
(2010) 01 AHC CK 0128
In the Allahabad High Court

Anjani Kumar Dubey and Others	Vs	APPELLANT
High Court Allahabad and Others		RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2010) 2 AWC 1482

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The petitioners are claiming continuance in service as Class IV employees in the District Judgeship of Agra. The petitioner No. 6 claims continuance as a driver. The petitioners have given their dates of appointment as follows:

Sl. Name Date of appointment No. 1. Anjani Kumar Dubey 14.7.1998

2. Awadhesh Kumar 14.7.1998

3. Jitendra Kumar Singh 13.11.1998

4. Vikas Chandra 12.10.2000

5. Syed Tanveer Mehndi 17.10.2000

6. Ghanshyam Lawaniya 1.5.2001

7. Layak Singh 27.6.2001

2. The contention raised is that they are entitled for regularisation under the U.P. Regularisation of Adhoc Appointments (On Posts Within the Purview of the Public Service Commission)(Third Amendment)Rules ,2001. The said rules are contained in Annexure 4 to the writ petition.

3. Sri K.N. Misra learned Counsel for the petitioners contends that the order

passed by the learned District Judge which is Annexure 1 to the writ petition refuses to re-appoint the petitioners on the communication of Hon''ble the Administrative Judge, Agra and the same is sought to be challenged on the ground that their continuance cannot be interrupted except otherwise than in accordance with law.

4. Sri Misra has further informed the Court that another letter has emanated from the High Court dated 26.11.2009 whereby such appointments have been ceased only in cases of such employees who have been appointed after 21.12.2001. Sri Misra contends that the petitioners are not covered under the said order of the High Court as they have been appointed prior to 2001. The said letter was issued under the orders of the High Court. Sri Misra contends that even otherwise on equity all the petitioners have continued for the past more than 10 years and secondly their continuance and claim for regularisation under the aforesaid Rules deserves to be assessed, therefore, there is no occasion to cease their appointments. It is further submitted that some of the petitioners have become over age and therefore the services of the petitioners cannot be dispensed with on the telephonic instructions of the Administrative Judge.

5. In response to the aforesaid submissions, Sri Amit Sthalekar learned Counsel for the High Court contends that such an issue was raised in the case of Veer Pal Singh v. State Writ Petition No. 64404 of 2009 decided on 27.11.2009 of the district judgeship of Jyotiba Phule Nagar where also after considering similar issues the writ petition was dismissed on the ground that no vested right accrues in favour of the petitioner therein as he was continuing on the basis of an illegal appointment. It is however relevant to point out that the said decision was in relation to an employee who had been appointed after the cut off date i.e. 21.11.2001 as mentioned in the letter of the Registrar General.

6. Sri Sthalekar has further produced the entire records relating to the report in respect of the appointment of the petitioners. A note was put up before the Hon''ble Administrative Judge on the basis of the office report dated 14.9.2009 for extension and re-appointment of the petitioners on adhoc basis as class IV employees. The Hon''ble Administrative Judge directed the matter to be placed before Hon''ble the Chief Justice vide order dated 17.9.2009 which is quoted below:

Registrar General

With the office report dated 14.9.2009 present file in question, which relates to extension of adhoc appointment of seven Class IV employees in the Judgeship of Agra, has come up.

Record in question reflects that in the Judgeship of Agra seven Class IV employees are working namely s/Sri Ghanshyam Lavania, Vikas Chandra Awadhesh Kumar, Tanveer Mehndi, Jitendra Kumar, Anjani Kumar Dubey and Layak Singh. Record in question further reflects that all these seven incumbents have proceeded to move applications addressed to District Judge, Agra at

different point of time mentioning therein that from reliable sources they came to know that appointments are going to be made, as such they are moving applications and their claim be also considered and thereafter after taking report from Nazarat appointments have been made. Fact of the matter is that said appointments have been made without undertaking any regular process of selection or any process of selection worth the name, all these appointments in plain and simple words can be termed to be as back door entries.

Recruitment of Class IV employees is governed by U.P. Sub Ordinate Civil Court Inferior Establishment Rules, 1965 which in itself does not provide for adhoc appointment to be made and here adhoc appointments have been made and said adhoc appointments have been made to continue for long period. On 8.8.2008, Administrative Judge, Agra asked for sanctioned strength of Class III and Class IV employees and further asked not to make any appointment either on Class III posts or Class IV posts. After said directives were given then a letter was sent by District Judge, Agra on 31.8.2009 giving therein reference of all these seven incumbents whose term was to expire on 31.8.2009 contending therein that their period may be extended for another three months. Administrative Judge, Agra, on 10.9.2008 passed following orders:

The District Judge, Agra was issued direction by me on 8.8.2008 not to make any appointment.

