

**Sanjeev Kumar Vs. State of U.P. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/483813](http://sooperkanoon.com/483813)

**Court :** Allahabad

**Decided On :** Aug-03-2001

**Reported in :** 2002(1)AWC260; [2001(91)FLR835]

**Judge :** Pradeep Kant, J.

**Acts :** [Constitution of India](#) - Article 16; Uttar Pradesh Industrial Disputes Act, 1947 - Sections 6N

**Appeal No. :** Writ Petition No. 3860 of 2001 (s/s)

**Appellant :** Sanjeev Kumar

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

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

**Advocate for Pet/Ap. :** Ram Bharose, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Pradeep Kant, J.**

1. The petitioner allege to have been engaged on daily wages on 1st May, 2000, in the office of Nldeshak, Rajya Sangrahalaya. Lucknow. According to the averments made in the writ petition, he has been paid daily wages for the period he has

worked but has been discharged from such engagement with effect from 19th July, 2001.

2. Learned counsel for the petitioner submitted that the petitioner has completed 240 days, therefore, the petitioner attained the status of temporary Government servant and he cannot be dispensed with from service without following the provisions of Section 6N of U. P. Industrial Disputes Act (hereinafter referred to as the Act).

3. The petitioner has not taken any plea in the writ petition nor has even stated that the office in which the petitioner is engaged, is an 'Industry' and the petitioner is a 'workman' nor the plea that the termination of services of the petitioner has been made without complying the provisions of Section 6N of the Act, because of which the termination of the service of the petitioner is bad in law. In the absence of aforesaid plea that the petitioner is entitled for protection of the provisions of Industrial Disputes Act, the said argument can neither be entertained nor could be substantiated by the learned counsel for the petitioner and is, therefore, rejected.

4. The learned counsel for the petitioner has relied upon a letter which appears to have been written by the State Minister, Sanskrit Evam Pura Dharmashav Vibhag, U. P. Shashan to the Director, Rajya Sangrahalaya in which it has been stated that the petitioner is working as daily wager since 1st May, 2000, in his personal staff and, therefore, the Director Rajya Sangrahalaya should ensure payment of wages to the petitioner Sanjeev Kumar and one more person, namely, Jainuddin Khan. In case there is any difficulty in making the payment, then the Director should talk to the Minister.

5. It is relevant to mention here that the petitioner had moved an application to the State Minister Sanskrit Evam Pura Dharmashav Vibhag, U. P. Shashan for getting appointment in the personal staff of the Minister, by means of application dated 29.4.2000. The letter of the Minister dated 12.5.2000 indicates that the petitioner was placed in the personal staff of the Minister on 1.5.2000 and the Minister in turn directed the Director, Rajya Sangrahalaya to make payment of the wages to the petitioner. These documents establish beyond doubt that the petitioner was not appointed by the Director Rajya Sangrahalaya at any point of time.

6. The letter of Minister does not support the statement of the petitioner made in the writ petition that he has worked as dally wager since 1st May, 2000 to 31st July, 2001. This letter is dated 12th May, 2000, whereas the petitioner is said to have been engaged on dally wages on 1st May, 2000. It appears that the Director or the authority concerned felt some difficulty in making the payment to these persons, therefore, the State Minister required the Director to make payment although these persons have been engaged in the personal staff of the Minister concerned and not in the services of the Directorate of Rajya Sangrahalaya. It appears that under this direction of Minister, the petitioner was paid daily wages although there appears to be no sanctioned vacancy or post where the petitioner could have been engaged or appointed. The petitioner has also not stated in the writ petition that he was engaged or appointed against any vacancy which was existing at that time in the Directorate, Rajya Sangrahalaya. This letter of the Minister is being put into service for getting the relief of continuance as daily wagers in the office of the Directorate, Rajya Sangrahalaya.

7. In my considered opinion, the letter of Minister has no sanctity for continuance of the petitioner as daily wager or otherwise as the engagement of daily wager can only be made under the given circumstances and not at the whims of the Minister, it is also to be seen as to whether the appointment of dally wager/ engagement on daily wages is permitted under the Rules or not and whether there is any exigency of work of special nature or permanent nature where such an engagement is to be made. I, therefore, find that this letter of Minister is of no assistance to the petitioner.

8. It would be appropriate to mention here that the adhocism and the appointment of daily wagers, namely, muster-roll employees has been a cause of concern of the State Government as well as the Courts. Time and again, the Government orders have been issued that such appointments or engagements should not be done unless specific permission is taken from the Government. The Courts have also taken strict view in the matter of such engagement and continuance of the employees on daily wage, it permits backdoor entries in the public employment denying the right of equal opportunity to all those persons who could otherwise be considered and are eligible for appointment. Despite the concern shown by the

State Government, the State Government and its officers have not hesitated in making such appointments although such engagements result in putting heavy burden on public exchequer and depriving the eligible candidates from seeking appointment in case there is any vacancy. It is also to be noticed that ad hoc appointments are made and dally wagers are engaged even if there is no vacancy and there is no work. The present is the blatant example which has been done at the behest of the Minister.

9. It is high time when the State Government should review the situation and Issue necessary directions to the concerned heads of the departments and all other officers who are the appointing authorities for these Class-III and Class-IV posts, giving specific guidelines as to under what circumstances any ad hoc appointment can be made to any post or dally wagger can be engaged, if at all such appointments can be made under law. The State Government is well advised that if the authorities do not follow such instructions which may be Issued by the Government, they should entail disciplinary proceedings including awarding of appropriate punishment against the erring officers. The apathy shown by the Government in this regard is not doing any good to the unemployed qualified youth of the State. The decision taken by the State Government from time to time for regularizing the services of dally wagers or ad hoc appointees who have been appointed before a particular date and have put in a minimum period of service, may have been helpful in getting the persons so appointed on regular basis by the State Government but that is not the end or a solution to the problem. The Constitution provides equal opportunity in the matter of employment and therefore, the State Government should be vigilant and should consider the repercussions and consequences which may ensue before making such Rules which permit the back-door entries to be regularized under the force of law, depriving hundreds and thousands of unemployed persons from an opportunity of seeking employment, as such vacancies are usually not advertised and no regular selection is made.

10. The writ petition being devoid of merits, is hereby accordingly dismissed.

Let a copy of this order be sent to the Chief Secretary, Government of U. P., Lucknow, through the Registrar of this Court.

