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Court : Allahabad

Decided On : Sep-26-2014

Judge : Mahesh Chandra Tripathi

Appeal No. : W.A. No. 3057 of 2007

Appellant : Surendra

Respondent : State of U.P. Thru' Chief Secretary, U.P. and Others

Judgement :

Mahesh Chandra Tripathi, J.

Heard Sri S.K. Mishra and Sri Pankaj Rai, learned Additional Chief Standing Counsel for the State-respondents.

By means of the present writ petition, the petitioner has sought for a writ of certiorari quashing the order dated 11.10.2006 passed by respondent No. 2 (annexure No. 4 to the writ petition) by which the department has rejected the claim of the petitioner for his regularization and further a direction may be issued to the respondents to permit the petitioner to work on the class-IV post on which he was working and pay him salary.

Brief facts giving rise to the present writ petition are as follows:-

The petitioner was engaged as daily wager on 18.10.1988 as class-IV employee under the respondent No. 3 and was discharging his duties accordingly till 27.11.2006. In exercise of power under proviso to Article 309 of the Constitution, the State Government has framed U.P. Regularization of Daily wages Appointments on Group 'D' Posts Rules, 2001 (hereinafter referred to as "2001 Rules") published in the Gazette dated 21st December 2001 which provides for regularization of such daily wage employees in Group 'D' posts who were appointed before 29th June 1991 and were continuing in service on the date of commencement of said Rules. Since, the petitioner was appointed prior to 29th June 1991 and was continuing in service on 21st December 2001, he claimed that he was entitled for regularization under the said Rules.

Respondents have filed counter affidavit stating that the petitioner was initially engaged in the department on daily wage basis since 1991 to 2001. Categorical stand has been taken in paragraph No. 6 of the counter affidavit that time to time he had been engaged only for very limited period and there was no continuous work performed by the petitioner in the department. For ready reference, the details pertaining to his engagement in the department as averred in paragraph No. 6 of the counter affidavit is reproduced herein below:-

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
48	-	38	295	84	-	-	147.5	308	297	289

A plea has also been taken that his engagement was never on regular basis and his initial engagement was not on substantive post. Therefore, the claim of the petitioner was not sustainable as per 2001 Rules.

Learned counsel for the petitioner drew attention of this Court that respondent No. 3 wrote a letter to the Chief Medical Officer, Ghaziabad on 04.08.2002, by which details were submitted about 20 daily wager employees working under him, so that their services could be regularized. In the said seniority list, petitioner was placed at serial No. 3.

Learned counsel for the petitioner further submitted that the respondent No. 3 vide letter dated 31.07.2004 had informed the petitioner for submitting the documents

regarding his educational qualification and for furnishing other details, in response the details were submitted by the petitioner promptly. By the impugned order dated 11.10.2006, the claim of the petitioner for regularization was turned down on the ground that his engagement in the department was temporary in nature and he never performed permanently in the department and his case was not covered as per 2001 Rules.

On the other hand, Sri Pankaj Rai, learned Additional Chief Standing Counsel submitted that 2001 Rules do not permit consideration of candidature of any person for regularization against the vacancies, which may be available in future inasmuch a perusal of the said Rules would make clear that it is one time arrangement made by the Rule framing authority in respect to such daily wage employees, who have rendered about 10 years of service and the said right was limited against the vacancies, permanent or temporary, as were available on the date of commencement of the said Rules and not for future vacancies.

In the present matter, learned Additional Chief Standing Counsel submitted that the petitioner was not in continuous service throughout the period and not worked continuously, hence his claim for regularization cannot be sustained and the respondents had rightly rejected the claim of the petitioner for regularization, which cannot be sustained as per Rule 4 of the U.P. Regularization of Daily Wages Appointments on Group 'D' Post Rules, 2001.

Learned counsel for the petitioner has relied upon certain case laws which are as follows:-

1. Sri Ram Yadav vs. State of U.P. and others, 2008 (3) ADJ 19.
2. Ram Sajeewan vs. State of U.P. and others, 2013 (3) ADJ 574.
3. Janardan Yadav vs. State of U.P., 2008 (1) ADJ 60.

Learned counsel for the petitioner submitted that the case of the petitioner is squarely covered by these decisions.

Heard the rival submissions of learned counsel for the parties and perused the record.

A right of regularization cannot be claimed by a person who has never been engaged or appointed after undergoing process of selection in accordance with rules and without equal opportunity of employment granted to similarly placed persons under Article 16 of the Constitution of India. The Apex Court, recently, in the case of State of Karnataka and others Vs. Uma Devi and Others, 2006(4) SCC 1 has held that regularization is not a mode of recruitment and a person who has not been engaged after giving opportunity of employment to all other eligible persons and after undergoing the process of selection in accordance with rules consistent with Article 16 cannot claim regularization. However, where the legislature has made some provision, the incumbents have been allowed benefit thereunder and may be considered for regularization. Referring to various earlier judgements on this aspect, recently, the Apex Court in M.P. State Corporation Bank Limited, Bhopal Vs. Nanuram Yadav and others JT 2007 (11) SC 369 has culled out the following principles in para-20 of the judgment :

"(1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 and 16 of the Constitution of India.

