

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. 62/3005/2021



Pronounced on: This the 29th day of June 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Mumtaz Ahmad Bhat, aged 44 years, S/o Mohammad Abdullah Bhat,
R/o Lawdara District Bandipora.

.....Applicant

(Advocate: Mr. Bhat Fayaz Ahmad)

Versus

1. State of Jammu and Kashmir through Commissioner/Secretary to Government Public Works Department, Civil Sectt Srinagar/Jammu.
2. Commissioner/Secretary to Government, Finance Department, Civil Sectt. Jammu/Srinagar.
3. Chief Engineer, Public Works, R&B Department, Srinagar.
4. Executive Engineer, R&B Division, Bandipora.
5. Muzafar Ahmad Rather, Helper C/o Chief Engineer, R&B Division Kashmir, Srinagar.

.....Respondents

(Advocate: Mr. Sudesh Magotra, learned D.A.G.)

(ORDER)

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J))



Applicant Mumtaz Ahmad Bhat has filed the present T.A. seeking the following reliefs:

- (a) Writ, order or direction in the nature of mandamus commanding upon the respondents to regularize the services of the petitioner w.e.f., 26.02.1994 from the date services of the private respondent have been regularized in light of the judgement dated 18.07.1996 rendered in SWP No. 395/95 instead of 24.08.2016 and release all consequential benefits in favour of the applicant.
- (b) Writ, order or direction in the nature of Mandamus commanding upon the respondent No. 1 to explain that why he has not bothered to clarify the date of regularization of the petitioner despite the fact clarification was sought by the respondent no. 3 and further direct the respondents to restrain from misinterpreting the judgement dated 18.07.1996 rendered in SWP No. 395/95.
- (c) Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed in favour of the petitioner."

2. Case of applicant can be summarised as below:

- a) Vide order dated 16.02.1994, applicant and Muzafar Ahmad Rather (respondent No. 5) were appointed as Daily wagers in respondent department;
- b) Vide order dated 26.02.1994, services of respondent No. 5 were regularised;
- c) In SWP No. 395/95, Hon'ble High Court vide order dated 18.07.1996 directed respondents to consider and regularise the services of applicant like respondent No. 5 within one month. LPA against said judgment was



- dismissed for want of prosecution vide order dated 15.12.1997 on the ground that court fee was not paid and counsel for State was not present;
- d) SWP No. 62/2010 seeking implementation of order passed in SWP No. 395/95, Hon'ble High Court directed respondents to implement the said judgment within 3 months;
 - e) In contempt application, respondents were directed to pass appropriate orders;
 - f) Vide G.O. order dated 24.08.2016, service of applicant was regularised but did not mention from which date the services are to be regularised. Since the Hon'ble High Court had directed vide order dated 26.02.1994 to regularise service of applicant on analogy of private respondent No. 5.
 - g) Applicant filed a representation that his services be regularised from 01.03.1994 i.e. the date from which respondent No. 5 had been regularised;

3. Applicant in the present T.A seeks a direction to the respondents to regularise his service from 26.02.1994 i.e. the date from which the service of respondent No. 5 was regularised.

4. In the counter affidavit filed by official respondents it has been averred that J&K Civil Services (Special Provisions) Act, 2010 does not have any provision with respect to regularisation of a Government employee to be given from a retrospective date, as such, the T.A. deserves to be dismissed.

5. We have heard and considered the arguments of learned counsel for applicant and learned DAG for respondents and gone through the material on record.

6. As per, G.O. dated 24.08.2016, one post of helper was created and service of applicant was regularised against the said post in relaxation of rules. The regularisation of applicant was treated as one time exception and not to form a precedence or basis for any such case in future.



7. As per order dated 18.07.1996 passed by the Hon'ble High Court in SWP No. 395/95 filed by the applicant, respondents were directed to consider the case of applicant for regularisation and regularise the service like respondent No. 5 within a period of one month from today i.e. 18.07.1996.

8. If, we go by the direction of the Hon'ble High Court, the regularisation issue was to be disposed of within one month from 18.07.1996. However, the respondents chose to contest the matter and finally passed the order in 2016 regularising the service of applicant. It is not the fault of applicant that the respondents delayed his regularisation and so, why should the applicant be penalised for the delay caused by the respondents in regularising his service. The regularisation of the service of applicant has not been directed under J&K Civil Services (Special Provisions) Act, 2010, as such, the Act is not applicable to the present case.

9. In light of the facts of the case and direction dated 18.07.1996 of Hon'ble High Court and in interest of justice, we dispose of the T.A. by directing the respondents to consider the regularisation of applicant to be w.e.f. from 26.02.1994 i.e. the date from which the services of respondent no. 5 were regularised, as prayed for, by the applicant and fix the notional seniority of the applicant and fix his pay scale and all the benefits attached thereto, as per, Rules on the basis that the applicant was entitled to being regularised from the year 26.02.1994 but the applicant will not be entitled to back wages or any other financial benefit till 24.08.2016 when the order of his regularisation was passed, save and except the notional seniority. The directions must be complied with within one month from date of receipt of certified copy of order. O.A. is accordingly disposed of. No costs.

(ANAND MATHUR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)