

Sarvan Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-12-2008

Reported in : 2009(1)AWC963

Judge : V.M. Sahai and ;Ran Vijai Singh, JJ.

Appellant : Sarvan Kumar

Respondent : State of U.P. and ors.

Disposition : Appeal dismissed

Judgement :

V.M. Sahai and Ran Vijai Singh, JJ.

1. List has been revised. No one appears on behalf of the appellant to press this special appeal.

2. This special appeal has been filed against the judgment and order dated 22.9.2008 passed by Hon'ble single Judge in Civil Misc. Writ Petition No. 49242 of 2008, Sarvan Kumar v. State of U.P. The said writ petition was filed with the following prayers:

1. Issue a writ, order or direction in the nature of mandamus commanding/directing the respondents to regularise the petitioner on the post of line man in the electricity department.

2. Issue a writ, order or direction in the nature of mandamus commanding/directing the respondents to pay the salary to the petitioner month to month regularly as regular employee with all consequential benefits.

3. Issue a writ, order or direction in the nature of mandamus commanding/directing the respondents to decide the respondents/application of the petitioner dated 15.7.2008 (contained in Annexure -4 to the writ petition).

3. The writ petition was dismissed by learned single Judge holding that in absence of any rule meant for regularisation no mandamus can be issued directing the respondents to regularise the services of the appellant/petitioner.

4. We have heard Shri Saurabh Pathak, holding brief of Shri J. P. Pandey and learned standing counsel for the respondents and perused the records.

5. The facts giving rise to this case are that the petitioner was engaged on daily wage basis in the Power Corporation. It appears after sometime the respondents have stopped taking work from the petitioner. The petitioner has filed the writ petition before this Court on the ground that number of vacancies are still existing and the petitioner be regularised against the said post. It was also prayed that the petitioner be paid regular salary month to month as admissible to the regular employees.

6. The question of regularisation of daily wage employee and admissibility of the regular pay scale has been considered time and again by the Apex Court. In the case of R.N. Nanjundappa v. T. Thimmiah : (1972)ILLJ565SC , where the Apex Court has observed that:

If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularization is possible of the act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be not introduce a new head of appointment in defiance of rules or it may have the effect of setting

at naught the rules.

This view has been followed in many other cases like : Sultan Sadik v. Sanjay Rai Subba : AIR 2004 SC1377 and A. Umarani v. Registrar, Cooperative Societies and Ors. : (2004)IIILLJ780SC , where the Apex Court has observed:

No regularisation is thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules...Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any 'State' within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

7. In the case of Pankaj Gupta v. State of J.&.K. : (2004)IIILLJ 1081 SC the Apex Court has observed:

No persons illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he would be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right to regularisation in the service because of the erroneous procedure adopted by the authority concerned in appointing such persons.

8. In the case of Mahendra I. Jain and Ors. v. Indore Development Authority and Ors. : (2005)ILLJ578SC . the Apex Court has observed:

The question, therefore, which arises for consideration is as to whether they could lay a void claim for regularisation of their services. The answer thereof must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment.

A State before offering public service to a persons must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the - State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation.'

Similar view has been taken by the Constitution Bench decision of the Apex Court in Secretary, State of Karnataka v. Uma Devi : (2006)11LLJ722SC ; State of U.P. v. Desh Raj : 2006 CriLJ2108 and Municipal Corporation v. Om Prakash Dube : (2007)ILLJ 1026 SC .

9. There is nothing on the record to indicate that the petitioner is eligible for consideration for the purposes of regularisation, therefore, in view of the above decisions of the Apex Court order for regularisation of the petitioner's services cannot be passed by this Court in absence of any statutory provisions.

10. So far as the availability of the minimum of pay scale to a daily wage worker is concerned it has also been considered in numerous decisions of the Apex Court. In the case of State of Haryana v. Jasmer Singh 1996 (2) SCC 777 : 1997 (1) AWC 2.145 (SC) (NOC), the Apex Court has observed:

The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily rated workers are not required to possess the qualifications prescribed for regular workers nor do they have to fulfil the requirement relating to the age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions regarding to regular service such as the liability of a member of the service to be transferred and is being subject to the disciplinary jurisdiction of the authorities as prescribed which daily rated workmen are not subjected to. They cannot therefore, be equated with regular workmen for the purpose for their wages. Nor can they claim minimum of the regular pay scale of the regular employee.

In the case of Harbans Lal v. State of Himachal Pradesh : (1989)IILLJ466SC and in the case of Ghaziabad Development Authority v. Vikram Chaudhary : (1995)IILLJ703SC , the Apex Court has held that daily rated workmen were entitled to be paid minimum of wages admissible to such workmen as prescribed and not minimum in the pay scale as applicable to similar employees in the regular service unless the employer had decided to make such minimum in the pay scale applicable to the daily rated workmen. The same view has been reiterated by the Apex Court in the case of State of Orissa v. Balram Sahu : (2002)IILLJ 1115 SC . where the Apex Court has held that the daily rated employees are entitled for minimum wages not minimum of the pay scale.

In the case of State of Haryana v. Tilak Raj : (2003)IILLJ487SC , the Apex Court has held that the pay scale is attached to a definite post and a daily wagger holds no post, hence they cannot be compared with the regular and permanent staff for any or all purposes including claim for parity.

In view of the above settled position of law, we do not find any error in the order passed by the learned single Judge. The special appeal fails and is hereby dismissed.

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