

Ramveer Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-11-2004

Reported in : 2004(4)AWC3128

Judge : Rakesh Tiwari, J.

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

Appeal No. : C.M.W.P. No. 27230 of 2003

Appellant : Ramveer Singh

Respondent : State of U.P. and ors.

Advocate for Def. : M.C. Chaturvedi, ; Rajnikant Tiwari and ; Ravi Ranjan, Additional C.S.C.

Advocate for Pet/Ap. : H.N. Singh, ; B. Narayan Singh, ; P.N. Tripathi and ; Satya Prakash Pandey, Advs.

Disposition : Petition allowed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the petitioners and Sri H. N. Singh, P. N. Tripathi, Sri Satya Prakash Pandey and other counsel in the connected writ petitions on behalf of the petitioners and Sri M. C. Chaturvedi, Additional Chief Standing Counsel assisted by Sri Rajnikant Tiwari and Sri Ravi Ranjan.

2. Petitioners have preferred this petition challenging the validity and correctness of the impugned order of termination passed by I. G. of Registration/District Registrar terminating the services of the petitioners from the post of Junior Clerks/Registration Clerks. Writ Petition No. 27230 of 2003. Ramveer Singh v. State through Secretary Institutional Finance. U. P., Lucknow and Ors., has been taken up as the leading case with the consent of the parties.

3. The I. G. Registration Department required dally wagers for copying of the registered documents at the districts level. A number of daily wagers were engaged by the department who are working for the last several years as Registration Clerks for speedy disposal of pending arrears of the documents in the Registration office with the condition that their appointment will not be for more than 3 months in a financial year. These dally wagers/Registration clerks were paid from head of account number 2030, 'Stamp and Registration' under non-plan expenditure. The appointment of the Registration Clerk were made on a post which is sanctioned by the Governor every year with express condition that the appointment shall not exceed three months during the course of financial year.

4. The U. P. Registration Department District Establishment Ministerial Rules, 1978 were published on May 12th, 1978. These rules were amended in 1978. By the amendment, the I. G. Registration became the appointing authority of Registration Clerk instead of the District Registrar.

5. The Regularisation Rules aforesaid were again amended by the State of U. P. on 20th December, 2001 in exercise of powers conferred by Article 309 of the Constitution of India vide U. P. Regularisation of Ad hoc Appointment (On the Posts Outside the Purview of Public Service Commission) (3rd Amendment) Rules, 2001 whereby the cut off date for the purposes of regularisation was substituted as 30th June, 1998 in place of 1.10.1986. Accordingly the person appointed on or before 30th June. 1988 who is working on the post, the

amendment rules dated 20th December, 2000 have come into force and has completed three years of service is entitled for regularisation.

6. It appears that the I. G. Registration published advertisement-Inviting applications for appointment to the post of Registration Clerks. Consequently a number of petitions were filed before this Court by the daily wagers already working in the department as clerks for quashing of the advertisement and for appointment and regularisation of their services as Registration Clerks. Interim orders were passed in the writ petitions directing therein that the petitioners be allowed to continue in service. The writ petitions were subsequently dismissed vide order and judgment dated 8.2.1995. The writ petitions as well as special appeal pending before this Court as well as before Lucknow Bench of this Court were decided by a Division Bench along with connected matters. The leading case in writ petition was Petition No. 30582 of 1991. Haseen Ahmad and Ors. v. State of U. P. and Ors., connected with Special Appeal No. 659 of 1994, State of U. P. and Ors. v. Harish Chandra Shukia and Ors. The judgment is in 1995 (1) UPLBEC 507.

7. Aggrieved by the order and Judgment aforesaid a number of special leave petition were filed before the Supreme Court which were decided along with leading case of Khagesh Kumar and Ors. v. J. G. Registration and Ors., 1996 (1) UPLBEC 23, vide order and judgment dated 27.11.1995. The Apex Court in the case of Khagesh Kumar and Ors. v. I. G. Registration and Ors., noticed the applicability of the U. P. Regularisation of Ad hoc Appointment {On Posts Outside the Purview of Public Service Commission) Rules, 1979 as amended by notification dated 7th August. 1989 which provides for cut off date for regularisation as 1.10.1986 and held that those employees who were appointed prior to cut off date and had completed three years of service as the case may be shall be regularized against permanent/temporary vacancies. It was further directed by the Apex Court that the Registration Clerks working on daily wage basis may be given at least one opportunity for regular appointment and they may also be given relaxation in the matter of age.

