

ITEM NO.47

COURT NO.3

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).18321/2017

(Arising out of impugned final judgment and order dated 29-12-2016 in CDLSW No. 62/2016 passed by the High Court of J & K at Jammu)

THE STATE OF JAMMU AND KASHMIR & ORS.

Petitioner(s)

VERSUS

VINOD KUMAR & ORS.

Respondent(s)

Date : 11-09-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. M. Shoeb Alam, AOR
Ms. Fauzia Shakil, Adv.
Mr. Ujjwal Singh, Adv.
Mr. Mojahid Karim Khan, Adv.

For Respondent(s) Mr. Ayushman Kotwal, Adv.
Mr. Yadav Narendra Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the parties and we are of the view that the High Court has failed to consider the facts on record inasmuch as it appears that by an order dated 28th December, 2010, learned Single Judge had directed that the eligibility for regularization of the respondents be considered.

Subsequently, on 15th April, 2011, eligibility was considered and it was found that the respondents are not eligible and a compliance report had been filed to this effect. Respondents have filed objection to the compliance report.

By an order dated 29th October, 2013, the entire issue was reopened and the directions were issued for regularization of the respondents.

In Writ Petition being SWP No.838 of 2010, it was directed that the consideration of the respondents for regularization was not in consonance with the spirit of the judgment and order passed by the High Court on 28th December, 2010. Accordingly, the petitioners before us were directed to pass a fresh order for the purpose of regularizing the services of the respondents.

Against this order, the State preferred an LPA which came to be dismissed by the impugned judgment and order passed on 29th December, 2016.

It is the contention of the petitioners that the respondents were only part-time employee and that there was no material to suggest that they had actually been working. On the other hand, the respondents have filed some documents stating that they were in fact working and it is contended that even today they are working.

The High Court has proceeded only on the basis that since others similarly placed had been regularized, the respondents should also be regularized. There appears to be some dispute whether the respondents were actually working on full time basis or not.

Unfortunately, the High Court has not looked at the issue from this perspective.

Under the circumstances, we set aside the order passed by the High court dated 29th December, 2016 and remand the matter to the High Court for fresh reconsideration by the Division Bench. The parties are at liberty to file additional documents and affidavits in support of their contentions and to bring on record any subsequent developments.

The special leave petition stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
ASSISTANT REGISTRAR