

(2001) 03 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 44986 of 1998

Arvind Kumar Rai and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Constitution of India, 1950 — Article 309

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 10, 4

Citation : (2001) 2 AWC 1324 : (2001) AWC 1324 : (2001) 90 FLR 111 : (2001) 2 UPLBEC 1448

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

Sudhir Narain, J.—Petitioner Nos. 1 to 9 are seeking regularization of their services on the posts of Junior Engineers (Civil) while petitioner No. 10 is seeking regularization of his services on the post of Junior Engineer (Mechanical). Besides this the petitioners are seeking the quashing of the selection proceedings undertaken by the U. P. Public Service Commission, Allahabad for these posts.

2. The petitioners allege that they are working as Junior Engineers in the Irrigation Department of the State of U. P. on daily wages under the respondent at least for the last about ten years. The details as regards the dates since when they started working are given below :

Name

Dates of starting work

Departments

1.

Arvind Kumar Rai

18.3.1989

Flood Works Division. Allahabad

2.

Avdhesh Narain

1.3.1990

-do-

3.

Mahanarain Kushwaha

1.1.1991

Bagla Canal Division, Allahabad

4.

Vijai Kumar Arora

1.1.1984

Irrigation Division. Rudrapur

5.

Jagat Singh Vishi

16.8.1986

Kosi Nlrman Khand-2,Ramnagar

6.

Anil Kumar Singh

1.11.1987

Musa Khand Bandh Prakhand. Varanasi

7.

Hari Shanker Pandey

20.9.1989

? do?

8.

Raghvendra Kaushik

1.11.1987

Upari Ganga Nahar, Aligarh

9.

Prakash Pandey

1.11.1985

Tarai Sichai Khand. Nainital

10

Lalji Pandey

1.1.1990

Flood Works Division. Allahabad

3. The State Government has framed various rules in regard to regularization of Class III posts. They are as under :

(i) The Uttar Pradesh Regularization of Ad hoc Appointments (On Posts Within the Purview of Public Service Commission) Rules, 1979,

(ii) The Uttar Pradesh Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979,

(iii) The U. P. Regularization of Daily Wages Appointments on Group-C Posts (Outside the Purview of U.P.P.S. Commission) Rules, 1998.

4. The posts of Junior Engineers (Civil) and (Mechanical) come within the purview of Public Service Commission. A person who is selected by the Public Service Commission is entitled for appointment to the post of Junior Engineer. The contention of the petitioners is that the post of Junior Engineer in the Irrigation Department was a post which was excluded from the purview of U. P. Public Service Commission by Notification dated 25.11.1989 and the same was within the purview of U. P. Subordinate Services Selection Commission Act, 1998. The U. P. Subordinate Services Selection Commission Act, 1998 has been repealed by the U- P. Subordinate Services Selection Commission (Repeal) Act. 1998.

5. Those petitioners who are covered by the U. P. Regularization of Ad hoc Appointments (On Posts Within the Purview of Public Service Commission) Rules, 1979 (in short 1979 Rules) can be considered for regularization of appointments under Rule 4 which reads as under :

"4. Regularization of ad hoc appointments.--(1) Any person who :

(i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service, as such, on the date of commencement of these rules ;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment : and

(iii) has completed or, as the case may be, after he has completed three years

continuous service ; and shall be considered for regular appointment in permanent or temporary vacancy as may be available 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 appointment under these rules, reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories, shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1), the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority as determined, from the date of order of appointment and if two or more persons are 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 their character rolls and such other records, pertaining to them, as may be considered necessary to judge 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).

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority."

6. Rule 10, however, was added to 1979 Rules by Notification dated 7.8.1989 providing that these rules shall apply *mutatis mutandis* also to any person directly appointed on ad hoc basis on or before October 1, 1986 and continuing in service as such, on the date of commencement of the U. P. Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission (Second Amendment) Rules. 1989.

7. The question, however, remains as to whether the petitioners who are working on daily wages can be treated to have been appointed on ad hoc basis. A person who is appointed on daily wages cannot normally be treated to have been appointed on ad hoc basis. Rule 4 has, however, is to be interpreted in the context and nature of the appointment and the work on which a person is employed.

8. According to the Webster's Encyclopedic Unabridged Dictionary of English Language "ad hoc" means "for this (special purpose) ; with respect to this (subject or thing)."

9. According to Words and Phrases (Permanent Edition) Volume 2 "ad hoc" means "The word "spread" as used in relation to the appointment of special

curator, has very much the same meaning as the words "ad hoc", which is the original while special is the translation.

10. According to Law Lexicon by P. Ramanath Aiyar "ad hoc" means "for particular purpose made, established, acting or concerned with a particular and or purpose."

