2026:JKLHC-JMU:228

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 13.07.2026
*Date of pronouncement:*27.07.2026
Date of uploading: 27.07.2026

Whether the operative part or full judgment is pronounced **FULL**

WP(C) No. 2079/2026
CM No. 4504/2026

UT of J&K and Ors. ….Petitioner(s)/Appellant(s)

Through:- Mr. Suneel Malhotra, GA.

V/S

Aftar Hussain ….Respondent(s)

Through:- Ms. Surinder Kour, Sr. Advocate with
Ms. Manpreet Kour, Advocate.

WP(C) No.2080/2026
CM No. 4505/2026

UT of J&K and Ors. ….Petitioner(s)/Appellant(s)

Through:-Mr. Suneel Malhotra, GA.

V/S

Aftar Hussain ….Respondent(s)

Through:- Ms. Surinder Kour, Sr. Advocate with
Ms. Manpreet Kour, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

Rajesh Sekhri-J

01. The controversy involved in both the petitions being intertwined, they are being disposed of by virtue of this common judgment.

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02. Petitioners have invoked writ jurisdiction of this Court for the quashment of orders, both dated 22.09.2025 passed by Central Administrative Tribunal, Jammu Bench ["the Tribunal" for short].

03. Before a closer look at the grounds urged in the memo of petitions, it shall be expedient to have an overview of background facts of the case.

FACTUAL MATRIX

04. As the factual matrix would unfurl, the respondent vide order dated 20.08.1998, issued by Additional Director, Sericulture Development Department, Jammu came to be appointed as a casual hand driver, subject to the availability of funds under the District Plan Budget and his engagement in terms of various orders came to be extended by the respondents from time to time.

05. Case set out by the respondent is that he continuously worked against a clear vacancy as a driver, though on casual hand basis and was paid salary of Rs. 3600/- per month on consolidated basis. The Development Officer, Sericulture Development Department vide letter dated 14.05.2010 sent a statement showing the details of seasonal/casual workers engaged on need basis, where his name figured at serial No. 1 and it was mentioned in the remarks column that he was "working as Driver against available post on the eve of superannuation of permanent driver on 07/1998". He approached the respondents for regularisation of his services and since it did not find favour he preferred a writ petition in this Court; SWP No. 1351/2011, for a mandate to the respondents to consider his case for regularisation/ permanent absorption on the post of driver on which

he was working since 1998 on consolidated basis and restraining the respondents from dis-engaging or terminating his services and replace him with a similar arrangement, which later came to be transferred to the Tribunal.

06. The writ petition was opposed by the appellants stating *inter alia* that respondent was engaged as a casual worker (driver) purely on need basis for 50 days in the first instance w.e.f. 20.08.1998, which was extended from time to time as per need of the department. He was again engaged as casual worker (driver) for 39 days from 28.10.1998, again on need basis, as per requirement of the department. They denied the claim of the respondent that he was appointed on consolidated basis. It was contended that his wages were paid as per his engagement as a casual worker only, as due to a skilled worker on the directions of Labour Commissioner. It was contented that respondent was working as a casual driver for 18 days per month and for rest of the month, he was not on the rolls of the department.

07. While the aforesaid writ petition; SWP No. 1351/2011 was pending consideration, Principal Secretary to Government, Finance Department issued a circular dated 17.03.2015 that a need was felt to impose a complete ban on the engagement of casual/seasonal/need based workers in all Government Departments including the State Owned PSUs and that necessary orders for withdrawing existing delegation of powers were being issued separately. All the Administrative Secretaries and Managing Directors of all State Owned PSUs were also advised to ensure that not a single casual/seasonal/need based worker is engaged under any

circumstances, henceforth available without the prior specific approval of the Chief Secretary and after the matter was examined in the Finance Department to assess the need/justification for the same.

08. Pursuant to the aforesaid circular, Director Sericulture Department wrote a letter dated 07.05.2015 to the Additional Director Sericulture Development Department, Jammu to implement the government circular dated 17.03.2015 in letter and spirit and circulate the same among sub-ordinate officers. Accordingly, the Additional Director wrote a letter dated 01.06.2015 to the Project Officer, Sericulture Development Department, Jammu and Deputy Directors of different districts including district Rajouri, with a copy to respondent No. 7-Mulberry Incharge, Budhal vide endorsement dated 10.06.2015 to dis-engage the casual/seasonal/need based workers in the respective Mulberry Circle and implement the aforesaid circulars and communications in letter and spirit.

09. Aggrieved of the aforesaid Government circular dated 17.03.2015 and subsequent communications issued pursuant thereto, respondent approached this Court by way of another writ petition; SWP No. 1923/2015**,** for their quashment.

10. It was contended by the respondent that he being fully eligible, in terms of Section 5 of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 [hereinafter referred to as Act of 2010], approached the appellants but his case for regularisation/permanent absorption on the post of driver, on which he was working since 1998 was not considered.

