

**Raja Ram Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Jan-28-2003

**Reported in :** 2003(3)AWC1736b; (1996)3UPLBEC1814

**Judge :** N.K. Mehrotra, J.

**Acts :** Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979 - Rules 4 and 10

**Appeal No. :** Writ Petition No. 7771 of 1986

**Appellant :** Raja Ram

**Respondent :** State of U.P. and ors.

**Advocate for Def. :** C.S.C.

**Advocate for Pet/Ap. :** D.S. Chaube, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

**N.K. Mehrotra, J.**

1. This writ petition has been filed under Article 226 of the Constitution of India to quash the impugned order of termination dated 13.10.1986, passed by the opposite party No. 3 Executive Engineer, Minor Irrigation Division-I, Lucknow and

for mandamus to hold the provisions of Rule 4 read with Rule 9 and Rule 8 of the U. P. Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979, as ultra vires and further a writ of mandamus commanding the opposite parties to allow the petitioner to continue in service without interruption and also to regularise the services of the petitioner in accordance with Regularisation Rules and give him full consequential benefits.

2. According to the petitioner, he was given appointment on the post of 'Gotakhor' by the opposite party No. 3 vide order dated 7.5.1983 (Annexure-1). He joined the post of 'Gotakhor' on 7.5.1983 and since then, he has been performing his duties without any complaint. His services were terminated vide order dated 13.10.1986 (Annexure-2) in accordance with the instructions contained in the U. P. Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Amendment) Rules, 1984. It is alleged that the petitioner has been discriminated vis-a-vis the other ad hoc employees who were appointed after the appointment of the petitioner under the opposite party No. 3 and in their cases the provisions of Regularisation Rules, 1984, have not been made applicable. The petitioner pointed out that Syed Ali Vasnir Zaidi, Sushil Kumar Srivastava, Aji Singh, Yadunath Singh and Subhash Chandra Upadhyaya were appointed after the date of the appointment of the petitioner and their services were regularised. The Regularisation Rules came into force in the year 1979 which provided that if, any person who was directly appointed on ad hoc basis before January 1, 1977 and was continuing in service as such on the date of commencement of the rules, i.e., 14.5.1979 shall be considered for regular appointment on the basis of their service records provided he possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment and had completed three years service as such. The provisions of Regularisation Rules were further extended to the employees appointed on ad hoc basis on or before 1.5.1983 by making amendment vide Notification No. 19/5/1981/Karmik-1, dated 22.3.1984. The petitioner further alleged that he has completed more than three years service and there is no infirmity in the way of his regularisation on the basis of his service record. The Regularisation Rules initially fixed 1.1.1977 as cut off date for giving facility to the ad hoc employees for regularisation and again extended this cut off date as 1.5.1983. This cut off date is

highly arbitrary and there is no nexus between the fixation of this date and the object which is desired to be achieved by giving this facility to the ad hoc employees appointed on or before 1.5.1983 and not to them who were appointed after 1.5.1983. This cut off date in the Rules infringes fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. The provisions of Rule 8 which provide that the services of a person whose case is not covered by Sub-rule

(1) of Rule 4 shall be terminated forthwith, are also contrary and unconstitutional. The post held by the petitioner has not been abolished and the ad hoc employees are being appointed even after restriction imposed by the Government. No regular selection has been held for the post, which was held by the petitioner. Thus, the petitioner has challenged his termination order on the grounds ;

(1) the cut off date 1.5.1983 is arbitrary ;

(2) the Rule 8 of the Regularisation Rules providing for termination of service is arbitrary and ultra vires ;

(3) the petitioner has been discriminated in the matter vis-a-vis ad hoc employees appointed on or before 1.5.1983 ; and

(4) the petitioner has been discriminated in the matter vis-a-vis other ad hoc employees who were appointed after the appointment of the petitioner on ad hoc basis but their services have not been terminated and they have been allowed to continue.

