot, by any stretch of reasoning, be termed as ‘casual labour’ to deny him the benefit of regularization under SRO

64 of 1994, which, for the purpose of regularization of its daily wagers, the University adopted in the year 1995.

13. For the foregoing reasons, I find no merit in the pleas taken by Mr. Abrol, learned counsel appearing on behalf of the University, to justify denial of relief prayed for by the petitioner. This writ petition is, accordingly, allowed and the petitioner is held entitled to regularization as Security Guard w.e.f. from 1st April, 2005 with all consequential benefits including arrears of salary we.f. 1st April, 2005 till his actual regularization made in the year 2010. The pensionary benefits, if any, received by the petitioner from the University of Jammu shall also be suitably revised and arrears, if any, due to him paid to the petitioner. Let the requisite exercise to comply with these directions be undertaken and completed by the University within a period of two months from the date copy of this judgment is served upon the respondents.



(Sanjeev Kumar)
Judge

Jammu:
19.03.2024
Vinod, PS

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