



Item Nos.7, 8 &amp; 9

**Central Administrative Tribunal  
Jammu Bench, Jammu**T.A. No.1016/2021  
(S.W.P. No.2150/2014)

With

T.A. No.1015/2021  
(S.W.P. No.1771/2011)

With

T.A. No.9306/2020  
(S.W.P. No.2179/2010)Monday, this the 24<sup>th</sup> day of May, 2021

(Through Video Conferencing)

**Hon'ble Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Tarun Shridhar, Member (A)**T.A. No.1016/2021

Dev Raj, age 46 years  
s/o Sh. Dessu  
R/o Manchan Tehsil & District Doda (J & K) ... Applicant  
(Mr. K Nirmal Kotwal, Advocate)

**Versus**

1. State of Jammu & Kashmir through Chief Secretary J & K Govt., Civil Secretariat, Jammu/Srinagar.
2. Commissioner/Secretary, Public Health Engineering Department, Civil Secretariat, Jammu/Srinagar
3. Chief Engineer, Public Health Engineering Department, B C Road, Jammu
4. Superintending Engineer (Hyd.) Circle Doda Tehsil & District Doda
5. Executive Engineer, Public Health Engineering Division, Doda, District Doda ... Respondents  
(Mr. Rajesh Thappa, Deputy Advocate General)

T.A. No.1015/2021



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Dev Raj, age 46 years  
s/o Sh. Dessu  
R/o Manchan Tehsil & District Doda (J & K) ... Applicant  
(Mr. K Nirmal Kotwal, Advocate)

### **Versus**

1. State of Jammu & Kashmir through Chief Secretary J & K Govt., Civil Secretariat, Jammu/Srinagar.
2. Commissioner/Secretary, Public Health Engineering Department, Civil Secretariat, Jammu/Srinagar
3. Chief Engineer, Public Health Engineering Department, B C Road, Jammu
4. Superintending Engineer (Hyd.) Circle Doda Tehsil & District Doda
5. Executive Engineer, Public Health Engineering Division, Doda, District Doda
6. Dev Raj s/o Doggu r/o Humble Tehsil & District Doda ... Respondents  
(Mr. Rajesh Thappa, Deputy Advocate General)

### T.A. No.9306/2020

Dev Raj, age 44 years  
s/o Sh. Dessu  
R/o Manchan Tehsil & District Doda (J & K) ... Applicant  
(Mr. K Nirmal Kotwal, Advocate)

### **Versus**

1. State of Jammu & Kashmir through Chief Secretary J & K Govt., Civil Secretariat, Jammu/Srinagar.
2. Commissioner/Secretary, Public Health Engineering Department, Civil Secretariat, Jammu/Srinagar



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3. Chief Engineer, Public Health Engineering Department, B C Road, Jammu
4. Superintending Engineer (Hyd.) Circle Doda Tehsil & District Doda
5. Executive Engineer, Public Health Engineering Division, Doda, District Doda
6. Dev Raj s/o Doggu r/o Humble Tehsil & District Doda

... Respondents  
(Mr. Rajesh Thappa, Deputy Advocate General)

### **O R D E R (ORAL)**

#### **Mr. Justice L. Narasimha Reddy:**

The applicant was engaged as Helper on daily wage basis in the year 1986 in the Doda Division of Public Health Engineering (PHE). His services were regularized, through order dated 17.03.2006 in terms of SRO No.64/1994. One Dev Raj s/o Doggu, who was engaged as Helper in the same establishment in the year 1992, was not extended such benefit. He filed SWP No.1073/2010 before the Hon'ble High Court of Jammu & Kashmir, complaining that the benefit of regularization was not extended to him, whereas the applicant, who was engaged four years later, was regularized. The SWP was disposed of on 03.05.2010 with a direction to consider the case of Dev Raj s/o Doggu, provided he is found eligible.



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2. The Department examined the records of the applicant on the one hand and Dev Raj s/o Doggu on the other, and found that the order of regularization dated 14.10.2006 issued in favour of the applicant was a mistake and it ought to have been issued on the basis of approval accorded by the Government, vide its order dated 17.03.2006. Through an order dated 07.08.2010, the Chief Engineer, PHE, Jammu has withdrawn the order of regularization dated 14.10.2006 issued in favour of the applicant. He filed SWP No.2179/2010 before the Hon'ble High Court, challenging the order dated 07.08.2016.

3. The Government issued a corrigendum dated 09.08.2011, withdrawing the order dated 17.03.2006 that paved the way for regularization of the applicant and a direction was issued for recovery of Rs.6.32 lacs from the applicant. Challenging the said order dated 09.08.2011 issued by the Government, the applicant filed second SWP No.1771/2011 before the Hon'ble High Court.