3. A counter-affidavit has been filed by the State of U. P. contending that the services of the petitioner have been terminated according to the provisions in G.O. No, 19/5-1981 Karmik-1, dated 22.3.1984 read with Regularisation Rules as amended in 1984. The petitioner was appointed temporarily and on ad hoc basis for a period of three months only and his services were liable to be terminated without notice before expiry of three months. The petitioner has not been discriminated and his services have been terminated according to the provisions of Ad hoc Regularisation Rules. The employees shown in para 7 at serial Nos. 1 to 4

on ad hoc basis were not appointed by the opposite party No. 3 and the employee shown at serial No. 5 was no more working under the opposite party No. 3. The employee shown appointed at serial No. 5 did not belong to cadre of 'Patrol' which post is held by the petitioner. The action under U. P. Regularisation of Ad hoc Appointment (On Posts Outside of the Purview of the Public Services Commission) Rules, 1979 read with its amendment Rules 1984 is being taken for different cadre of the posts by different offices under the U. P. Government. The Ad hoc Regularisation Rules as amended in 1984 were not applicable in the case of the petitioner as he was appointed after May, 1983, which is the cut off date in the Rules.

4. The petitioner has also filed a supplementary-affidavit along with certain documents to show that one Laxmi Saran Gupta was appointed as Clerk in ad hoc capacity by the opposite party No. 3 on 21.6.1983 ; his services were also terminated on 13.10.1986 ; Laxmi Saran Gupta preferred a writ petition and his petition was allowed and he has been taken back in the service.

5. I have heard the learned counsel for the parties and have perused the evidence on record.

6. The appointment letter of the petitioner is Annexure-1 to the writ petition. He was appointed on probation for a period of three months as his appointment was purely temporary and by way of an interim arrangement. It was mentioned in the appointment letter that his services are wholly temporary and can be terminated at any time without any notice even prior to the period of three months. Annexure-2 to the writ petition is the impugned order of termination, which goes to show that his services were terminated under the Ad hoc Appointment Regularisation Rules after giving one month's salary as provided under the Rules.

7. The learned counsel for the petitioner has referred a judgment in Arvind Kumar Yadav v. State of U. P., 1994 (12) LCD 446. Even in this judgment of this Court it was held that every appointee has to continue only in terms of the conditions of appointment and in accordance with the rules applicable to him. The letter of appointment Annexure-1 goes to show the conditions of the appointment. He was appointed as Patrol for a period of three months with the condition that his

services can be terminated without any notice even prior to expiry of three months and therefore, the petitioner has no right to seek any remedy in this petition.

8. The petitioner has stated in the writ petition that the services of the persons who were appointed after his appointment, have not been terminated and he has given the names of five persons in para 7 of the petition. The judgment referred by the learned counsel for the petitioner in the case of Arvind Kumar Yadav (supra), is also against him on this contention. This Court has held that such contention does not confer any right on the petitioners for consideration of his case for regularisation. The question that some juniors have been indefinitely retained in service does not also create any right to the petitioner to continue indefinitely in service. Supposing any wrong order has been passed in favour of the others even then, it will not give any benefit to the petitioner for seeking remedy in the Court. In the case of State of Punjab and Ors. v. Dr. Rajeev Sarwal, (1999) 9 SCC 240, it was held by the Supreme Court that wrong decision of the administrative authority does not become precedent for others. Similarly, in Coromandel Fertilizers Ltd. v. Union of India and Ors., 1984 (Supp) SCC 457, it was held that a wrong decision in favour of any party does not entitle any other party to claim benefit on the basis of that decision.

