
(2012) 04 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2349 of 2008

Anand Prakash Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Citation : (2012) 7 ADJ 67

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : S. Chandra, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Ritu Raj Awasthi, J.—Heard Pt. S. Chandra, Learned Counsel for petitioner as well as Mr. Ajay Shukla, learned Standing Counsel and perused the record. The writ petition has been filed challenging the order dated 3rd of April, 2008 whereby the claim of petitioner for regularization has been rejected on the ground that no appointment letter was issued to the petitioner, petitioner has not completed 240 days in a calendar year during the period 1991 to 1998 as such he does not come within the purview of Uttar Pradesh Regularization of Daily Wages Appointment of Group C Posts (Outside the purview of the U.P. Public Service Commission) Rules, 1998 (hereinafter referred to as the "Rules") and sanctioned post of typist is not available in the department.

2. Learned Counsel for petitioner submits that the petitioner was appointed on daily wages on 1.6.1989 and since then he has been working. However, in the year 1992, service of petitioner was orally terminated w.e.f. 1.1.1992 against which the petitioner had filed Writ Petition No. 129 (S/S) of 1992, wherein by interim order dated 8.1.1992, the oral termination of petitioner was stayed and in compliance of the same, petitioner was reinstated into service w.e.f. 13.1.1992. Thereafter, the petitioner has been working continuously as Typist cum-Clerk in the office of opposite party No. 5 and he is still working on the said

post on daily wages till today.

3. It is informed by Learned Counsel for petitioner that the petitioner is getting minimum of regular pay-scale in compliance of Court's order 6.10.2005 passed in Writ Petition No. 129 (S/S) of 1992. After the post of Typist-cum-Clerk got vacant, name of the petitioner was recommended by letter dated 7.7.2003 by opposite party No. 5 for regularization, however, he was not considered. It was in compliance of the Court's order dated 6.10.2005 passed in Writ Petition No. 129 (S/S) of 1992 that the case of petitioner for regularization was considered, however, by the impugned order 3.4.2008 in most arbitrary and illegal manner, regularization has been refused to the petitioner.

4. The contention of Learned Counsel for petitioner is that under the Rules, there is no requirement that a person must complete 240 days in each calendar year during the period he has worked on daily wages. The petitioner is fully covered under the said Rules as he was appointed prior to cut off date i.e. 25th June, 1991 and has been working on daily wages at the time of coming into force of the said Rules i.e. on 9.7.1998 and he is still working till today.

5. It is further submitted that it is wrong to say that no appointment letter was issued to the petitioner as the working on daily wages of the petitioner in the department has not been denied.

6. It is further contended that under the Government Order dated 8th September, 2010, the State Government has taken a policy decision to regularize all those daily wages employees working in different Departments/Public Undertakings/Corporations, etc who are engaged prior to 29th June, 1991 and they are still working. Their regularization is to be done by creating supernumerary post as such it cannot be said that the post is not available in the department.

7. In support of his submission Learned Counsel for petitioner has placed reliance upon a judgment of the Court in the case of Janardan Yadav v. State of U.P., 2008 (1) ADJ 60, wherein the Court has held that for the purpose of regularization of daily wages employees, the only requirement under Rule 4 (1) is that the incumbent should have been appointed directly on daily wages before 29th June, 1991 and continuing on the date of coming into force of the said Rules. It is nowhere required that the incumbent must have worked throughout from the date of initial engagement till the date of commencement of the Rules.

8. It is also submitted that the U.P. Regularization of Daily Wages Appointment on Group "D" Posts Rules, 2001 are pari materia one and the same as the Uttar Pradesh Regularization of Daily Wages Appointment of Group C Posts (Outside the purview of the U.P. Public Service Commission) Rules, 1998 are concerned.

9. Learned Standing Counsel on the other hand submitted that the petitioner has no right to claim regularization on a class III post as no post of Typist was sanctioned in the office of Opposite Party No 5. The petitioner was working on

daily wages as Typist-cum-Clerk as such he could not have been regularized on the post of Typist.

10. It is further submitted that no appointment letter was issued to the petitioner at the time of his engagement on daily wages as such he cannot claim that he has been working since his initial engagement in the year 1989.