(2) Regularization cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

(4) Those who come by back door should go through that door.

(5) No regularization is permissible in exercise of the statutory power conferred under Art. 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.

(6) The Court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

Since the facts are not in dispute and it is also not disputed that the petitioner was engaged on daily wage basis in 1988, i.e., before 29.6.1991 and was also working on the date of commencement of Rules 2001, i.e., on 21.12.2001, thus it is evident that he was entitled to be considered for regularization under the said Rules. The only question for consideration is whether the said Rules require continuous service throughout, i.e., from the date of initial engagement till the commencement of the Rules. In my view, there is no such requirement under the Rules as is apparent from perusal thereof. Rule 4(1) of Rules 2001 is reproduced as under:

"4. Regularization of daily wages appointments on Group 'D' posts.- (1) Any person who-

(a) was directly appointed on daily wage basis on a Group 'D' post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group 'D' post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders."

The only requirement under Rule 4(1)(a) are that the incumbent was directly appointed on daily wage basis on a Group 'D' Post in a Government Service before 29.6.1991 and is continuing in service as such on the date of commencement of the said Rules. The further requirement under Clause (b) of Rule 4(1) is that he must have possessed requisite qualification required for regular appointment on that post at the time of such employment on daily wage basis.

Respondents have not disputed the existence of all the said three conditions but their further presumption that the Rules also contemplates continuous service throughout from the date of initial engagement till the date of commencement of the Rules and only then a person appointed on daily wage basis would be entitled for regularization is not sustainable and contrary to the Rules 2001.

A perusal of clause (a) of Rule 4 of the said Rules indicates that a person, who was directly appointed as daily wage basis on a Group-D post in the Government service before 29th June, 1991 and was continuing in service, would be considered for regularization.

In Ram Sajeewan case (supra), the Court has also considered the break in service or artificial break in service. Paragraph 5 of the said judgement reads as under:

5. The question is, whether break in service or artificial break in service would constitute a disability for ousting the claim of the petitioner. Rule 4 does not indicate anything, nor does it indicate that a daily wager should be in continuous service. All that Rule 4 (a) of the Rules of 2001 provides is that a person should be appointed on a daily wage basis prior to 29th June, 1991 and is continuing in service on the date of commencement of the Rules of 2001. Artificial break in service is to be ignored and cannot be taken into consideration nor does the Rule provide that the person should be in continuous service. The very nomenclature of the term "daily wager" does not indicate continuous service.

In Sri Ram Yadav case (supra), the question of artificial break was also considered. Paragraph 5 of the said Judgment, which reads as under:

5. The contention of the learned counsel for the petitioner is that the rejection of the petitioner's representation on the above ground is against the record and the order is based on incorrect facts. He has placed the report of the Forest Range Officer, Kalakanker, which was submitted by him in pursuance of the letter of the Divisional Director, Social Forestry dated 25-10-2004. In the said report he had given the break up of the petitioner's working. It shows that the petitioner has worked for 348 days in the year 1990-91, 350 days in the year 1991-92, 351 days in the year 1992-93, 355 days in the year 1993-94, 353 days in the year 1994-95 and 230 days in the year 1995-96. He has also drawn my attention to the counter affidavit of respondents in earlier with petition No. 19670/02 filed by the petitioner, wherein it was clearly admitted by the respondents in paragraph 5 of the Counter affidavit that the petitioner had regularly worked from the year 1978-79 to 1994-95 and had also worked for 230 days in the year 1995-96 and 180 days in the year 1996-97. Therefore, in view of the admission of respondents on record the recital in the impugned order that the petitioner had not worked for a single day between the year 1991 and 1996 is factually incorrect and against the records. Accordingly, the rejection of the representation of the petitioner on the above ground is wholly unsustainable and, as such, the impugned order deserves to be quashed.

In Janardan Yadav case (supra), this Court while considering the matter of regularization of a class-IV employee under the U.P. Regularization of Daily Wages Appointment on Group 'D' Posts Rules, 2001 has held that for the purpose of regularization, the only requirement is that the incumbent should have been appointed directly on the daily wages before 29.6.1991 and should be continued, as such, on 21.12.2001. The said rules nowhere requires that such an incumbent seeking regularization would have worked throughout continuously from the date of his initial appointment till the date of enforcement of the rules.

From a perusal of number of working days as mentioned by the petitioner in his writ petition, which clearly shows that the petitioner was appointed in the year 1988 and remained in service and worked continuously till 2006 even-after the enforcement of the Regularization Rules.

Accordingly, the impugned order dated 11.10.2006 is hereby set aside and quashed. The matter is remanded to the authority concerned to reconsider the matter.

In view of the above, the writ petition is allowed and the respondents are directed to reconsider the matter of the petitioner for regularization in the light of the observations made above within six weeks from the date of production of a certified copy of this order.

In the result, the writ petition succeeds and is allowed.

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