

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 3939/2019

RESERVED ON: 07.10.2022

PRONOUNCED ON: 19.10.2022

SHOWKAT AHMAD NAJAR AND OTHERS

...Petitioner(s)

Through: Mr. Jahangir Iqbal, Sr. Adv. with Ms. Humaira, Adv.

Vs

UT OF J&K AND OTHERS

...Respondent(s)

Through: Mr. M. Iqbal Dar, Advocate

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

Public employment means an employment by a State, be it temporary or permanent. The major concern nowadays is unemployment, a person has a choice either to stay unemployed or accept employment with any kind of exploitative terms being offered by the employer. These employees have enough knowledge of getting terminated anytime even after discharging their services on a meager amount for decades without getting same salary and condition of services as given to the class IV employees, as such the government cannot be provided an escape route to avoid the mandate of equality enshrined in Article 14 of the Constitution, this Article declares that there shall be equality before law and the equal protection of law.

If a person is not having feeling of belongingness within an organization, he will not put forward his best efforts. The sense of belongingness arises only when he feels that he will not turn out of employment anytime and at the whims of the government. The security of work should as far as possible, be assured to the employee so that he may contribute the maximum efforts for the development. Government in particular should not allow workers to remain as

temporary employees for an unreasonable long period of time; this kind of exploitation of decades makes a temporary employee suffer to the great extent.

1. In the instant writ petition, the petitioners herein are seeking direction upon the respondents to regularize services of the petitioners against the Class-IV posts in the same as has been adopted in the case of other similarly placed Consolidated Workers, on the ground taken in the writ petition.

Brief Facts:

2. The petitioners have been appointed as Consolidated Workers in the respondent-Board initially for a period specified in the order. The said terms of engagement was extended from time to time.
3. As per the policy decision taken by the respondent Board, an employee engaged on daily rated/Consolidated Worker, after completion of seven years of service, is entitled to regularization against class IV post.
4. The respondents are stated to have, from time to time, regularized the services of various Consolidated Workers, thereby, implementing the Policy decision taken by the Board in this behalf. The similar claim of the petitioners, however, despite making various representations has been ignored by the respondents without any plausible reasons, meaning thereby that the respondents have implemented the policy decision only in respect of their favorites in total disregard of the fact that the petitioners were appointed much prior to the Consolidated Workers, who have been regularized by the respondent Board. The petitioners and the persons, who have been regularized in

terms of orders No. 887-B of 2006 dated 28.11.2006, 413-B of 2012 dated 27.07.2012 and that of order No. 17-B of 2018 dated 02.01.2018, in law, constitute one class, therefore, the petitioners cannot be subjected to invidious discrimination in the matter of regularization. By not regularizing the services of the petitioners, the petitioners have been subjected to hostile and invidious discrimination, notwithstanding the fact that the petitioners are similarly situated with those who have been regularized from time to time by the respondents.

5. The petitioners are continuously working on consolidated basis in the respondent Board and their period of engagement has been extended from time to time and they are discharging the same for as is being discharged by a regular employee. The petitioners have worked on meager consolidated wages only with a hope that their services would be regularized in light of the policy decision taken by the respondent Board, the doctrine of legitimate expectations, covers the case of the petitioners.
6. Upon notice respondents appeared and filed their reply, wherein it has been mentioned that the petitioners shown at Serial Nos.7,8,9,13,72,87,97,98 & 99 are not working as consolidated workers as on date. Moreover, the petitioner shown at Serial No. 86 has crossed the age of 58 years, as such is not entitled to regularization.
7. It is further stated in the reply that the petitioners have been engaged as consolidated workers temporarily on need basis and, as such, they have no right to claim regularization. It is also stated that in the past such workers were regularized after

putting in not less than seven years by virtue of Order No. 413-B of 2012 dated 27.07.2012 only after the Governing Body (Board of Governors) of the J&K Board of School Education (JK BOSE) accorded sanction to the creation of posts and the regularization of consolidated workers in terms of Order No. 17-B of 2018 dated 02.01.2018, 04 consolidated workers have been regularized strictly in compliance to the directions of the writ Court.