4. An interim order was passed by the Hon'ble High Court in SWP No.2179/2010, directing the respondents to pass reasoned order. In compliance with the same, the Executive Engineer passed an order dated 19.07.2014, stating that the SRO No.64/1994 does not apply to the case of the applicant since he



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is engaged in the year 1996 and that the amount paid to the applicant, needs to be recovered. Feeling aggrieved by this order, the applicant filed third SWP, No.2150/2014 before the Hon'ble High Court, challenging the order dated 19.07.2014.

5. The applicant contends that it was on their own accord, that the respondents have regularized his services, vide order dated 14.10.2006, that too, after obtaining approval by the Government. He further submits that once he worked in regular capacity for more than a decade, there was absolutely no basis for withdrawing the order of regularization or to recover the amount, that was already paid to him.

6. The respondents filed separate counter affidavits in respective Writ Petitions. They contend that the regularization of the services of the applicant in the year 2006 was on account of a mistake and the confusion as to identity of the persons with similar names and the applicant, cannot derive any undue benefit out of that.

7. The respondents further contend that the case of the applicant was examined in compliance with the interim order and it is found his services cannot be regularized since SRO No.64/1994 applies only to those cases where the persons were



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engaged on daily wage or contractual basis, earlier to that but not subsequent thereto.

8. All these three SWPs have since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.1016/2021, T.A. No.1015/2021 and T.A. No.9306/2020 respectively.

9. Today, we heard Mr. K Nirmal Kotwal, learned counsel for applicant and Mr. Rajesh Thappa, learned Deputy Advocate General, at length.

10. The subject matter of these T.As. is the withdrawal of benefit of regularization, that was extended to him in the year 2006. While the orders, that are challenged in T.A. No.1015/2021 and T.A. No.9306/2020 are a bit cryptic, the one, which is dated 19.07.2014 challenged in T.A. No.1016/2021, gives a glimpse of the case of the applicant. It refers to the regularization of the services of applicant on the basis of approval accorded by the Government vide order dated 17.03.2006. The respondents did not have any qualms about the orders of regularization of the applicant. It is only when one Dev Raj, s/o Doggu filed SWP No.1073/2010 before the Hon'ble High Court and directions were issued for examination of the



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matter in detail, that they took the view that the services of Dev Raj s/o Doggu and not the applicant, i.e., Dev Raj s/o Dessu, were required to be regularized in terms of SRO No.64/1994. Without issuing any notice whatever to the applicant, straightway an order of withdrawal was passed. It is not even alleged in any of the proceedings that the applicant has made any misrepresentation, much less committed any fraud in obtaining the order of regularization. The concept of regularization is so rampant in the State of Jammu & Kashmir, that not only the SROs are issued from time to time, but also the State legislature has enacted the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010 in this behalf.

11. The effort is to emphasize that regularization of the services of daily wagers / contractual employees is not an exceptional phenomenal in the State of Jammu & Kashmir. The applicant was very much working in the establishment and it is not a case of his turning out to be an imposter. The respondents have come forward with the plea that the applicant is not eligible in terms of SRO No.64/1994, by citing the reason that his appointment was two years after the SRO came into force.

12. Things would have been different altogether, had it been a case where the applicant started claiming the benefit under



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SRO No.64/1994 and the terms thereof would not permit such a relief. This is a case where the respondents have extended the benefit under whatever provision in the year 2006, and that is sought to be withdrawn in the year 2011, i.e., 5 years after his services were regularized. The withdrawal of regularization would lead to his cessation from the cadre, which, for all practical purposes, amounts to dismissal or removal from service. No steps of that nature can be taken, without initiating the departmental proceedings. The exceptional cases are where the orders of regularization were obtained by playing fraud or by making misrepresentation, etc. None of them exist in this case. Once it is only a difference as to the date of appointment, and not the very identity of the applicant, his right for regularization cannot be taken away. Though it is pleaded that the crucial date of extending the benefit of SRO No.64/1994 was extended, we do not intend to address that issue since the relevant material is not before us.

13. We are of the view that the balancing act can be done by directing that the regularization of the applicant shall be continued but he shall not be entitled to be paid any back-wages even while restraining the respondents from making any recover, as proposed in the impugned order.



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14. We, therefore, partly allow these T.As. directing that:

- (a) The orders withdrawing the regularization of the applicant shall stand set aside,
- (b) The applicant shall be entitled to draw the salary as a regular employee from 01.07.2021 onwards without any benefit of arrears of salary; and
- (c) The respondents shall not be entitled to recover the amount of Rs.6.32 lacs from the applicant, as proposed in the impugned order.

There shall be no order as to costs.

**( Tarun Shridhar )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

**May 24, 2021**  
/sunil/jyoti/neha/sd/