



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.6352/2020
(SWP No.1384/2004)

Monday, this the 8th of February, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Fayaz Ahmad Rather, age 36 years,
S/o Ghulam Ahmad Rather,
R/o Buchroo, P/O Wathora, Chadura.

..Applicant

(By Advocate: Mr. M.A.Qayoom)

VERSUS

1. State of J & K through Additional Secretary to Government, Health & Medical Education Department, Civil Secretariat, Srinagar/Jammu.
2. Principal, Government Medical College, Srinagar.
3. Chief Accounts Officer, Associated Hospitals, Srinagar.

..Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

ORDER (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as X-Ray Assistant in the Government Medical College, Srinagar, against migrant vacancy on 18.06.1990. His services were regularized in that vacancy on 01.11.1993, through an order dated 30.01.2004, issued by the

Respondent No.2. The manner in which the vacancies held by the residents of Kashmir Region, who migrated to Jammu Region due to militancy threat, must be dealt with, was considered by the Full Bench of the Hon'ble High Court of Jammu and Kashmir in SWP.No.1309/1998. Certain steps were indicated in this behalf. One of it is in relation to regularization of the employees appointed against migrant vacancies.

2. In the course of implementation of the scheme framed by the Hon'ble High Court, it was noticed that the services of the applicant were regularized against a migrant vacancy by the 2nd respondent, who is not competent to do so. Accordingly, an order was passed on 07.09.2004, rescinding the order of regularization of the services of the applicant. Recovery of amounts already paid to the applicant, as a result of the regularization, was also ordered.

3. The applicant filed SWP.No.1384/2004, challenging the order dated 07.09.2004. He contends that it was only after verification about the status of the migrant employee, that the 2nd respondent passed an order dated 30.01.2004, and that there was no basis for rescinding the order of regularization. It is also pleaded that no notice was issued to the applicant.

4. The respondents filed a detailed reply. According to them, the regularization of the services of the applicant in the post of X-Ray Assistant by the 2nd respondent was not proper and it was

also contrary to the scheme framed by the Hon'ble High Court. It is stated that the impugned order was passed in the course of the implementation of the directions issued by the Hon'ble High Court.

5. The SWP has since been transferred to this Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as TA.No.6352/2020.

6. Today, we heard Mr.M.A.Qayoom, learned counsel for the Applicant and Mr.Sudesh Magotra, learned Deputy Advocate General, for the Respondents.

7. It is fairly well known that quite large number of residents of Kashmir belonging to a particular religion, migrated to Jammu Region due to militancy threat. These persons included employees in the Government service also. To protect the interests of the migrant employees on one hand and the concerned departments in the Kashmir Region, on the other hand, the Government initiated various steps. While the migrants were engaged in other services in Jammu Region, the resultant vacancies were permitted to be handled through temporary arrangement in the Kashmir Region. In the context of regularization of services against the migrant vacancies, the Hon'ble High Court evolved a scheme. The manner of verification and the authority competent to undertake the exercise, were indicated.

8. The applicant was appointed as X-Ray Assistant against a post, which was held by a person, who has since migrated to Jammu Region. His initial appointment was on temporary basis. However, within 3 years, the Principal of the College, the 2nd respondent herein, regularized the services of the applicant with effect from 01.11.1993, through an order dated 30.01.2004. He is not the authority to regularize. Therefore, the order does not carry with it, any legality. Even now, the applicant is not able to establish that the 2nd respondent is the competent authority to regularize his services in the post of X-Ray Assistant. The post is part of hierarchy in the Health and Medical Education Department.

9. So far as the plea of violation of principles of natural justice is concerned, it would have been certainly available to the applicant, had it been a case where the exercise was undertaken by the respondents on their own accord. Once it was dealt with by the Hon'ble High Court, no separate notice is required to be issued. Even now, the case of the applicant can be considered by the authority competent to do so. We are of the view that the emoluments already paid to the applicant cannot be recovered since the corresponding service was already procured from him.

10. We, therefore, partly allow the OA, upholding the order dated 07.09.2004, but setting aside the direction for recovery of the amount from the applicant. The interim order passed in the

Writ Petition shall stand vacated and the respondents shall consider the case of the applicant within four weeks from the date of receipt of a copy of this order, if he is still in service. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 8, 2021

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