8. The judgment in the case of Khagesh Kumar and Ors. v. I. G. Registration U. P. and Ors. and further clarified in the case of I. G. Registration U. P. and Ors. v. Avadhesh Kumar, 1996 (3) UPLBEC 1744, and further a direction was issued to consider even such candidates who have become over-age and were working on dally wage. The provisions of U. P. Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001 were promulgated which amended Rules 4 of the original Rule 4 of U. P. Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979. Hence, all the persons who were appointed either prior or subsequent to the cut off date would continue on the ad hoc basis till regular selection was made in the light of direction given by the Apex Court.

9. The aforesaid judgment and order in I. G. Registration and others v. Avadhesh Kumar and Ors., was thereafter modified by the Apex Court on an Interlocutory Application No. 6 of 1996 filed by the State in Civil Appeal No. 7500 of 1996. The order modifying the judgment is as under :

'While disposing of the appeal on April 12, 1996, we had directed that though their appointments were not valid in law and cannot be regularised, all the working dally wage employees working would be continued temporarily till the regularly selected candidates are appointed. This order would be applicable to those candidates who would be working on dally wage basis as on the date. It is seen on the facts in this case that the respondents were continuing on the day when the High Court had passed the order. When the matter was being disposed of by this Court finally, they were terminated. We have clarified on the earlier occasion that in the event of their proceeding in the main matter their cases would be considered as we have already directed that temporary candidates continuing as on the date of the order will continue on daily wage basis till regularly selected candidates are appointed. The benefit of the order would also go to the respondents.

The order is accordingly clarified and this order of benefit will not be applicable to any other person.

Sd. K. Ramaswamy Sd. G. B. Pattanaik 8.11.1996'

10. Sri H. N. Singh, counsel for the petitioners contends that there are a large number of vacancies of Registration Clerks as is apparent from para 15 of the judgment in Khagesh Kumar (supra). It is further submitted that the method of computation of three years was also laid down by the Supreme Court, i.e., breaks of less than three months were to be ignored and any break of more than three months was to be excluded in the computation of three years period and only the period during which the petitioner actually worked should be counted. Sri P. N. Tripathi in Writ Petition No. 25710 of 2003, Jai Prakash Tiwari v. State of U. P. and Ors., has contended that in the registration department old records of register of several years are also to be copied for which staff is required.

11. Additional Chief Standing Counsel Sri M. C. Chaturvedi assisted by standing counsels has contended that the examination for Group 'C' posts in the Registration Department District Establishment has already been held by I. G. Registration on 190 post of the Registration Clerk in the year 1998 as per the provisions of Direct Recruitment on Group 'C' post (Outside the Purview of U. P. P. S. C.) Rules, 1998 and the results could not be declared in view of the interim orders of this Court passed in various writ petitions.

12. Further it is submitted that earlier as directed by the Apex Court efforts were made for selection on the post of Group 'C' posts but it could not be carried by the U. P. Subordinate Selection Commission, Lucknow, due to some unavoidable, reasons and also due to various interim orders of this Court obtained by the dally wagers and due to amendment in provision of the selection. The Subordinate Selection Commission is no more in existence. It is .necessary to state here that a new rule U. P. Procedure for Direct Recruitment for Group 'C' post (Outside the Purview of U. P. Public Service Commission) Rules, 2002 have been framed by the State Government effective from 29th June, 2002 and now selection on Group 'C' post will be carried as per the provisions given therein.

13. It is further submitted that by the Introduction of Act No. 36 of 2001 applicable from 20.5.2002 the provision of the Registration Act has been amended. Now the copying work has totally been banned and no copying work is being done in the registration offices of U. P. Since there are 950 regular staff in the various

Registration Offices of U. P. and they are being trained in batches about the computer operation and hence no dally wagger is required for computerisation work in the department any more.

14. It is also submitted that in view of the facts stated there is no existing vacancy in the I. G. Registration Department. Nearly 400 dally wagers are working in the registration offices on the basis of various interim orders of this Court and due to various pronouncements of this Court and Apex Court working on basis of interim orders has no claim of regularisation. However, they have no work to do due to Introduction of amended provisions of the Indian Registration Act by Act No. 36 of 2001 and the copying being totally banned. There are no dally wagger in the department who qualify the requirement of regularisation as laid down in the Khagesh Kumar's case by the Apex Court. And further new regularisation rule of U. P. Regularisation of Daily Wage Appointment on Group 'C' Post outside the Purview U. P. Public Service Commission 1998, have been framed by the State Government to consider the regularisation of dally wagers. It has overriding effect due to its Rule 2. The dally wagers of the Registration Department do not qualify for regularisation under those rules.

