

Item No.5



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 3173/2021
CMP No.01/2018
(SWP No.935/2016)

Monday, this the 12th day of July, 2021

(Through Video Conferencing)

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

Ali Mohammad Malik aged 45 years
s/o Gh. Hassan Malik
r/o Sahoo-Sachan Kulgam Kashmir

..Applicant

(Nemo for applicant)

Versus

1. State of J & K through Commissioner/Secretary to Govt.
Home Department, Civil Secretariat, Srinagar/Jammu
2. Director General of Police J & K State Srinagar/Jammu
3. Director Forensic Laboratory, J & K Srinagar
4. Secretary, Service Selection Recruitment Board, J & K,
Jammu/Srinagar
5. Asif Hussain s/o Wali Mohammad Khanday, r/o Palmar,
Kishtiwar Tehsil & District Kishtiwar
(vide CMP No.01/2018)

..Respondents

(Mr. Sudesh Magotra, Deputy Advocate General for respondent Nos. 1 to 4 and Mr. Bhat Fayaz Ahmad, Advocate for newly impleaded respondent No.5)

ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:****CMP No.01/2018**

This Application is filed with a prayer to implead Asif Hussain as one of the respondents. It is stated that the applicant herein was selected for the post of Gas Mechanic in the Forensic Science Laboratory (FSL), Jammu & Kashmir, Srinagar and he is entitled to be impleaded as party in the SWP.

2. Having regard to the facts and circumstances, we allow the CMP and Asif Hussain shall stand impleaded as respondent No.5 in the SWP.

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3. The applicant states that he started working as Chowkidar in FSL, Srinagar from 1996 and thereafter he worked as Gas Mechanic against leave vacancy from 2009 onwards. Complaining that the respondents are not regularizing his services even after his working for more than five years, he filed SP No.935/2016 before the Hon'ble High Court of Jammu & Kashmir, with a prayer to direct the respondents to regularize his services in the post of Gas Mechanic in FSL, Jammu &

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Kashmir and to extend him, the pay scale attached to that post. He contends that there exist several schemes evolved by the Government for regularization of daily wagers and temporary employees, and there was absolutely no basis for the respondents in not extending the benefit to him. The Hon'ble High Court passed an interim order dated 03.05.2016, directing that the applicant shall not be disturbed until further orders.

4. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the working of the applicant against the leave vacancy of the post of Gas Mechanic is totally unauthorized. It is also stated that an advertisement was issued on 01.09.2015 to fill the post on regular basis and a candidate by name Asif Hussain, impleaded as respondent No.5, was selected. It is stated that on account of the interim order dated 03.05.2016 by the Hon'ble High Court, further steps could not be taken.

5. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as T.A. No. 3173/2021.

6. Today, there is no representation for the applicant. On earlier occasion also, there was no representation. We heard the

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arguments of Mr. Sudesh Magotra, Deputy Advocate General for respondent Nos. 1 to 4 and Mr. Bhat Fayaz Ahmad, learned counsel for respondent No.5, and perused the record.

7. Even according to the applicant, he worked as Gas Mechanic in the FSL, against a leave vacancy. By its very nature, the leave vacancy is for a limited duration and once the regular incumbent reports, the one, who is working against leave vacancy, has to vacate. Added to that, the post was already notified to the Jammu & Kashmir Services Selection Board and the respondent No.5 was selected. It is fairly well settled that whatever be the duration for which a temporary, *ad hoc* or daily wagger works against the post, he has to give way to the one, who is selected and appointed on regular basis.

8. We do not find any merit in the T.A. It is accordingly dismissed. The interim order dated 03.05.2016 is vacated. The appointing authority shall take necessary steps for issuing order of appointment to the selected candidate as early as possible. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 12, 2021
/sunil/ankit/