9. The learned counsels for the petitioner has further referred a decision of this Court, in Writ Petition No. 7550 of 1986, Lakshmi Shanker Gupta v. State of U. P.. in which the Court held that petitioner Lakshmi Shanker Gupta was discriminated with other employees in whose case the provisions of termination of service were not made applicable and who were allowed to continue in service although they were appointed subsequent to the date 13.10.1986. The petitioner has also filed a copy of the judgment in Lakshmi Shanker Gupta case but in my opinion, it is not a correct law and the judgment referred by the petitioner is not precedent and does not have any binding effect. In view of the decision stated above the judgment in the case of Lakshmi Shanker Gupta (supra), is not based on the law laid down by the Supreme Court, therefore, the petitioner cannot be given any relief on the ground that the writ petition of Lakshmi Shanker Gupta was allowed by this Court after giving benefit of wrong decision in the cases of others.

10. Admittedly, the petitioner was appointed after the cut off date in the Regularisation Rules. His services were terminated in accordance with Rule 10 of U. P. Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979, which provide that the services of a person appointed on ad hoc basis who is not found suitable or whose case is not covered by Sub-rule (1) of Rule 4 of these rules, shall be terminated forthwith and on such termination, he shall be entitled to receive one month's pay. It is under this provisions that the services of the petitioner have been terminated because he was appointed after the cut off date fixed for regularisation of ad hoc employees. Although this Rule 10 has not been challenged in the petition instead a wrong rule has been challenged but it has been argued that this rule is ultra vires on the ground that it does not provide an opportunity of hearing to those whose services have been terminated under Rule 10 of these rules but this contention has no force because the petitioner is purely an ad hoc employee appointed without following any rules and procedure and in case of temporary employees who are covered by the U. P. Temporary Government Servants Termination of Services Rules, there is no need to give any notice but the services of the temporary employees can be terminated by one month's notice or one months' salary in lieu thereof. The same provisions have been incorporated in Rule 10 of the Regularisation Rules.

11. The learned counsel for the petitioner has referred a decision in Arvind Kumar Yadav (supra) to show that this Court has already held the cut off date 1.10.1986 in the Regularisation Rules as ultra vires and arbitrary but in view of the latter decision of the Supreme Court, this law also does not hold good. In the instant case, the cut off date in the Regularisation Rules has been fixed to accommodate the employees according to the need and vacancies. So this cut off date cannot be said to be unreasonable on the ground of any such decision. In Reserve Bank of India and Ors. v. C. N. Sahasranaman and Ors., AIR 1986 SC 1830, it was held by the Supreme Court that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone.

12. In *D. C. Bhatia and Ors. v. Union of India and Anr.*, (1995) 1 SCC 104, it was held by the Supreme Court that it is for the Legislature to decide which class of persons should be given protection and on what basis such protection is to be given. The Court would not interfere with such matters of legislative policy.

13. In *State of Haryana and Ors. v. Rai Chand Jain and Ors.*, (1997) 5 SCC 167, it was held by the Supreme Court that it is for the Government to decide as a part of the executive policy the date from which arrears would be granted to the employees. The matter being an executive policy in character cannot be considered as arbitrary violating Article 14 of the Constitution. So it is clear from this law laid down by the Supreme Court that fixation of cut off date is matter of policy of the Government. Similar view was taken in *State of Bihar and Ors. v. Ramjee Prasad and Ors.*, (1990) 3 SCC 368.

14. Moreover, these Regularisation Rules were referred by the Supreme Court in *Khagesh Kumar and Ors. v. Inspector General of Registration and Ors.*, AIR 1996 SC 417, and the provisions of these Rules were held reasonable. Therefore, in view of the aforesaid Judicial decisions, the observations of this Court in *Arvind Kumar Yadav's case* (supra) that any provisions with regard to cut off date in these rules is void, is not a good law and cannot be followed by giving discretionary relief under Article 226 of Constitution of India specially when the petitioner is not in the service of the opposite parties and his services were terminated according to the terms of the appointment and the Regularisation Rules applicable for the persons of the cadre of the petitioner. Therefore, the writ petition has no force and is liable to be dismissed.

15. In result, the writ petition is dismissed.

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