

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

OWP no.66/2007
c/w CPOWP no.509/2013

Pronounced on: 23.02.2024

Director, Rural Development, Kashmir, Srinagar

.....Petitioner(s)

Through: Mr Alla Uddin Ganai, AAG

Versus

1. Abdul Qayoom Dar S/o Gh. Mohd. Dar R/o Hassanabad, Rainawari, Srinagar
2. Industrial Tribunal/Labour Court, Srinagar

.....Respondent(s)

Through: Mr T.H.Khawja, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Director, Rural Development, Kashmir, Srinagar – petitioner herein, prays for passing of a writ of certiorari, quashing and setting-aside the Award/judgement dated 15th November 2006, passed by Industrial Tribunal/Labour Court, Srinagar – respondent no.2 herein, *for short "Tribunal"*, in a claim petition titled as Abdul Qayoom Dar v. State of J&K. Petitioner also seeks for passing of a writ of certiorari to declare null and void the Reference dated 3rd September 2001 made by the Government to the Industrial Tribunal/Labour Court, Srinagar.
2. It is Government of Jammu and Kashmir that vide SRO 375 dated 3rd September 2001 made a Reference to the Trial Court requiring it to

adjudicate the dispute that was raised by respondent no.1 herein. It would be appropriate to reproduce SRO hereunder:

“GOVERNMENT OF JAMMU AND KASHMIR
CIVIL SECT: LABOUR & EMPLOYMENT DEPARTMENT

.....
NOTIFICATION

SRINAGAR, THE 3rd September 2001.

SRO 375 : - Whereas, the Government is of the opinion that an Industrial Dispute exists between the Director Rural Development Srinagar and its workman namely Shri Abdul Qayoom Dar S/o Ghulam Mohd. Dar R/o Rainawari, Srinagar regarding the matter here-in-after appearing; and

Whereas, the Government considers it desirable to refer the dispute to the Labour Court for adjudication.

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Dispute Act, 1947 (XIV of 1947), the Government of Jammu and Kashmir hereby refer the said dispute to the Labour Court for adjudication in respect of the following matters, namely:-

- a/ legality or otherwise of the action of the management (Director Rural Development, Srinagar) in terminating the engagement/services of the aforesaid workman, namely Abdul Qayoom Dar; and
- b/ award appropriate relief to the said workman in case illegality of the action of the said management is established.

By order of the Government of Jammu and Kashmir.

Sd/-

(P. L. Raina)

Commr. & Secretary to Government
Labour and Employment Department

No.L&E/ID/64/2001

Dated: 3.9.2001

Copy to the:

- 1- Commissioner & Secretary to Govt., Law Department (w.7.s.c.)
- 2- Labour Commissioner, J&K, Srinagar
- 3- General Manager, Government Press, J&K, Srinagar for publication in the next Government issue Gazettee.
- 4- Presiding Officer/Industrial Labour Court, J&K, Jammu along with 39 leaves
- 5- Assistant Labour Commissioner, Srinagar/Jammu.
- 6- Stock file.”

3. The Tribunal on receiving SRO/Reference, summoned the parties to put in attendance before it. Respondent no.1 herein filed his claim petition, stating therein that he was engaged in 1992 and continued to work

under Block Development Officer, Srinagar, and that he remained in service up to August 1998. It was also contention of respondent no.1 that his services were suddenly dispensed with by petitioner-department which according to him was in utter disregard to provisions of Industrial Disputes Act and in violation of Chapter V-B of the Act. He, thus, sought a direction upon petitioner-department to him back in service with all consequential benefits and declaring his termination/dispensing with services as unjustified.

4. Objections to the claim petition of respondent no.1 were filed by petitioner-department. Their stand before the Tribunal was that it has no jurisdiction to try and entertain claim petition of respondent no.1 as he is not a workman as defined under the Act because he has already approached the Civil Court and his suit stands dismissed. According to petitioner-department there existed no dispute between respondent no.1 and the department because he did not come within the definition of workman as defined under the Act and that respondent no.1 was disengaged in view of the policy decision with regard to all daily wagers. It was further stand of petitioner-department before the Tribunal that respondent no.1 was initially engaged for 60 days with usual breaks and he had never been allowed to continue for more than sixty days as such, he did not come within the definition of workman as defined under the Act.

5. As is evident from perusal of the material on the file, the Tribunal given the rival contentions of the parties framed following issues:

(1) Whether this Court has no jurisdiction to try the present petition? OPR

(2) Whether the present petition is barred by *res judicata*?

OPR

(3) Whether the action of the management in terminating the services of the petitioner is illegal and unjustified, therefore, is required to be quashed? OPP

(4) To what relief the parties are entitled? OP Parties.

6. It appears that the Tribunal vide its interim order dated 29th April 2003 decided Issue nos.1&2 in favour of respondent no.1 and against petitioner-department. Thereafter, parties were directed to adduce their evidence. Respondent no.1 produced and examined seven witnesses, besides himself. Petitioner-department as impugned judgment on its perusal would reveal failed to adduce any evidence and, as such, its right to produce evidence was closed on 2nd May 2005. It is in terms of the impugned Award/judgment that the Tribunal held action of petitioner-department in terminating services of respondent/claimant as illegal and uncalled for and, consequently, held him entitled to reinstatement along with all back wages and other consequential service benefits.