11. I have considered the submissions made by the parties' counsel.

12. It is nowhere denied that the petitioner has not been working since his initial engagement on daily wages w.e.f. 1.6.1989. It is also not denied that the petitioner was reinstated into service w.e.f. 13.1.1992 in compliance of interim order passed in Writ Petition No. 129 (S/S) of 1992 as such it can easily be concluded that the petitioner has been working on daily wages against a class III post in the office of opposite party No. 5.

13. So far as the contention of opposite parties that since the petitioner had not completed 240 days of work in a calendar year during the period 29.6.1991 till 9.7.1998 as such he was not covered under the Rules is concerned, suffice is to record that there is no such requirement under Rule 4 (1) of the Rules which relates to regularization of daily wages appointment on Group "C" post. The said rule is *pari materia* the same as Rule 4 (1) of U.P. Regularization of Daily Wages Appointment on Group "D" Posts Rules, 2001. The import of the rules 2001 was considered by the Court in the case of Janardan Yadav (*supra*) wherein it has been held that the only requirement under the said Rules is that the incumbent must have been appointed directly on daily wages before 29.6.1991 and continuing on the date of commencement of the Rules. It is nowhere required that the incumbent must have worked throughout from the date of initial engagement till the commencement of Rules.

14. Relevant paragraphs 5 and 8 are reproduced as under:

5. Since the facts are not in dispute and it is also not disputed that the petitioner was engaged on daily wage basis in 1984, i.e., before 29.6.1991 and was also working on the date of commencement of Rules 2001, i.e. on 21.12.2001, thus it is evident that he was entitled to be considered for regularization under the said Rules. The only question up for consideration is whether the said Rules require continuous service throughout, i.e., from the date of initial engagement till the commencement of the Rules. In my view, there is no such requirement under the Rules as is apparent from perusal thereof. Rule 4(1) of Rules 2001 is reproduced as under:

4. Regularization 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.

8. The said stand is contrary to the Rules and it amounts to reading certain words in Rule 4(1) which is not provided therein by the Rule framing authority. The rule framing authority has not framed the aforesaid Rules in manner as are being read by the respondents. Since the Rules are applicable only to daily wage employees, the Rules framing authority was aware that such employee could not have worked continuously throughout and, therefore, has clearly provided that the engagement must be before 29.6.1991 and he is continuing as such on the date of commencement of the Rules. If a daily wage engagement has been made before 29.6.2001 and was continuing on 21.12.2001, meaning thereby the daily wage engagement remained necessity of the department or the requirement thereof for more than 10 years, for such a person only, the benefit of regularization under 2001 Rules has been provided, and it nowhere requires further that the incumbent must have worked continuously from the date of initial engagement till the commencement of these Rules and to read these words would amount to legislation, which is not permissible in law. While interpreting the statute, it is well settled that neither any word shall be added nor be subtracted but if a plain reading of the statute is clear and unambiguous, the same has to be followed as such. this Court does not find any ambiguity in Rule- 4(1) providing as to which kind of persons would be entitled for regularization and it nowhere requires that the incumbent must have worked throughout from the date of initial engagement till the date of commencement of the Rules.

15. So far as the question of non availability of post is concerned, it is to be noted that under the Government Order dated 8th September, 2010, the State Government has taken a decision to regularize all daily wages employees working in various Government Departments/Public Undertakings/Corporations who were engaged prior to 29th June, 1991 and are still working. It includes even work charged employees. The said decision of the State Government is to the effect that in case the required posts for regularization are not available, the same shall be created. The Government Order dated 8th September, 2010 has been produced before the Court during the argument. The contents of the said Government Order has not been disputed by the State Counsel. As such, regularization of the petitioner cannot be refused on the ground of non availability of sanctioned post.

16. So far as non issuance of appointment letter to the petitioner is concerned, it is to be noted that non issuance of appointment letter in no manner can debar

the petitioner from regularization as it is the admitted position that the petitioner is working on daily wages.

17. In this view of the matter, I am of the considered opinion that the impugned order dated 3.4.2008 refusing regularization to the petitioner is not sustainable, it is accordingly quashed. The writ petition is allowed with a direction to the opposite party Nos. 4 and 5 to consider the petitioner for regularization in accordance with law, in case the petitioner is working at present on daily wages and pass appropriate orders in this regard, expeditiously, say within a period of four months from the date of receipt of a certified copy of this order.