11. The Supreme Court in the case of Khagesh Kumar and others Vs. Inspector General of Registration and others, has applied the 1979 Regularization Rules for regularizing the services of daily wages employees of the Registration Department of the State. This decision was followed in Ajai Kumar Misra and Others Vs. Secretary of Institutional Finance, U.P. Shasan and Others, wherein it has been held that the Registration Clerk appointed on or before 1.10.1986 on dally wages, in view of the sanction given by the Government for such post, would be deemed to be taken ad hoc employees within the meaning of Rule 4 of the U. P. Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979.

12. Petitioner Nos. 4. 5 and 9 who are claiming to have been working since prior to 1.10.1986, can be considered for regularization under the 1979 Rules referred to above. The respondent No. 1 shall consider them for regularization within two months from the date of production of a certified copy of this order.

13. As regards other petitioners, since they are working on daily wages after 1.10.1986 they are not covered by the 1979 Rules.

14. Shri Ashok Khare, learned counsel for the petitioners, submitted that the cut off date mentioned under Rule 10 of the 1979 Rules is arbitrary. He has referred to the U. P. Regularization of Daily Wages Appointment on Group-C Post (Outside the Purview of Public Service Commission) Rules, 1998 whereunder the daily wages employees appointed on or before 29.6.1991 are entitled to be regularized. A person cannot claim parity in respect of regularization relying upon the provisions of Rules, which are not applicable in the case of the petitioners. It is for the State Government to consider as to whether an employee is to be regularized or not under the Rules framed by it.

15. The next contention of the learned counsel for the petitioners is that if the petitioners are not entitled to be regularized under 1979 Rules, then they will be entitled to be regularized under the general principles of reasonableness and fair play. He has referred to the decision rendered in Arun Kumar Rout and Others Vs. State of Bihar and Others, , wherein the Hon"ble Supreme Court held that it after appointments, the services were terminated on the ground that initial appointments were irregular, unless it is shown that the employees concerned had committed fraud, they should be regularized taking sympathetic consideration. In Urmila Devi and others u. State of Bihar and others. 1999 SCO (L S) 642, it has been held by the Hon"ble. Supreme Court that the persons working on daily wages basis in the State of Bihar for a long period may be considered for regularizatton in absence of statutory right of regularization.

These cases have no application to the facts of the present case.

16. One view is that the posts are to be filled in accordance with the rules for appointment to the posts and a person cannot be brought in regular service merely because he was given employment on daily wages for one reason or the other. If the person who was given appointment on daily wages or on ad hoc basis, is entitled to participate in the selection for the posts but if he keeps himself out from the selection process, he cannot turn up and say to regularize his services merely because he had worked on daily wages. The other view is that the persons who are working for a long period should not be thrown out, rather they should be regularised in service.

17. In *State of Himachal Pradesh v. Suresh Kumar Verma and another*, 1996 (2) SLR 321 (SC)), it was held that the appointment is to be made in accordance with the rules and the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules. The Court observed that the appointment of persons on daily wages cannot be a conduit pipe for regular appointments which would be a backdoor entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption.

18. In *Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others*, , the appellant claimed regularization on the ground that she had worked on a permanent post for about nine years but her contention was repelled on the ground that the recruitment was to be made in accordance with the rules and a person appointed temporarily was not entitled for regularization. The claim of the appellant for regularization was also rejected on the ground that the post was within the purview of the Public Service Commission and the Temporary Government Service Regularization Rules issued by the Government in 1975 could not be made applicable in the larger interest to such persons who are not covered by the Rules. The Court referred to the observations made in the decision rendered in *Dr M.A. Haque and Others Vs. Union of India (UOI) and Others*, as follows :

"..... we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by passing of the Public Service Commission are permitted, it will open a backdoor for Illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularization of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitment. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidate dictated by various considerations are being recruited as a matter of course."

19. A person, who is appointed on daily wages cannot claim a better position

from those persons, who were appointed on ad hoc or on temporary basis. If a person appointed on temporary basis cannot be regularized in service under the regularization rules, a person working on daily wages can also not be regularized unless there is any rule for regularization of his services.

20. It is, however, made clear that if the Government frames any scheme for regularization in respect of Junior Engineers, the petitioners other than petitioner Nos. 4, 5 and 9 may be considered for regularization under the said scheme.

21. The petitioners have challenged the selection process undertaken by the U. P. Public Service Commission, Allahabad for the post of Junior Engineers in pursuance of the Advertisement No. 3/98-99 on the ground that unless they are regularized, no further appointments be made. The selection has already taken place and the appointments have also been made. It is made clear that if petitioner Nos. 4, 5 and 9 are regularized in service, they shall be absorbed on the substantive posts, which were notified by advertisement No. 3/98-99.

22. The writ petition is disposed of with the above observations.