8. It has also been stated that 38 consolidated workers having put in minimum of 07 years service were also regularized by the competent authority vide Order No. 887-B of 2006 dated 28.11.2006, but the same was not backed by any policy or rules to that effect and was done subject to confirmation by the Board, which however, was subsequently confirmed by the Governing Body of the J&K BOSE with dissent note by the government members like Administrative Secretary, Finance, Education as well as two Directors of School Education.
9. It is also specified in the reply that four Consolidated Workers, who have been referred to by the petitioners in the writ petition were regularized in compliance to the directions passed by the writ Court. Moreover, with regard to the remaining Consolidated Workers, whose number is 94 among whom 89 are petitioners, their cases too were processed and placed before the Governing Board and its meeting was held on 31st May, 2017, for consideration of their regularization and creation of required number of posts, besides grant of relaxation in age, qualification

bar whatever required. The Board after considering the matter resolved that a Sub Committee comprising of:-

- i. *Secretary, JK BOSE.*
- ii. *Director, School Education, Kashmir.*
- iii. *Director, School Education, Jammu.*

be constituted to examine the cases of Consolidated Workers and make necessary recommendation to the Chairman, JK BOSE, within one month for their regularization and action taken be placed before the Board subsequently, which later on submitted its report.

10. It is also stated in the reply that efforts were made repeatedly to ensure their regularization, but the Governing Board being the Apex Body having sole mandate to consider such matters, which involve major policy decision, has not granted any assent so far.

11. It has further been stated by the respondents that respondent Board has been gracious enough to consider and process the regularization of the petitioners and submitted same before the Governing Body of the JK BOSE thrice. It is also stated in the reply that the regularization involves creation of posts, relaxation of Age bar as well as qualification in some cases, which is the domain of the Board of Governors.

12. Comprehensive report has been filed in terms of Writ Court Order dated 29th September, 2022, whereby the Sub Committee did the required exercise, examined all the 28 cases by reference to relevant records and submitted the report along with the following recommendations:-

- a. *Utilization of 48 posts of orderlies presently available in the pay band of Rs. 4440-7440 + Grade Pay Rs. 1300/- for the regularization and appointment of senior most 48 consolidated workers working in*

different capacities out of both the categories as per the list forming Annexure-A to the said item from Serial No.s 1 to 48 as orderlies, vehicle cleaners, gardeners', sweepers and Chowkidars as the case may be, in the pay band of Rs. 4440-7440+ Grade Pay 1300/-.

- b. Creation of 47 posts of Class-IV in the pay band of Rs. 4440-7440+ Grade Pay 1300/- for the regularization and appointment of remaining 46 Consolidated Workers figuring in the said list (Annexure-A) from Serial No.s 49 to 94 as Orderlies, Vehicle Cleaners, Sweepers and Chowkidars as the case may be, in the pay band of Rs. 4440-7440+ Grade Pay 1300/-.*
- c. Relaxation in qualification bar and age bar (upper age limit) wherever applicable as shown against each worker, the said list (Annexure-A) for their regularization and appointment as Class-IV employees.*

13. It has also been mentioned in the reply that based on the said recommendations, a the detailed report was once again placed before the Board of Governors in its meeting held on 5th April, 2018, for consideration and approval. The Board of Governors while considering, resolved that a Sub Committee of officers comprising of:-

- i. Director, School Education, Kashmir.*
- ii. Director, School Education, Jammu.*
- iii. Director Academics, JK BOSE.*
- iv. Chief Accounts Officer, JK BOSE.*

be constituted to examine and determine the regularization of eligible consolidated workers in relation to SRO 520 of 2017 dated 21st December, 2017.

14. Accordingly, the said Sub Committee met on 24th April, 2018 for examining and determining the regularization of all the eligible Consolidated Workers in relation to SRO 520 of 2017. The Sub Committee after perusing the relevant record and discussing in detail all the issues concerning the matter came to the conclusion that SRO 520 of 2017 dated 21st December, 2017

does not apply in the case of Consolidated Workers as is also been made clear in the said SRO itself, which provide that these rules do not apply to the *“persons engaged in Non-Governmental Agency or Autonomous Body or Public Sector Undertaking or Corporation or Government Company or Society or other local Authority, which have their own rules and regulations governing their functioning”*.

15. It is stated that there has been a precedence in the JK BOSE that Consolidated Workers have been regularized by the Board of Governors as Orderlies against the available posts or even by creating necessary posts for their regularization, four such workers have recently been regularized and appointed as Orderlies in compliance to the Judgment passed by the Writ Court in SWP No. 1806/2012 and SWP No. 2009/2017, who too were existing and figuring among the Consolidated Workers for whom the regularization and appointment was solicited. It has also been stated that after the regularization of these four workers the number has reduced to 95 including one Mrs. Nayeema Akhter, who has been engaged as Consolidated Worker, in pursuance to the decision taken by the Board of Governors at its meeting held on 5th April, 2018 on compassionate grounds. The Sub Committee had accordingly submitted a detailed report mentioning therein that the regularization and appointment of 95 Consolidated Workers of both General as well as Technical Categories as Class-IV employees equivalent to the pay band of Rs. 4440-7440+ Grade Pay 1300/- and made the following recommendations:-

16.It further envisages that the regularization of 95 Consolidated Workers as Class-IV employees and equivalent as enlisted in Annexure-F of these minutes in the pre-revised Pay band of Rs. 4440-7440 with Grade Pay of Rs. 1300/- now revised to pay level I Rs. 18000-56900 be made by way of following mechanism.