7. Learned counsel for petitioner has stated that conclusion drawn by Tribunal is without any material inasmuch as it has exceeded its jurisdiction by declaring respondent no.1 entitled to reinstatement as well as back wages along with other consequential benefits. He would contend that respondent no.1 was never employed as a daily wager for a period of more than two months and he never worked continuously. The Tribunal has not appreciated the fact of the matter that respondent no.1 had been disengaged pursuant to policy decision of the Government and, as such, no illegality had been committed by

petitioner-department. It is contended that under law a daily wager or casual labour has no right to seek regularization or continuation unless and until there is a need for the same and, therefore, the Tribunal had no competence to hold respondent no.1 entitled to reinstatement and back wages along with all consequential benefits. Respondent no.1 has not produced any evidence which would have suggested that he was continuously working in petitioner-department. Respondent no.1 had filed a civil suit on the same subject-matter, which was before the Tribunal. The said suit was dismissed.

8. On the other hand, it is stated by learned counsel for respondent no.1 that petitioner are precluded to raise the question of jurisdiction, authority and competence of the Tribunal because it is the Government of Jammu and Kashmir that vide SRO 375 dated 3rd September 2001 referred the matter to the Tribunal with points of reference. Those two points of reference to be adjudicated upon by the Tribunal was legality or otherwise of action of petitioner-department in terminating engagement/ service of respondent no.1/workman; and award appropriate relief to the workman/respondent no.1 in case illegality of action of the said petitioner-department is established.

9. I have heard learned counsel for parties and considered the matter.

10. It is an admitted position on the part of petitioner-department that respondent no.1 had been engaged/appointed in petitioner-department way back in the year 1992, i.e., SRO 64 of 1994, viz. Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularisation) Rules, 1994. These Rules have come into effect from 1st April 1994. These Rules apply to Daily Rated Workers/Work

Charged Employees engaged in any Government Department. Rule 2 (b) says that casual labour/worker means a person who is engaged through an appointment order or otherwise on daily rated basis for rendering casual services to a department. Rule 2 (e) provides that “continuous working” means continuous working of daily rated workers or work charged employee after his first engagement regardless of the fact whether wages have been paid for the gazette holidays/Sundays. Daily rated Worker means a person engaged on daily wage basis at the rates sanction by the Government from time to time as is defined under Section 2(f) of the Rules. Rule 4 provides that a daily rated worker/work charged employee shall be eligible for regularization if he is resident of J&K; if on the date of his initial appointment his age was within the minimum and maximum age limit as prescribed for appointment in government service; if he possess the prescribed academic and/or technical qualification for the post against which he is required to be engaged; if 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. Rule 5 provides that all the daily rated workers who on 31st March 1994 are eligible under Rule 4 for regularization shall with effect from 1st April 1994 be appointed on the regular pay scale of Class-IV prescribed in the concerned department for the relevant category of posts in the scale of Rs.750-940. It is clearly mentioned in Rule 8 that 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 not have completed seven years

on 31st March 1994 but may complete by the end of subsequent financial years and their absorption shall be considered in that financial year.

11. As record would tend to show that after framing of issues, the witnesses were adduced by the parties who in unison admitted that respondent no.1 was working in petitioner-department prior to imposition of ban under SRO 64 of 1994, i.e., respondent no.1 was working in petitioner-department since 1992, and, as such, entitled to continue. Taking into account these aspects of the matter, the Tribunal has rightly held termination of respondent no.1 as illegal and uncalled for and consequently held respondent no.1 entitled to reinstatement along with all back wages and other consequential service benefits.

12. The power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen is provided in Section 11A of the Industrial Disputes Act. It envisions that where an industrial dispute relating to discharge or dismissal of a workman is referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of adjudication proceedings, the Labour Court, Tribunal or National Tribunal is satisfied that order of discharge or dismissal is not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman. In such circumstances, there is no substance in the contention of petitioner-respondent that the Tribunal has no jurisdiction to pass impugned Award.

13. Petitioner-department admits that respondent no.1 had been engaged in the year 1992. So, he had/has a right to challenge his discontinuation

which has rightly and correctly been declared by Tribunal as illegal. In that view of matter, impugned order/award passed by the Tribunal does not call for any interference and consequently writ petition is liable to be dismissed.

14. Reference made by learned counsel for petitioner to judgement dated 23rd April 2021 passed by this Court in OWP no.498/2014 titled as Director Rural Development and others v. Assistant Commissioner and others is extremely distinct and different in facts and circumstances to the case in hand.

15. For the reasons discussed above, writ petition is devoid of any merit and is, accordingly, **dismissed**.

16. Insofar as contempt petition (CPOWP no.509/201) is concerned, the proceedings are dropped and the same is **closed**, at this stage.

However, it is made clear that in the event petitioner-department does not implement the order(s) with respect whereof the contempt petition was filed, within eight weeks, respondent no.1 will be free to review come up with a contempt petition against petitioner-department.

(Vinod Chatterji Koul)
Judge

Srinagar

23.02.2024

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.