11. This writ petition was also resisted by the appellants by and large on the same grounds those were urged in the earlier writ petition that respondent was engaged purely as a casual worker (driver) on need basis for 50 days in the first instance w.e.f. 20.08.1998, which came to be extended from time to time as per need of the department. He was again engaged as a casual worker (driver) for 39 days w.e.f. 28.10.1998 on need basis as per the requirement of the department. They again denied the claim of the respondent regarding appointment on consolidated basis and contended that his wages were paid to him as per his engagement as a casual worker only as due to a skilled worker on the directions of the Labour Commissioner. It was also contended that respondent was working as a casual driver for 18 days in a month and for rest of the period, he was not on the rolls of the department. The appellants prayed for dismissal of the petitions.

12. After the promulgation of J&K Reorganization Act, 2019 both the writ petitions came to be transferred to the Tribunal and were respectively re-numbered as TA No. 230/2024 and TA No. 196/2024.

13. Learned Tribunal on hearing rival contentions has come to conclude and hold that since respondent meets the requisite criteria, in terms of Section 5 of the Act of 2010 that he has been appointed against a clear vacancy, continued in that position, possessed the necessary qualifications and there is no pending disciplinary or criminal proceedings against him, his long service and nature of his work substantiates his claim for regularisation. As such, while allowing TA No. 196/2024 [SWP No. 1923/2015] the Tribunal directed the appellants to regularise services of the respondent in the Sericulture

Department immediately in accordance with the provisions of Act of 2010 with all benefits and emoluments associated with the regular employment including arrears of salary, due to delay in his regularisation.

14. Learned Tribunal also allowed TA No. 230/2024 [SWP No. 1351/2011] and directed the appellants to consider the case of the respondent for regularisation/permanent absorption on the post of driver on which he was working since 1998 on consolidated basis.

GROUNDS OF CHALLENGE

15. Appellants are aggrieved of the impugned judgments by and large on the same grounds on which they opposed the claim of the respondent before the Tribunal that his engagement was purely as a casual labourer or need basis, which came to be extended from time to time as per need of the department and that he worked for 18 days per month on need basis only and not for the whole of the month.

16. It is contention of the appellants that since as per Rule 5 of J&K Sericulture Subordinate Service Rules, the post of driver is to be filled by direct recruitment, therefore no casual labour can be regularised as a driver and SRO 69 was not attracted. They are aggrieved of the impugned judgments *inter alia* on the following grounds:

(A)That the respondent herein, since was not fulfilling the eligibility criteria as prescribed for regularization as prescribed under SRO 64 OF 1994 (J&K Civil Services Special Provisions Act of 2010) hence the respondent herein could not have been considered for regularization under J&K Civil Services Special Provisions Act of 2010 as the respondent herein was admittedly working as casual labour. That as per SRO 69 (J&K Sericulture Subordinate Service

Rules), Rule 5 provided that the post of Driver is to be filled by direct recruitment and therefore, the law applicable to the filed makes it clear that no casual labour can be regularised as Driver and any such regularization shall be in sheer violation of the law and the said SRO as such could not have been directed. Therefore the impugned judgement is illegal and bad in the eyes of law and needs to be set aside. The copy of the said SRO 69 is enclosed herewith as Annexure XI.

(B) That the respondent herein had not described and had not placed any material on record before the Ld. CAT Bench Jammu as to under which law/rule the respondent is entitled to regularization as driver when admittedly being a casual labour/worker even if the respondent herein against the rule was permitted to drive the departmental vehicle being a casual labour/worker. The directions of the Ld. CAT Bench Jammu are devoid of merit and law and de horns rule therefore the impugned judgement is illegal and bad in the eyes of law and needs to be set aside.

(C) That the respondent herein on wrong premises filed the writ petition and claimed the regularization on one hand under J&K Civil Services Special Provisions Act of 2010, even though knowing well that the said act of 2010 is applicable to persons appointed on adhoc or contractual basis including those appointed on consolidated pay provided that such appointment has been made against a clear vacancy while as here in the present case, the respondent herein was appointed as a casual labour therefore the said provision was not applicable to the respondent herein and the writ petition/TA ought to have been dismissed but the same has been erroneously allowed as such the impugned judgement is illegal and bad in the eyes of law and needs to be set aside.

(D) That the Hon'ble Division Bench of this Hon'ble Court in case title Abdul Majid Magrey Vs State and ors LPASW NO. 29/2019 (Srinagar Wing), The Hon'ble Court has held that the employee can seek regularization from the date the empowerment committee

had recommended and not prior to it. That here in the present case, since the Act of 2010 was not applicable to the case of the respondent as such the empowerment committee had not recommended the case of the respondent for registration at any stage. The respondent herein cannot seek regularization as a matter of right in absence of any rule as such the impugned judgement passed by Ld. CAT Bench Jammu is against the settled principles of law and needs to be set aside.

