

Ved Pal Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Sep-01-2009

Reported in : 2009(4)AWC4199

Judge : Sudhir Agarwal, J.

Appellant : Ved Pal

Respondent : State of U.P. and anr.

Advocate for Pet/Ap. : Sri. S. K. Mishra

Disposition : Petition dismissed

Judgement :

Sudhir Agarwal, J.

1. Heard Sri S. K. Mishra, learned Counsel for the petitioner and learned standing counsel for the respondents.

2. It is not in dispute that though the petitioner was engaged on daily wage basis as alleged in 1990 but his engagement was discontinued on 16.10.1998 whereagainst he filed Writ Petition No. 7444 of 1999 which was disposed of vide judgment dated 11.3.1999 with the following observation:

I have heard the learned Counsel for the petitioner as well as learned standing counsel. As the question involved is too trivial to drag on unnecessarily before this Court hence I dispose of the writ petition by issuing a direction to the respondents that in case the work and post are available in the said Cheetal Park or elsewhere the petitioner may be allowed to work and paid salary.

3. Pursuant thereto it is said by learned Counsel for the petitioner that though he made representation but he was not engaged. The fact remains that the petitioner after having been discontinued on 16.10.1998 has not been engaged again as daily wager with the respondents. On 21.12.2001 when the U.P. Regularisation of Daily Wages Appointments on Group 'D' Posts Rules, 2001 (hereinafter referred to as the 'Rules, 2001') were enacted he, therefore, was not in employment of the respondents.

4. He, however, submitted an application for regularisation before the authorities concerned and his grievance is that he has not been regularised under Rules, 2001 though some other persons were regularised including Smt. Kamla wife of Kishan Lal, Nake Pal son of Ballay and Shakuntala Devi wife of Charan Singh as stated in para 9 of the writ petition. He, therefore, submitted that his case for regularisation under Rules, 2001 has to be considered by the respondents.

5. I do not find any force in the submissions.

6. Rule 4 of Rules, 2001 reads as under:

4. Regularisation of daily wages appointments on Group 'D' posts.-(1) Any person who:

(a) was directly appointed on daily wage basis on a Group 'D' post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group 'D' post, on the date of

commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-servicemen) Act, 1993 as amended from time to time and the orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of Sub-rule (1) the Appointing Authority shall constitute a Selection Committee in accordance with the relevant provisions of the service rules.

(4) The Appointing Authority shall, having regard to the provisions of Sub-rule (1), prepare an eligibility list of the candidates, arrange in order of seniority as determined from the date of order of appointment on daily wage basis and if two or more persons were appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with such relevant records pertaining to the candidates, as may be considered necessary, to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in Sub-rule (4), and if it considers necessary, it may interview the candidates also.

(6) The Selection Committee shall prepare a list of selected candidates in order of seniority, and forward the same to the Appointing Authority.

(Emphasis added)

7. A perusal of the above Rules make it clear that in order to attract consideration for regularisation under Rules, 2001, one must have to show that he was engaged

as daily wager prior to 29.6.1991 and was engaged in service on the commencement of Rules, 2001, i.e., on-21.12.2001.

8. It is evident and in fact admitted by learned Counsel for the petitioner that on the date of commencement of Rules, 2001 the petitioner was not in service. If that be so, he cannot be considered for regularisation under the aforesaid Rules as the same are not applicable to him. In order to attract the provisions of regularisation one must fulfil each and every aspect and condition prescribed under the regularisation rules otherwise he cannot be considered for regularisation. The Constitution Bench of the Apex Court in *Secretary, State of Karnataka v. Uma Devi* : 2006 (4) SCC 1 : 2006 (5) AWC 5325 (SC), has held that for the purpose of regularisation one must satisfy the conditions prescribed in the regularisation rules very strictly since it is a kind of appointment not made in accordance with law and, therefore, have to be considered very strictly. This has been followed by the Apex Court recently in the case of *State of West Bengal and Ors. v. Banibrata Ghosh and Ors.* : 2009 (3) SCC 250 and *Council of Scientific and Industrial Research and Ors. v. Ramesh Chandra Agrawal and Anr.* : 2009 (3) SCC 35.

9. So far as his further submission that some other persons have been regularised though the petitioner has not been considered for regularisation is concerned, it is not stated anywhere in the pleadings that the persons who have been considered for regularisation are those who do not fulfil the requirement under the Rules, 2001. In the circumstances, it cannot be said that the case of petitioner is at par with those whose names are given in para 9 of the writ petition.

10. Moreover, if some persons, not eligible for regularisation have been regularised, that itself would not give any benefit to the petitioner since it is well-settled legal position that two wrongs will not make one right. The Apex Court in the case of *State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr.* : AIR 2000 SC 2306 : 2000 (3) AWC 2.29 (SC)(NOC); *Union of India and Anr. v. International Trading Co. and Anr.* : AIR 2003 SC 3983; *Lalit Mohan Pandey v. Pooran Singh and Ors.* : AIR 2004 SC 2303 : 2004 (3) AWC 1995 (SC); *M/s. Anand Buttons Ltd. etc. v. State of Haryana and Ors.* : AIR 2005 SC 565 : 2005 (1) AWC 146 (SC) and *Kastha Niwarak G. S. S. Maryadit, Indore v. President, Indore*

Development Authority : AIR 2006 SC 1142 : 2006 (2) AWC 1139 (SC), has held that Article 14 has no application in such cases.

11. In the result, I do not find any merit in the writ petition. Dismissed.

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