15. This matter again came up for consideration before this Court as well as Apex Court. Recently in Writ Petition No. 13844 of 1990, Vinod Kumar Bharti and Ors. v. State of U.P. and Ors., along with other connected cases, it was held that:

'This Court is of the opinion that all the writ petitions deserves to be disposed of finally with the direction to the concerned authority to consider the representation of the petitioners for being considered on merit afresh (Ignoring any earlier decision on the matter) taking into account the provision of Rule 1998 as well as the direction given by the Supreme Court in the case of Audhesh Kumar (supra) for the above purpose any decision rejecting the representation of the petitioners in the above cases shall be deemed to have been set aside by the Court, The petitioners are directed to file fresh representation and photocopy of the writ petitions with annexures before the concerned competent authority within six weeks from today which shall be considered and decided by the competent authorities within three weeks thereafter by a reasoned order. The petitioners are,

however, not entitled for the relief claimed but the relief which this Court mould, as Indicated here-in-above.'

With the above observations, the writ petitions are disposed of finally.

Sd. A. K. Yog. J. 21.11.2000'

16. The question of regularisation of Registration Clerks also came before this Court in Writ Petition No. 8323 of 1991. Sandeep Kumar Singh v. District Registrar, Mirzapur and Ors., in which it has been held in paragraph 4 as under :

'It is not disputed that the petitioner continued in service after passing the impugned order. In view of the facts and circumstances and directions referred to above and in view of a recent order passed in Writ Petition No. 43211 of 2002, this writ petition is disposed of finally with the direction that the respondents shall consider the case of the petitioner for regularization in accordance with law and rules as amended update and in view of the directions issued by the Apex Court. It is further directed that till the exercise of regularisation is completed with regard to the petitioner, petitioner shall continue in service.

With the aforesaid observations, the petition is disposed of finally.

Sd. Anjani Kumar, J'

17. In the Special Appeal No. 524 of 2000 arising out of judgment and order dated 15.3.2000, passed in C.M.W.P. No. 13479 of 2000 filed by State of U. P. and others (supra) a Division Bench of this Court after hearing the counsel for the parties, allowed the appeal with certain directions, which are as under :

'We dispose of this appeal with a direction that the said committee shall consider the matter relating to the regularization of the services of the petitioners in the light of the directions issued by the Supreme Court in Khagesh Kumar and Ors. v. I. G. Registration and Ors., 1995 Supp (4) SCC 182, as well as the provisions of U. P. Regularization of Dally Wage Appointment of Group 'C' posts (Outside the Purview of the U. P. Public Service Commission), 1998 Rules.

This special appeal is accordingly allowed. The writ petition also stands disposed of in the term as indicated above. However, there shall be no order as to costs.

Sd. Tarun Chatterjee, C.J. Sd. Vineet Saran, J. 5.8.2003'

18. It appears from the record that no regular selection has taken place since then though an advertisement for direct recruitment was published on 24th March, 1991. More than 13 years have passed. In the meantime a large number of vacancies have arisen yet the direction given by the Apex Court in the Khagesh Kumar and others as well as in Audhesh Kumar and others has not been complied with by I. G. registration department. The contention of the standing counsel that there is no copying work in the registration office is not founded as the work of copying is to be done by the petitioner for giving the copy to the person who comes for registration.

19. A query was made from the standing counsel about the number of vacancies of Junior Clerks accrued and available in the department since 1991 and how have they been filled. Further information was sought as to whether these daily wagers could be provided with computer training so that they can be adjusted in the department for copying work or on computer and if computer training cannot be given to them, can they be adjusted in the vacancies that have arisen during the last 13 years. The standing counsel sought time and has submitted written arguments, which has been signed by Additional I. G. Registration U. P., Allahabad. No reply to the query made by the Court has been given.

20. It is thus, apparent that the department is avoiding the Implementation of orders and direction of this Court as well as direction issued by the Apex Court in case of Khagesh Kumar and others (supra). A large number of vacancies of Clerks/Junior Clerks/Computer Operator have accrued during the last 13 years in the department and are lying vacant. An advertisement for filling up 190 posts of such vacancies had been issued but could not be filled up due to Interim order of the Court in various writ petitions. In view of the order of Apex Court in case of Khagesh Kumar and Audhesh Kumar nature of appointment of petitioner and other similarly placed person daily wages registration clerk is of ad hoc nature getting wages on daily wage basis. As such they are entitled for benefit of regularisation

under Regularisation Rule.

