

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

Case No. LPA 13/2022 in
SWP No. 757/2019

Reserved on : 03.09.2025
Pronounced on : 25.03.2026
Uploaded on : 25.03.2026
Whether the operative part or full
judgment is pronounced

Ghulam Nabi Bhatand Ors.

....Petitioner/Appellant

Through:- Mr. Areeb Javed Kawoosa, Advocate

V/s

State of J&K and Ors.

.....Respondent(s)

Through:- Mr. Wasim Gul, GA

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

PER SINDHU SHARMA-J

1. This Letters Patent Appeal (hereinafter referred to as “LPA”) has been preferred by the appellants against the judgment and order dated 16.12.2021, passed by the learned Single Judge in SWP No. 757/2019, titled “*Ghulam Nabi Bhat and Others v. State of J&K and Others*”, whereby the writ petition filed by the appellants came to be dismissed.

2. The case set up by the appellants before the learned Single Judge was that they, being 51 in number, were engaged as daily rated workers in J&K Cement factory, Khrew) (hereinafter referred to as "*the Company*") on muster roll basis from the year 2005 onwards. In the year 2013, vide Order No. JKCL:P&P/O1(LC)/2013 dated 06.11.2013, the appellants were brought on the muster rolls of the Company and were being paid ₹150 per day. To meet the shortage of manpower caused due to the retirement of a large number of employees of the Cement Factory, Khrew, the appellants were converted into daily rated workers vide Order No. JKCL:P&A:PF/2018-383 dated 14.06.2018, initially for a period of five years, subject to confirmation by the Board of Directors.

3. On 07.03.2019, the Company issued Order No. JKCL:P&A:PF/2019-191, whereby the engagement of employees working on muster rolls as well as those engaged for 89 days was withdrawn.

4. Aggrieved by the said order dated 07.03.2019, the appellants approached this Court by filing SWP No. 757/2019, inter alia, seeking a writ of mandamus, directing the respondents to adhere to the terms and conditions contained in Order No. JKCL:P&A:PF/2018-383 dated 14.06.2018, and to allow the appellants to perform their duties in terms thereof; with further direction to release all wages and benefits due to

them under the said order and other applicable Government orders and SROs. A prayer was also made directing the respondent No. 1 to deploy the appellants in other Government departments in the event they were found surplus, as had been done in similar cases. A further direction was also sought to restrain the respondents from giving effect to Order No. JKCL:P&A:PF/2019-191 dated 07.03.2019 insofar as, it pertained to the appellants.

5. The appellants contended that, while the services of other similarly situated employees of the Company who were found surplus were adjusted and deployed in different Government departments, the appellants were left out without any justification. It is submitted that in terms of Government Order No. 48-IND of 2021 dated 09.03.2021, the remaining staff of the Company was deployed in various Government departments and organizations, but the appellants were denied similar treatment, thereby violating the constitutional guarantee of equality under Article 14 of the Constitution of India.

6. The appellants further averred that they had rendered uninterrupted service for more than a decade, had gained sufficient expertise in different sections of the Company, and that their engagement for five years vide order dated 14.06.2018 had not expired on the date of issuance of the

disengagement order. Their disengagement, therefore, was arbitrary and violative of the principles of natural justice.

7. The stand of the respondents before the learned Writ Court was that appellants were engaged as daily rated workers only in the year 2018 on a temporary basis, subject to confirmation by the Board of Directors. It was further contended that the Pollution Control Board, vide order dated 29.12.2018, ordered the closure of the Khrew Plant for want of installation of pollution control devices. Restoration of the said plant would involve an expenditure of more than ₹300 Crores, which was beyond the financial means of the Company. The respondents submitted that the Company did not receive any budgetary support from the Government and was sustaining itself only through its own resources. It was also stated that the Company was unable to release retiral dues of its retired employees for the past more than two years and was facing difficulty in paying salaries even to its permanent staff. In such circumstances, it was asserted that there was no alternative but to disengage the appellants, who had no vested right to continue as daily wagers.

8. After considering the rival submissions and examining the record, the learned Single Judge held that the appellants, being daily rated workers, had no right to continue in service, particularly when the Khrew Plant of the respondent-Company

had been closed pursuant to the directions of the J&K State Pollution Control Board. The Court further observed that the Company, facing an acute financial crisis, was not in a position to pay the retiral dues of its employees or release salaries of its permanent staff on time. Restoration of the plant would involve an expenditure exceeding ₹300 Crores, which was beyond the capacity of the Company.

9. Accordingly, the learned Single Judge found no illegality or infirmity in the order dated 07.03.2019 and dismissed the writ petition. However, it was observed that in the event the Khrew Plant was restored or renovated in the future and the services of daily rated workers were again required, the appellants would be entitled to first priority for engagement.

10. Aggrieved by the judgment dated 16.12.2021, the appellants have preferred the present appeal on, inter alia, on the grounds, that the learned Single Judge failed to consider that other similarly situated daily rated workers of the respondent-Company were deployed and transferred to various Government departments, while the appellants were arbitrarily excluded without justification; that the learned Single Judge failed to appreciate that the appellants had been continuously working since 2005, had acquired requisite skill and expertise, and were engaged as daily rated workers for a fixed tenure of

five years under order dated 14.06.2018, which had not expired on the date of their disengagement.

11. We have given our thoughtful consideration to the rival submissions made and perused the record of the case.

12. The essential facts are not in dispute that the appellants were engaged as daily rated workers on a purely temporary basis in J&K Cements Limited, subject to confirmation by the Board of Directors; that the Khrew Plant of the Company was ordered to be closed by the Jammu and Kashmir State Pollution Control Board on 29.12.2018 for non-compliance with environmental norms and that the Company, being in severe financial distress, was constrained to disengage all such muster roll and daily rated workers vide order dated 07.03.2019.

13. It is well settled that a daily wager or casual employee has no right to continue in service, and their engagement does not confer upon them any claim for regularization or continued employment. The Hon'ble Supreme Court in ***Secretary, State of Karnataka v. Umadevi*** (2006) 4 SCC 1, categorically held that any engagement not made in accordance with the recruitment rules or a regular selection process does not confer any legal right to claim continuance or absorption. In para 38 the Hon'ble Supreme Court observed as under:-

“38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

14. In the present case, the appellants were engaged only on a daily wage basis, without any regular recruitment process, and their engagement was explicitly conditional and temporary, subject to approval by the Board. The Company, being a public sector undertaking functioning on its own financial resources, was facing acute fiscal constraints and was compelled to close its operations following the directions of the Pollution Control Board. In such circumstances, the action of the Company in discontinuing the services of the appellants cannot be said to be arbitrary or violative of Article 14 of the Constitution.

15. The contention of the appellants that similarly situated employees were deployed in Government departments does not hold merit. The Government Order No. 48-IND of 2021 dated

09.03.2021 was issued in respect of certain categories of regular or permanent staff of the Company, and not for daily wagers or muster roll workers. The appellants, therefore, cannot claim parity with those employees who stood on a different legal and factual footing.

16. The learned Single Judge, after examining the entire factual and legal matrix, has rightly held that the appellants had no vested right to continue in employment and that their disengagement was neither arbitrary nor in violation of any statutory or contractual provision. The observation made by the learned Single Judge that the appellants would be given preference in case the Khrew Plant is revived in the future sufficiently safeguards their limited equitable interests.

17. We, therefore, find no perversity, illegality, or infirmity in the impugned judgment dated 16.12.2021 warranting interference in this appeal under Clause 12 of the Letters Patent.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

SRINAGAR
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