

Sunil Kumar Sharma Vs. State of U.P. and ors.

Sunil Kumar Sharma Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/485659

Court : Allahabad

Decided On : Aug-21-2002

Reported in : 2002(4)AWC3172

Judge : A.K. Yog, J.

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

Appeal No. : C.M.W.P. No. 55604 of 2000

Appellant : Sunil Kumar Sharma

Respondent : State of U.P. and ors.

Advocate for Def. : Abhinav Upadhyay, S.C.

Advocate for Pet/Ap. : N.L. Pandey, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Yog, J.

1. Petitioner, Sunil Kumar Sharma, claims regularisation on the basis of his work for the following periods (as per his date and event chart along with the writ petition) admittedly, having been engaged as daily, wager in the department of

Registration Government of U. P. :

Petitioner was appointed for the period from 11.4.1984 to 31.12.1984 (8-1/2 months) Gap 3 weeks Petitioner was appointed for the period from 23.1.1985 to 31.1.1985 [10 days] Gap 9-1/2 months Petitioner was appointed for the period from 16.4.1985 to 30.6.1985 (2-1/2 months) Gap 12 months Petitioner was appointed for the period from 8.2.1986 to 3.5.1986 (2 months 27 days)

The aforesaid statistics shows that petitioner had worked, in total for 15 months (ignoring short breaks, i.e. gap of less than 3 months).

2. The learned standing counsel, however, giving his own calculation about the work of the petitioner and according to it, the petitioner had worked for 511 days (i.e. less than two years). Petitioner does not dispute that he had not worked continuously for three years on or before October, 1986 for being eligible to be regularised under the Uttar Pradesh Regularisation of Ad Hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules 1979, (called the Rules, 1979).

3. The learned counsel for the petitioner conceded that petitioner had not pleaded three years continuous service as required under relevant ad hoc rules prior to 1986.

4. The aforesaid rules were amended vide the Uttar Pradesh Regularisation of Ad Hoc Appointments (on the Posts Outside the Purview of the Public Service Commission) (Second Amendment) Rules, 1989, (called the Rules, 1989).

Rule 2 of Second Amendment Rules, 1989, reads :

'2. Insertion of new Rule 10.--After Rule 9 of Uttar Pradesh Regularisation of Ad Hoc Appointments (on the Posts Outside the Purview of the Public Service Commission) Rules, 1979, the following rule shall be inserted, namely :

'10. Extension of the Rules.--The provisions of these rules shall apply, mutatis mutandis, also to any person directly appointed on ad hoc basis on or before October 1, 1986 and continuing in service as such, on the date of commencement

of the Uttar Pradesh Regularization of Ad Hoc Appointments (on the Posts Outside the Purview of the Public Service Commission) (Second Amendment) Rules, 1989.'

5. There is no dispute that petitioner was not allowed to continue as dally wager after June 30, 1985. It is also admitted to the petitioner that thereafter he had filed writ petition wherein he obtained an interim order dated 27.8.1991, Annexure-5 to the writ petition which was subsequently confirmed vide order dated September 14, 1993, Annexure-6 to the writ petition.

6. For convenience the aforesaid two orders are reproduced :

(i) 'Issue notice.

Until further orders the selection pursuant to the advertisement will continue but so long as the post if any held by the petitioner is decided to be manned by daily wages earner by the respondents the petitioner will be permitted to continue if his work continues to be satisfactory and shall be paid his salary admissible to him regularly.

(ii) 'Heard learned counsel for the petitioner and the learned standing counsel. The interim order dated 27.8.1991, is hereby confirmed. It is further directed that the petitioner will be paid the same salary which is being paid to the regular employees on the post on which he is working on the basis of equal for equal work.'

7. It will be useful to note here that interim order dated 27.8.1991, itself supports the above since it use the expression 'until further orders'. Order dated September 14, 1993 reads : '.....the interim order dated 27.8.1991, is hereby confirmed.....'. This signifies that petitioner's working under aforesaid interim order was not unqualified but subject to further orders of this Court.

8. Petitioner's Writ Petition No. 23740 of 1991 and other connected writ petitions were dismissed by the Division Bench of this Court vide judgment and order dated February 8, 1995 in Hasnain Ahmad etc. etc. v. State of U. P. and Ors., 1995 (1) AWC 545 : (1995) 1 UPLBEC 507. Against the said judgment and order special

leave petition was filed before the Apex Court which was disposed of along with other similar matters vide judgment and order dated September 27, 1995, in the case of Khagesh Kumar and Ors. v. Inspector General of Registration and Ors., 1996 (1) AWC 69 (SC) : 1996 (1) UPLBEC 23. The Apex Court upheld the Division Bench decision of this Court along with the direction contained in para 24 of the said judgment.

9. Learned counsel for the petitioner has raised no grievance that while his case for regularisation was considered, any of the directions given by the Apex Court has not been followed.

10. The learned counsel for the petitioner had concealed, as per facts given in the writ petition itself that petitioner has not worked for requisite period so as to be eligible for regularisation under original ad hoc Rules, 1979. Learned counsel for the petitioner also failed to show that he was continuing in services as such on the commencement of the Second Amendment Rules, i.e., August, 1989.

11. In view of the above, petitioner has clearly got no case for being considered for regularisation as he does not, on his own showing, satisfy eligibility criterion.

12. Learned counsel for the petitioner, however, submitted that petitioner had worked for the period during September 27, 1991 to March 22, 1995 and in support of said submission, he referred to the certificate dated July 20, 1989, issued by the A.D.M. (Finance and Revenue), Annexure-10 to the writ petition.

13. The contention of the petitioner, according to submission of the petitioner's counsel, is that petitioner has been continuing in service for more than three years, he should be considered for regularisation irrespective of the fact that his continuance in the service was under ad-interim order of this Court.

14. It may be stated that such an argument has come forward before this Court for the first time inasmuch as no such contention was raised by the petitioner before the concerned authority while he filed representation dated September 10, 1999 and February 29, 2000, Annexures-11 and 12 to the writ petition. Even the impugned order, rejecting petitioner's representation dated 2.11.2000, Annexure-

14 to the writ petition shows that no such claim was made before the concerned authority.

15. Petitioner's attempt to clamour for regularisation on the basis of his working during the period under interim order of the Court, as indicated above, is clearly an attempt to carve out a new case, for the first time, before this Court. Firstly, it is not permissible, secondly, even if the petitioner's contention is considered, this Court finds that it has no substance.

16. It is well-settled that anything done under interim orders of the Court cannot prejudice and non-suit a party against whom it is issued unless it attains finality. Passing of an ad-interim order is generally by way of exception to the general rule that no order be passed against a person without hearing and it is on the basis of equity of preserve 'situation' so that final relief is not lost. But granting relief or passing a decree on the basis of something done under ad-interim order will amount to granting undue advantage over the other party.

17. In support of the above, learned standing counsel Sri Abhinav Upadhaya has placed reliance on the decision in the case of Committee of Management v. Sri Kumar Tiwari and Anr., 1997 (4) SCC 388 (Para 6), wherein the Apex Court, in unequivocal terms held that if one continues in service not on the basis of his own right under condition of appointment but by virtue of an interim-stay-order granted by the Court, such person cannot claim benefit of such working under any law.

18. The said view was also taken by this Court in the case of Ram Swaroop Sharma v. State of U. P. and Ors., 2000 (2) AWC 1536 : 2000 (2) ESC 993 (All) (Para 8-20).

19. In view of the above, this Court finds no merits in the writ petition. It is, accordingly, dismissed. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com