- i. *Combined seniority as per the dates of their engagement shall be followed in respect of General as well as Technical categories of Consolidated Workers.*
- ii. *The existing vacancies numbering 48 shall be utilized for the regularization of 48 Consolidated Workers out of the combined list as per the seniority as four posts of Orderlies stand already filled up by regularizing four such posts of Orderlies in the pay band of Rs. 4440-7440+ Grade Pay 1300/- in compliance to the Judgment passed by the Division Bench of the Writ Court.*
- iii. *The remaining 47 Consolidated Workers be also regularized by way of creation of equal number of Class-IV posts in the pay band of Rs. 4440-7440+ Grade Pay 1300/- after approval of the competent Authority.*
- iv. *The relaxation wherever required may be obtained from the competent authority.*

The Chief Accounts Officer, JK BOSE apprised the Sub Committee that the J&K Board of School Education, has sufficient resources for creation of 47 Class-IV posts in the pay band of Rs. 4440-7440+ Grade Pay 1300/-.

17.The said report of the Sub Committee was placed before the Board of Governors and the Agenda was moved in circulation among the members of the Board for their concurrence who agreed to the same and signed the resolution, which was finally submitted to the then Principal Secretary to Government, Finance Department as (Member of Board) for his signatures, however, resolution was not returned and instead an observation was made thereon that the proposal of regularization of

Contractual/Casual Staff is not supported by rules or an approved policy.

18. Once again an Item vide No. XXIV was placed before the Board of Governors meeting which was held on 11th February, 2022 to consider the following:-

- i. *Regularization and appointment of 64 most senior Consolidated Workers as Class-IV employees like Orderlies, Vehicles Cleaners, Gardeners, Flood Cleaners, Sweepers and Chowkidars in the pay level 1 Rs. 18000-56900 against the available posts of 64 Orderlies as on date, in accordance with the procedure adopted in this regard previously.*
- ii. *In view of the recommendations made by two sub-committees constituted by the Board of Governors at its meetings held on 31st May, 2017 and 5th April, 2018, creation of 30 posts of Orderlies in the pay level 1 Rs. 18000-56900 for the regularization/appointment of remaining 30 Consolidated Workers.*
or
Creation of 30 Supernumerary Class-IV posts in the pay level 1 Rs. 18000-56900 which shall be subsumed as and when the Class-IV vacancies become available by way of promotion or retirement of the existing Orderlies, whichever is deemed feasible.
- iii. *Relaxation in age (upper age limit/Qualification bar) wherever required as shown in the list.*

19. The Board of governors upon consideration of the matter has resolved that the proposal be submitted to the Financial Commissioner (Additional Chief Secretary) to Government, Finance Department for examination and concurrence. Accordingly, the detailed proposal was submitted to the Finance Department by JK BOSE on 22nd March, 2022 and is still awaited.

20. Counsel for the respondents has also placed on record Order No. 17-B of 2018 dated 2nd January, 2018, whereby Secretary, JK BOSE has accorded the regularization of four Consolidated

Workers as Orderlies in compliance to the Orders passed by the Writ Court, w.e.f 9th May, 2014, purely on notional basis without financial implications, in the pay band of Rs. 4440-7440+ Grade Pay Rs. 1300/- against the available post of Orderlies.

21. Heard learned counsel for the respondents at length.

22. Coming back to the instant case, it is required to be noted at the very outset, that the petitioners are working as Consolidated Workers since last more than fifteen years. It is not in dispute and cannot be disputed that most of the petitioners were engaged and are continuing against the clear vacancies. Respondents have admitted that the petitioners are continuously working in JK BOSE and are not entitled to the same treatment as has been given to the similarly circumstanced Consolidated Workers. The claim of the petitioners' lies in the narrow compass only to the extent that their services be regularized against Class-IV post by granting them the same benefit and treatment as has been given/ extended to other consolidated workers whose services have been regularized against the Class-IV post.