The District Judge has reported that there are 7 employees namely S/Sri Ghanshyam Lavania, Vikas Chandra Awadhesh Kumar Tanveer Mehndi, Jitendra Kumar, Anjani Kumar Dubey and Layak Singh working in the judgeship on Class IV posts on adhoc basis for last many years. The details have been given in the report of Sri B.M. Sinha, Officer Incharge Nazarat/Addl. District Judge, Court No. 8, Agra. The District Judge requested me to inform that their terms are being extended every three months. Since the term of three employees was going to expire earlier, he was allowed to extend the term on adhoc basis. In order to avoid any break in service, I had allowed to extend the term for three months on adhoc basis.

Since these employees are working for several years, the District Judge may be asked to submit proposal for their regularisation in accordance with the U.P. Regularization of Daily Wages Appointments on Group "D" Posts Rules 2001. The rules provide for constitution of Selection Committee of those employees who are working on daily wages on adhoc basis between the cut of dates provided in the rules and for drawing list for their regular appointment on the substantive vacancy following the rules of reservation. The rules also provide, that those daily wages employees who are not eligible for regular appointment shall not be allowed to continue.

After said order was passed by Administrative Judge, a Selection Committee was constituted by District Judge, Agra to consider the matter of regularisation and Selection Committee has given report that none of all these seven incumbents

are entitled to be regularised as their claim is not at all covered either under Uttar Pradesh Regularization of Daily Wagers Appointments on Group "D" Posts Rules 2001 or under U.P. Regularization of Adhoc Appointment (Post outside the purview of the Public Service Commission), Rules, 1979 as amended on 20.12.2001.

Claim of all these seven applicants has been considered and has not found acceptable for the purposes of extending regularisation and as per order dated 10.9.2009 daily wages employees who are not found eligible for regular appointment shall not be allowed to continue. Regular process of selection in spite of existence of vacancy has not been under taken, the question is that after regularisation has been refused can even then said seven applicants can be continued in the establishment.

After letter dated 1.9.2009 has been sent for extension of tenure of these seven incumbents which has come to an end on 31.8.2009, another letter has been sent by District Judge, Agra dated 16.9.2009 giving therein details and reference of letter dated 9.9.2009 of Registrar (Budget) wherein letter sent by Principal Accountant General (Civil Audit) U.P. Allahabad has been referred to, which proceeds to mention that payments made to these incumbents is irregular, and these appointments are irregular.

In reference of employees who have been working in Fast Track Courts under the orders of Hon"ble the Chief Justice Committee has been constituted of Hon"ble Mr. Justice Arun Tandon and Hon"ble Mr. Justice Sudhir Agarwal to consider the matter of regularization of employees bereft of existing Rules. Applicants in the present case,, it is true have been appointed without following any process, can their claim be considered for absorption/adjustment and continuance in the fact of the case specially when they are Class IV employee, and have been permitted to continue for long and regular process of selection has not yet been held.

Office has clearly made note that even in the past as a practice qua Class IV employees to be appointed on adhoc basis same was done after taking permission of Hon"ble the Chief Justice, and here, no such permission has ever been accorded in this regard by the Chief Justice.

Let entire papers be placed before Hon"ble the Chief ,Justice so that requisite orders are passed which may be in the nature of policy decision in the matter of recruitment or Class IV employees in Inferior Establishment dealing with the situation like one in hand.

Sd. Administrative Judge, Agra 17.9.2009

7. Hon"ble the Chief Justice was pleased to constitute a Committee of two Hon"ble Judges requesting them to submit a report in respect of the petitioners as well as the Committee was already considering the extention of benefit of regularisation to employees who have been working in Fast Track Courts. The said Committee submitted an interim report on 14.10.2009 which was approved

by Hon''ble the Chief Justice on 3.11.2009. Upon the approval of the said report the Registrar General issued orders on 5.11.2009 seeking information in this regard.

8. The Joint Registrar (Inspection) submitted a report dated 9.11.2009 after referring to the letter dated 5.11.2009. The letter dated 5.11.2009 is being quoted below for ready reference:

I have been directed to inform you on the above subject that the Hon''ble High Court has been pleased to direct that in order to restore back the procedure for appointment of Class III and Class IV employees in your Judgeship all such adhoc /daily wages appointees who have so appointed subsequent to 31st of December 2001 (cut of date under the provisions of Uttar Pradesh Regularisation of Daily Wages Appointments on Group "D" Posts Rules, 2001) without following any procedure known to law, must be ceased to work immediately and to submit its compliance report immediately.

The Hon''ble Court has further required you to submit details of the existing vacancies along with reservation applicable and to initiate henceforth the procedure prescribed by law for filling up of all these vacancies and to complete within two months. You are further directed to make no further adhoc/daily wage/tenure appointment.

You are therefore communicated to make necessary compliance as above and submit report immediately.