(E) That the respondent herein had filed another writ petition bearing SWP NO: 1923/2015 before this Hon'ble Court and sought the direction for quashing the communication no. ADSJ/Req.Seed/1068-80 dated 01/06/2015 with respect to disengagement of causal/seasonal/need based workers and other ailed reliefs which was also transferred to Ld. CAT Bench Jammu and bears TA No.196 of 2024 which too has been allowed and the petitioners herein have been directed to regularize the services of the respondent herein in accordance with the provisions of J&K Civil Services Special Provisions Act of 2010 and the whole exercise is directed to be completed within 3 months. The petitioners have also challenged the said judgement as passed in the said TA dated 22/09/2025. That two writs were filed seeking similar reliefs.

(F) That the Ld. CAT Bench Jammu failed to apply the settled law and passed the impugned judgement which is factually and legally incorrect as such needs to be set aside.

(G) That the Petitioners reserve its right to urge additional or alternative grounds of challenge to the impugned order at the time of final hearing of the petition.

(H) That there is no other equally efficacious remedy available to the petitioners than to approach this Hon'ble Court invoking Writ Jurisdiction and the petitioners have not filed a similar petition before this Hon'ble Court or before the Hon'ble Supreme Court of India on the same facts.

That in view of the above facts and circumstances, the present petition be allowed and the impugned order dated 22/09/2025 passed by Hon'ble CAT Bench Jammu in case titled Aftar Hussain Vs UT/State of J&K and ors whereby the Hon'ble Tribunal has allowed the TA No. 230/2024, may kindly be set aside.

17. Having heard learned counsels for the parties, we have gone through the impugned judgments and the material on record.

APPELLANT'S CASE

18. It is contention of the appellants that since respondent was not fulfilling the eligibility criteria as prescribed for regularization under SRO 64 and Act of 2010, he could not be considered for regularization because he was admittedly working as a casual labour. According to them, Act of 2010 is applicable to persons appointed on adhoc or contractual basis including those appointed on consolidated pay provided, such appointment is made against a clear vacancy and since respondent was appointed as a casual labour, Act of 2010 was not attracted to his case and TAs ought to have been dismissed by the Tribunal.

ISSUES FOR DETERMINATION

19. The question which begs consideration of this Court is "whether an employee engaged on a casual need basis or daily wage basis can be regularized on a post meant for direct recruitment and if the answer is in affirmation; the designation and the grade he is entitled to.

FINDINGS AND REAASONG

20. It goes without saying that under the service jurisprudence regularisation cannot be claimed *dehors* the statutory recruitment

rules and there is no automatic right vested in a person engaged on need basis to be regularized against a post, specifically meant for direct recruitment. Ordinarily, the posts designated to be filled entirely by direct recruitment must go through a transparent and open selection process to ensure constitutional mandate of equality enshrined in Articles 14 and 16. However, government is also under a constitutional mandate to formulate schemes for regularisation to address the plight of its long serving, need based or daily rated workers.

21. Act of 2010 came to be enacted by the Government of J&K for the same purpose to provide a framework for the regularization of its adhoc, contractual and consolidated appointees. As per Section 5 of the Act, regularization of such employees is contingent on conditions like, the appointee must have been appointed against a clear vacancy, must have continued in that position, must possess the necessary qualifications and must not have any pending disciplinary or criminal proceedings against him.

22. A division Bench of this Court in a bunch of LPAs with lead case **Ashok Kumar vs State of J&K and Ors**. reported as **2003 (4) JKJ (HC) 93** dealing with the position of casual labours has observed that where an employee has continued to work for sufficiently long period, then, it would not be apt to call him having been appointed on casual basis.

Relevant excerpt of the judgment for the facility of reference, captured in para 40 is extracted below:

"***CASUAL EMPLOYEES***

> ***The cases of casual employees be also examined. In this regard, it would be apt to note the dictionary meaning of the word 'casual'. In Black's Law Dictionary, Sixth Edition, the meaning of word 'casual' has been defined as "occurring without regularity", "occasional", "impermanent" and "as employment for irregular periods". A perusal of above meaning would indicate that where an employee has continued to work for sufficiently long period, then, it would not be apt to call him having been appointed on casual basis. As a matter of fact, this aspect of the matter was considered in Piara Singh's case (supra). The relevant observations made in para 51 of the judgment stand already noticed above. For facility of reference, the relevant observations made in this paragraph are being quoted again:-***
>
> ***"If a casual labourer is continued for a fairly long spell say two or three years- a presumption may arise that there is a regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation, while doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person."***