21. The services of the petitioner are sought to be terminated on the ground that there is no work for the petitioner and there is no vacancy against which they can be adjusted. The stand of department is falsified by their own action. Regard may also be had to the direction given in the case of Khagesh Kumar wherein the Apex Court has noticed in paragraph 15 of the judgment that a large number of post of registration clerks are vacant in the registration department as well as directions issued by the High Court in various writ petitions and special appeal. Pursuant to decision by Apex Court in Khagesh Kumar (supra).

22. Thus, from the various directions passed in the writ petitions, special appeals, it is evident that directions have been issued that the petitioners have been permitted to continue till they are regularized particularly in view of the directions issued by the Supreme Court in the judgment in Khagesh Kumar and others (supra). It has already been noticed that the department is not complying with the directions of the High Court as well as the Apex Court. Their action amounts to Contempt. This Court has viewed this matter very seriously and with concern particularly, the inaction of the authorities for not complying' the order and judgment of the Courts. However one more opportunity is granted to the authorities to comply with the order and judgment in letter and spirit. Accordingly a direction is issued to the respondents to comply with the direction issued by the Apex Court as contained in Para 24 of the judgment of Khagesh Kumar and others (supra)-which is as under :

'(1) The petitioner or other similarly placed persons who were employed as Registration Clerks on dally wage basis prior to October 1, 1986, shall be considered for regularisation under the provisions of Rule 4 (1) (if) and they have completed three years continuous service. The said period of three years service shall be computed by taking the actual period during which the employee had worked as Registration Clerk on dally wage basis. The period during which such an employee has performed the duties of Registration Clerk under paragraph 101 of Manual shall be counted as part of service for the purpose of such regularization.

(2) In the event of appointment on regular basis on the post of Registration Clerks, the petitioner or other similarly placed persons who had worked as Registration Clerks on daily wage basis may be given one opportunity of being considered for such appointment and they be given relaxation in the matter of age requirement prescribed for such appointment under the rules.

(3) The Subordinate Service Selection Commission while making selection for regular appointment to the posts of Registration Clerks shall give weightage for their experience to the Registration Clerks who have worked on daily wage basis and shall frame suitable guidelines for that purpose.

(4) If any of the petitioners or other similarly placed person was required to perform the duties of Registration Clerk as an Apprentice under paragraph 101 of the Manual, he may submit a representation to the appropriate authority setting out the full particulars of such employment within three months and the concerned authority, after verifying the correctness of the said claim, shall pass the necessary order for the period he is found to have so worked on the post of Registration Clerk. The said payment shall be made within a period of three months from the date of submission of the representation.'

23. The petitioners are further directed to give training in computer to daily wage Registration Clerks so that they can work in the registration department. It may not be forgotten that in similar circumstances, the banks and other such offices have provided training to their staffs and officers to make them computer compatible. If it is not possible for the department to give them training, the petitioners shall be adjusted in the vacancies of Clerks already existing and in future vacancies till all the persons working in the registration department on daily wagers as Registration Clerks, etc. are absorbed in the following manner :

(i) A seniority list will be prepared by the department according to the date of initial appointment of the daily wage employee working on the post of Junior Clerk/Registration Clerk.

(ii) All these employees who have worked for three years according to the norms laid down by the Hon'ble Supreme Court shall be appointed according to their

seniority against existing vacancies.

(iii) After filling up the existing vacancies these employees shall be given appointment on temporary vacancies.

(iv) Rest of the Junior Clerks/Registration Clerks working on daily wages will be given appointment for at least three months in every financial year for which necessary sanction shall be taken from competent authorities.

(v) Vacancies accruing every year shall be first filled up from Junior Clerks/Registration Clerks who have been given temporary appointments as per direction No. II given above.

(vi) The temporary vacancies shall again be filled from the Junior Clerks/Registration Clerks according to the seniority list prepared as per directions No. I.

24. The Additional I. G. Registration, U.P., Allahabad shall submit a report every quarter to the Court giving details through the standing counsel showing compliance of the directions issued by this Court and the directions issued in the case of Khagesh Kumar and others (supra) by the Apex Court. The first compliance report regarding filling up of the vacancies shall be submitted by the I. G. of Registration, U.P. Allahabad, on or before 30th November, 2004 and every three months thereafter till all the petitioners are absorbed. In view of the aforesaid directions order of terminating the service of the petitioners are quashed. They shall be continued in service by the department till the compliance of the order issued by this Court as well as Apex Court is made and all of them is absorbed in service.

25. The writ petition is allowed with above directions.