9. The Joint Registrar (Inspection) has further indicated in his report that the Accountant General (Civil Audit) had found that the payment to the petitioners was irregularly made. The part of the report in relation to the petitioner is being quoted below:

As per letter D.O. No. 99/PA/DJ/2009, dated September 16,2009 of District Judge, Agra addressed to Sri Sita Ram Yadav, Private Secretary to Hon''ble Mr. Justice V.K. Shukla, the Administrative Judge, Agra, a letter No. 3056/Admin.(B-VI) Section, dated 9.9.2009 was received to District Judge, Agra from the Registrar (Budget) of this Hon''ble Court mentioning therein that the Principal Accountant General (Civil Audit), U.P., Allahabad had found that the payment of salary of Rs. 19.08 Lacs was made irregularly to 7 adhoc appointees. The District Judge had requested to place the letter before Hon''ble the Administrative Judge, Agra. Services of 7 adhoc employees in his Judgeship were extended by the District Judges of Agra Judgeship after every three months. These seven employees were not employed in Fast Track Courts and in this issue the matter of employees of Fast Track Court was not involved because the Hon''ble Committee is yet to consider the matter of absorption of employees of Fast track Courts in the regular strength of the subordinate courts and the matter is still under consideration of the Hon''ble Committee.

10. Thereafter, the Registrar General has further issued a clarification on

26.11.2009 which is to the following effect:

With reference to your letter No. 2880/1 dated 12.11.2009 on the above subject, I have been directed to inform you that cut of date 21.12.2001 is mentioned with reference to the date of enforcement of Group "D" Regularization Rules. The date is tentative and the Committee shall pass final orders qua appointees on Class III and IV posts (without advertisement) after collection of entire facts. All appointees of Class III and IV posts who have been appointed after 21.11.2001 without advertisement and without following the prescribed rules must be ceased immediately and no Committee is to be constituted and you must yourself take decision after examination of records.

I am therefore to request you kindly to comply with the aforesaid directions given by the Court and send your report immediately.

11. A perusal of all these documents and records which are on record of the High Court on the administrative side, it is evident that the appointment of the petitioners was made without undertaking any regular process of selection nor is there any merit in the writ petition to demonstrate the same. The Regularisation Rules therefore would not be attracted in the case of the petitioners where the very appointment of the petitioners has not been made in accordance with the procedure prescribed under the rules. As a matter of fact Hon"ble the Administrative Judge has taken notice of the fact that there is no provision for adhoc appointments under the U.P. Subordinate Civil Court Inferior Establishment, Rules, 1965.

12. The appointment of the petitioners was clearly through the back-door and therefore they cannot claim retention in service as a matter of right nor do they have any claim for regularisation under the existing rules. The contention raised in the writ petition that there are some other employees who continue in some other districts cannot enure any benefit to the petitioners inasmuch as any illegality being perpetuated in any district cannot be a ground to entertain the claim of the petitioners and protection of Article 14 of the Constitution of India.

13. The contention of the petitioners that they have been appointed by the District Judge on adhoc basis cannot be accepted inasmuch as the District Judge cannot exercise a discretion bereft of any procedure conforming to Articles 14 and 16 of the Constitution of India. There is nothing on record to indicate that any reasonable procedure was employed for appointing the petitioners and as such the claim of the petitioners cannot be accepted. This aspect had been dealt with in the judgment of the learned Single Judge in the case of Veer Pal Singh (supra) decided on 27.11.2009. Apart from this, the Supreme Court in the case of State of Bihar Vs. Upendra Narayan Singh and Others, has held" that any regular appointment made on a post under the State or Union without issuing advertisement, inviting applications from eligible candidates and without holding a proper selection where all eligible persons get a fair chance to compete is in violation of guarantee enshrined under Article 226 of the Constitution. Ad hoc/

temporary/daily wage employees are not entitled to claim regularisation in service as a matter of right. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order.

14. Further the following passages of the Supreme Court in the case of Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another, the Court in para 11 and 12 said as under:

11. There cannot be any doubt whatsoever that keeping in view the equal protection clause contained in Articles 14 of the Constitution of India as also Article 16 thereof, all the employees should be treated equally. Equality clause however, must be enforced in legality and not illegality.

12. There cannot furthermore be any doubt that Article 14 is a positive concept. The Constitution does not envisage enforcement of the equality clause where a person has got an undue benefit by reason of an illegal act.

15. The fact that some other employees in other districts are continuing will not attract the equality clause in view of the clear law laid down by the Supreme Court quoted herein above.

16. The contention that the petitioners were appointed prior to 21.12.2001 would also not make any difference inasmuch as the said date is in reference to the claim of regularisation. As already noticed above the appointment has to be made in accordance with the procedure prescribed in law and then only can a claim of regularisation be considered.

17. Accordingly, I am of the opinion that even if the petitioners are appointed prior to 21.11.2001 it would not make any difference so far as the status of the petitioners is concerned. Admittedly the petitioners are appointed without following any procedure prescribed in law and therefore, they cannot be a possible claim of regularisation under the existing rules.

18. In view of the law aforesaid and the conclusion drawn herein above, no case is made out in favour of the petitioners.

19. The writ petition lacks merit and is accordingly dismissed.

20. It is, however, made clear that in view of the recommendations made by the Hon"ble Administrative Judge, in the event any benefits are extended to such adhoc employees on the administrative side, then the dismissal of this writ petition shall not be an impediment for the availability of such benefits if any.