

Rajendra Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-17-2009

Reported in : 2009(85)AWC1849

Judge : S.U. Khan, J.

Appellant : Rajendra Kumar

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties.

2. According to the petitioner he was appointed in the year 1985 as Jeep Driver in the office of Executive Engineer, Mant Branch Ganga Nahar, Mathura on temporary/daily wages and that he continued to work as such till November, 1993 with artificial breaks. In para 8 of the writ petition it has been stated:

that thereafter petitioner's services were orally terminated without any rhyme or reason although the services of the petitioner ought to have been regularised by the respondent.

3. It is also mentioned that on 18.3.1993 petitioner had made a representation, copy of which is Annexure-1 to the writ petition. It is further mentioned that petitioner was agitating the matter before the respondents continuously. Thereafter, it is mentioned that through letter dated 11.6.1997 (Annexure-3 to the writ petition) written by Executive Engineer to Superintendent Engineer (S.E.) drainage Mandal, Aligarh and through letter order dated 30.6.1997 by S.E. services of 28 other daily wagers were regularised. Reference has also been made to another letter dated 24.6.1998 (Annexure-7 to the writ petition) written by Chief Engineer Irrigation Department, U.P. regarding regularisation of services. In para 15 it is mentioned that IV Class Employees Union also agitated the matter of the petitioner through letter dated 6.1.1998 (Annexure-9 to the writ petition) which was replied by Executive Engineer on 6.1.1998. It was in reply to letter dated 21.12.1997. Petitioner also gave a notice under Section 80, C.P.C. on 4.8.1998. Thereafter, he filed Writ Petition No. 17522 of 1999 which was disposed of on 26.4.1999 with the direction to the respondent Superintendent Engineer (S.E.) Irrigation Department Mandal Mathura to consider the case of the petitioner. Thereafter representation of the petitioner was rejected by S.E. on 25.6.1999 (Annexure-12 to the writ petition) which has been challenged through this writ petition.

4. In the impugned order it is mentioned that petitioner worked in the department as daily wager on few days in several years in the following manner:

1985 124 days

1986 199 days

1987 173 days

1988 92 days

1989 to 1991 Nil

1992 185 days

1993 50 days

The main grievance of the petitioner is that through Annexure-3 which is letter by Executive Engineer dated 11.6.1997, two lists of daily wagers in the division in question were prepared. One was of those persons who had completed 240 days of work and were still working and the second list was of those daily wagers in the department who had completed 240 days of service before their removal but at the time of issuance of the said letter dated 11.6.1997 they were not working. In the second list three persons are mentioned who had worked till September, 1991, June, 1979 and third one had worked until 1986 and they were taken back in service and their services were regularised.

5. Writ petition of the petitioner is liable to be dismissed on the ground that he approached the Court very late. He was admittedly not in service after December, 1993. The representation which is alleged to have been made by the petitioner was made on 18.3.1993. After November, 1993, till when, according to the petitioner he had worked, he did not file any representation for 5 or 6 years and no copy of any such representation has been annexed. The first representation was in the form of a letter written by the Union on 21.12.1997, i.e., after four years from removal of the petitioner. Thereafter, first writ petition was filed in the year 1999. Supreme Court in *C. Jacob v. Director of Geology and Mining* : (2009)IILLJ1SC , has held that no relief can be granted if petitioner approaches the High Court through writ petition after inordinate delay. In this regard reference may also be made to *Shiv Dass v. Union of India* : (2007)IILLJ212SC , where it has been held that if writ petition is filed after three years it cannot be entertained unless it is a recurring cause of action.

6. Moreover, merely on the basis that someone has worked for more than 240 days in a year, he may get a right of getting compensation under Section 25F of I.D. Act or Section 6N of U.P.I.D. Act at the time of retrenchment but he has got no right to be regularised.

7. Accordingly, writ petition is liable to be dismissed. However, the Court will be failing in its duty if it does not express its grave displeasure over the conduct of the respondents in regularising the services of such daily wagers, who were not in service for 5 or 6 years, through Annexure-3 list 2. Sri Ravinder was not in service

since 1979. He was regularised in 1997, i.e., after 18 years. He had also not completed 240 days. Sri Ram Kumar was not in service since 1986. His services were regularised after 10 years, i.e., in the year 1997. Similarly, Ramesh Chandra, Jeep driver was also not in service since September, 1991. His services were regularised after 6 years. Regularisation is possible only of continuing employees. Regularising service of such employees who are no more in employment is not permissible under any of the provisions or principles.

8. However, as regularisation of those employees is not under challenge hence that is not being set aside. However, respondents and other Government departments must be careful in this regard in future.

9. Petitioner has also died on 26.11.2000 hence it is not possible to grant the prayer which is mainly to the effect that petitioner must be employed as jeep driver.

10. Second prayer in the writ petition is for quashing the illegal appointment of Ramesh Chandra made in place of petitioner ignoring the claim of the petitioner. However, as Ramesh Chandra has not been made respondent in the writ petition hence the said prayer cannot be entertained.

11. Accordingly, writ petition is dismissed on the above grounds.