23. If facts and circumstances obtaining the present case are considered in the light of aforesaid judgment, we have no doubt in our mind that though respondent was engaged under the style of casual labour on need basis for driving the department vehicle, but in effect his services were continuously utilized by the appellants for 28 years as daily rated worker by extending his engagement from time to time in terms of different orders and his salary was also paid on consolidated basis, which is evident from the master sheets and attendance-cum-salary sheets annexed with the petitions. It is also evident from a letter dated 14.05.2010, forwarded by Development Officer, Sericulture Development Department that respondent has been "working as Driver against available post on the eve of superannuation of permanent driver on 07/1998", and he continued in that position and there is nothing in the record to suggest that there was any disciplinary or criminal proceeding pending against him. As such, we concur with the observation of learned Tribunal that respondent meets

the criteria laid down in Section 5 of the Act of 2010. The length of service rendered by the respondent i.e., 28 years substantiates his claim for regularization and the petitioner UT and its instrumentalities as a model and welfare state are under a bounden duty to protect the rights of its employees. In the circumstances, insofar as TA No. 230/2024 [SWP No. 1351/2011] is concerned, we do not find any illegality or impropriety in the observation of the Tribunal that long service of the respondent and nature of his work substantiates his claim for regularisation.

24. Now the question for consideration is the designation and grade respondent is entitled to.

25. The Jammu and Kashmir, Sericulture (Subordinate) Service Recruitment Rules, 1979 came to be amended by way of SRO-69 and Schedule "A" annexed to the said Rules was substituted by the following schedule:

MINISTERIAL

Class	Category	Designation	Grade	Minimum Qualification or direct Recruitment	Method Of Recruitment
1	2	3	4	5	6
	A	Section Officer	825-1240		100% by promotion from Class II(A) Category having not less than 5 years services in that category
	B	Statistical Officer	825-1240		By deputation from the Directorate of Evolution and statistics
	C	P. A. Dum Steno	825-1240		100% by test from Jr. scale Steno-graphers, steno-typist (600-925) having not less than 5 years' service in the category and on the basis of test in short hand and type writing of 60 words and 40 words per minute speed respectively or by deputation from

					Civil Sectt.
	A	Supdtt/Head Astt.	600-925		By promotion from Class III Category having 5 years service in ministerial cadre and having passed Sectt. Asstt. Examination.
	B.	Jr. Acctts	do		By deputation from Finance Deptt.
		Stenographers/Steno cum typists		PUC with 60 words speed in hand and words in type writing per minute	Direct recruitment or deputation from Civil Sectt.

Senior Assistant /Typist			By promotion from class VI from among person having 3 year service in the class
Jr. Statistical Asstt.	600-925		By deputation from evolution and Statistical
Accounts Clerk	475-850		By deputation from Finance Department
Driver	**do**	**Middle pass with 02 years hill driving licence**	**By direct recruitment.**
Mul.-Clerk/Store Clerk/Jr. Asstt.	410-500	Matric having 50 words speed in type writing per minute	75% by direct recruitment and 25% from amongst Chowkidar and other inferior Govt. Employees working in the Deptt provided they are Matriculates and have 25 Words speed in type writing per minute.
Orderlies	**345-460**	**Middle**	**By direct recruitment**

(Emphasis Supplied)

CONCLUSION

26. Respondent has served as a casual worker on need basis since 1998 i.e., for about 28 years now for driving the government vehicle, because he was holding a valid driving licence. True it is that he cannot be dis-engaged at this length of service and age on the premise that his engagement was purely on need base as a casual worker, however, under the standard service rules and judicial precedents an employee engaged on a casual need base or daily wage basis cannot be regularised directly to a higher post. On regularisation, he is typically to be absorbed into the lowest entry level grade. As per established regularisation frameworks a worker engaged on daily need basis is to be placed in the lowest grade applicable to the

government service because allowing a lower-tier employee to claim a higher post merely because he was assigned higher duties would bypass transparent and merit based recruitment processes.

27. A perusal of Schedule "A" to SRO 69 reveals that lowest entry level grade of the ministerial staff is orderlies in the pay grade of 345-460. Learned Tribunal, as such, has fallen in grave error of law in directing the appellants to regularise services of the respondent as a driver in a higher pay grade of 475-850, which is not countenance in law.

ORDER

28. For what has been observed and discussed above, petitions are allowed in part with a direction to the appellants to immediately regularise the service of the respondent as orderly in the grade of 345-460 from the date he completed 07 years of his service, with all benefits and emoluments associated therewith. Respondent shall also be entitled to the arrears from the date of his regularisation till date. The whole exercise shall be completed within a period of 03 months from the date a copy of this judgment is made available.

29. Both the petitions are ***disposed of***.

(Rajesh Sekhri)
Judge

(Sindhu Sharma)
Judge

Jammu
27.07.2026
Sushant

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**