

Raj Kumar Acharaya Vs. State and Ors

Raj Kumar Acharaya Vs. State and Ors

SooperKanoon Citation : sooperkanoon.com/65062

Court : Rajasthan Jodhpur

Decided On : Aug-28-2015

Appellant : Raj Kumar Acharaya

Respondent : State and Ors

Judgement :

1 S.B.Civil Writ Petition No.9344/2015 Date of Order : 28.08.2015 HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS Mr.Gopal Acharya, for the petitioner.

Mr.Rajesh Panwar, Addl.

Advocate General for respondents.

Mr.Rajesh Panwar, learned Addl.

Advocate General is directed to accept notice on behalf of the respondents.

Learned counsel for the petitioner has relied upon the judgment of this Court in SBCWP No.4663/2012 (Ishwar Singh & ORS.versus State of Rajasthan & Ors.).decided on 12.3.2015 whereby the Coordinate Bench of this Court passed the following order :- In view of the above, no direction to either regularize the services of the petitioners or grant of regular appointment can be issued.

However, the petitioners working in the Home Guard Department shall be granted salary at the minimum of the pay prescribed for the post of Constable in the Police

Department without any running pay scale, allowance etc.and the said benefit shall be extended to the petitioners w.e.f.01.03.2015.

The petitioners would be paid the aforesaid amount with revision of basic pay, if any, in the corresponding police department from time to time.

Appropriate order to the said effect will be passed within one month.

.

2 After perusing the above adjudication made by Coordinate Bench of this Court, I cannot loose sight of the fact that recently upon the identical issue, the Hon'ble Supreme Court in case of Jiban Krishna Mondal & ORS.versus State of West Bengal & Ors., reported in 2015 LAB.

I.C.Page 2438 has held in para No.19 and 20 as follows:- 19.

A Careful perusal of genesis of Home Guards and its role will show that the Organization was always meant to be voluntary and it consisted of people from all walks of life.

In fact Government servants were also enrolled in the Home Guards to be called as and when the need arises.

A large number of State enactments i.e.Andhra Pradesh Home Guards Act, 1948, Bombay Home Guards Act, 1947, Assam Home Guards Act, 1947, Manipur Home Guards Act, 1966, Madhya Pradesh Home Guards Act, 1947, Punjab Home Guard Act, 1947, Rajasthan Home Guards Act, 1963 etc.placed before this Court in compilation by learned Attorney General during the hearing makes it clear that the provisions of all these enactments are more or less similar.

The voluntary nature is a basic feature of the Home Guards.

20.

Majority of the appellants has attained the maximum age and are no more members of the Home Guards.

The appointment letters enclosed by the remaining category of appellants, do not suggest that they are performing duty all over the year like any Government servant.

There is nothing on the record to suggest the master-servant relationship.

They were appointed pursuant to Home Guard Rules, 1962 and it is made clear that their services are voluntary and will not get any pay but the duty allowance as may be fixed by the State Government from time to time.

In that view of the matter, we hold that the appellants are not entitled for regularization of service.

Further, in absence of any comparison of duties, responsibilities, accountability and status, they may not be equated with the Police Constables or personnel to claim parity with the pay or scale of pay as provided to the Police personnel.

The High Court by the impugned judgment and orders rightly refused to grant regularization of their services.

We find no merit in these appeals and they are accordingly dismissed.

.

Further, the Constitution Bench of Hon'ble Supreme Court in case of Secretary, State of Karnataka versus Uma Devi & Ors., reported in 2006 (4) SCC p.1 held that back door entry are not permissible and employees employed on daily wages cannot be extended to claim the equal treatment with those who were regularly employed.

Para 48 of the aforesaid judgment is as follows :- 48 It was then contended that the 4 rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated.

It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries

for doing similar work.

The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them.

There is no case that the wage agreed upon was not being paid.

Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules.

No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work.

There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.

As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution.

The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed.

That would be treating unequals as equals.

It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

In view of above, prima facie, I am of the opinion that in view of both the adjudications made by Hon'ble Supreme Court, this writ petition cannot be disposed of in terms of the judgment in case of Ishwar Singh (supra). However, learned counsel for the petitioner is seeking sometime to argue this matter.

He is permitted to do so.

List this matter on 03.09.2015.

A copy of this order may be supplied to Mr. Rajesh Panwar, learned Addl.

Advocate General.

[GOPAL KRISHAN VYAS]., J.

arun

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