23. Mr. M.I. Dar, learned counsel for the respondents has produced the requisite record. A communication dated 17th March, 2022, is available in the record which reflects that from April 2018 upto 28th February, 2022, 17 posts of Class-IV as Orderlies have become available, as such no. of vacancies are increased upto 65, as such, only 29 class-IV posts need to be created. Moreover, one Consolidated Workers namely Rekha Devi has

left the service w.e.f 11.02.1999, thus, the number of such workers has reduced to 94 from 95.

24. Respondents have out-rightly admitted that most of the posts are available and few Supernumerary posts can be created for regularization of the services of the petitioners against the Class-IV posts. It is also admitted by the respondents that the recommendations of the Sub Committee can be accepted *in toto* by the Board of Governors that 95 Consolidated Workers can be regularized as Class-IV Sweepers & Chowkidars in the pre-revised pay band of Rs. 4440-7440+ Grade Pay of 1300/-

25. Mr. M.I. Dar, learned counsel for the respondents has stated that the petitioners are Consolidated Workers, as such they have no right of regularization but on the other hand, has conceded that similar consolidated workers, who were engaged after petitioners have been regularized in terms of the Judgments passed by this Court.

26. Mr. Jahangir Iqbal, learned senior counsel for the petitioners submitted that in terms of the reply, comprehensive report and record filed by the respondents, the petitioners case has not only been considered, but has also been approved by the competent authority. He has further submitted that all along as per the precedence adopted by JK BOSE, the Board of Governors is the exclusive authority to regularize the services of the temporary employees against the post of Class-IV and it has also submitted that the claim of the petitioners is covered by the Judgments passed in cases titled "*Secretary, State of Karnataka and Ors*

Vs. Umadevi and Ors”. It would be relevant and germane herein, to reproduce the relevant paragraph herein:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

27. In case titled as “**University of Delhi Vs. Delhi University Contract Employees Union & Ors**”, the view taken by the Apex Court is also profitable to be reproduced herein:

Para-4 of the Judgment in the case of Umadevi specifically directs that Courts should desist from using orders preventing regular selection or recruitment at the instance of person who are only adhoc/contractual/casual employees and who have not secured regular appointments as per procedure established. The Supreme Court has further observed that passing of orders preventing regular recruitment tends to defeat the every constitutional scheme of public employment and that powers under Article 226 of the Constitution of India, therefore cannot be exercised for perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment.

28. In case titled “**State of Jammu and Kashmir & Ors Vs. District Bar Association, Bandipora**” passed by the Apex Court would be profitable to be reproduced herein:

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in [State of Karnataka v. M.L. Kesari](#), has examined that question and explained the principle regarding regularization as enunciated in Umadevi (3) case. The decision in that case summed up the following three essentials for regularization: (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular

and not illegal and thereby qualify for regularization. Para 7 in this regard is apposite and may be extracted at this stage: “7. It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Umadevi (3) [[State of Karnataka v. Umadevi](#) (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

45. The upshot of the above discussion is that not only because in Umadevi (3) case this Court did not disturb the appointments already made or regularization granted, but also because the decision itself permitted regularization in case of irregular appointments, the legislative enactment granting such regularization does not call for interference at this late stage when those appointed or regularized have already started retiring having served their respective departments, in some cases for as long as 22 years.”

29. The ratio laid down in the Judgment supra is clearly applicable to the instant case as the petitioners are not disputed to be eligible for the post and, as such, entitled for regularization.

30. In view of what has been said hereinabove, the writ petition succeeds and is allowed. The Competent Authority is directed to consider the claim of the petitioners in light of the resolution passed by the Board of Governors as also various recommendations made in favour of the petitioners in the same manner as has been done in case of four similarly placed Consolidated Workers namely *Mr. Kewal Krishan, S/o Mr. Raj Kumar, Mr. Rajesh Singh, S/o Mr. Skinder Singh, Mr. Davinder, Singh S/o Mr. Tulsi Dass & Mr. Saleem Ali, S/O Mr. Sharief*, who have been regularized vide order no. 17-B of 2018 dated 02.01.2018. The respondent J&K State Board of School Education is further directed to pass a speaking order within a period of two months from the date copy of this Judgment is made available to the respondents.

31. Accordingly, the writ petition is *disposed of* along with all connected applications, on the above lines.

32. Record be returned to learned counsel for the respondents.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR
19 .10.2022
ARIF

Whether the order is speaking Yes/No

Whether the order is reportable Yes/No