
(2012) 03 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 253 (S/S) of 2012

Ashok Kumar Mishra

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 4 AWC 4131

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ramesh Pandey and Neetesh Kumar, for the Appellant;

Judgement

Sudhir Agarwal, J.—Heard Sri. Ramesh Pandey, learned counsel for the petitioner and perused the record. The writ petition is directed against order dated 6.9.2010, passed by Director Training and Employment, U.P., Lucknow rejecting petitioner's representation claiming regularization under U.P. Regularisation of Ad hoc Appointments (on Posts Outside the Purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as "1979 Rules"), as amended from time to time on the ground that at the time of initial appointment on ad hoc basis, petitioner did not fulfill requisite qualifications for appointment on the post of Maths Instructor.

2. It is not in dispute that for appointment on the post of Maths Instructor, requisite qualification prescribed in the Government Order dated 28.5.1975, which reads as under:

3. The petitioner was appointed as Instructor on 21.1.1981 by order passed by Joint Director, Directorate of Training and Employment, U.P., Lucknow. The appointment letter is Annexure-2 to the writ petition which shows that petitioner was appointed on purely ad hoc and temporary basis liable to be terminated at any point of time. At the time of appointment, he admittedly possess following qualifications; High School (Passed in 1972); Intermediate (Passed in 1979); Diploma in Electrical Engineering (Passed in 1978).

4. As per the requirement, three years experience was lacking when petitioner was so appointed on ad hoc basis. 1979 Rules came into force on 14.5.1979 and permitted regularization of an ad hoc appointee if he fulfils certain conditions prescribed therein. Rule 4 of 1979 Rules (as amended till 20.12.2001) read as under:

Regularization of ad hoc appointment.--(1) Any person who-

(i) was directly appointed on ad hoc basis on or before June 30, 1998 and is continuing in service as such on the date of commencement of the Uttar Pradesh Regularisation of Ad Hoc Appointment (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001.

(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 service shall be considered for regular appointments 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 rules or orders.

5. The cut off date in the aforesaid 1979 Rules was amended from time to time. The petitioner made representation for claiming regularization. It appears that the matter was also considered by Directorate and it required the Principals, Government Industrial Training Institutions at different places to furnish information of such ad hoc appointees. This is evident from Annexure-3 to the writ petition. When no final decision was taken, petitioner approached this Court in Writ Petition No. 8663 (S/S) of 2009 which was disposed of on 27.4.2010 permitting petitioner to make a fresh representation to the Director who was required to take a decision thereon. It is pursuant thereto the impugned order has been passed.

6. Learned counsel for the petitioner submitted that merely for the fact that petitioner did not possess requisite qualification pertaining to experience at the time of his initial appointment, he cannot be denied regularization, inasmuch as, if at the initial stage, i.e., at the time of appointment, petitioner did not possess requisite qualification pertaining to experience, after appointment on the post of Math Instructor he has gained such experience and that ought to have been taken into consideration for regularization. Reliance is placed on Apex Court's decision In Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, and Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, Reliance is also placed on two judgments of this Court in Writ Petition No. 1844 (SS) of 2006, Rakesh Muni Tripathi v. State of U.P. and others, decided on 3.5.2006 and Writ Petition No. 6930 (SS) of 2003, Om Ram Kinkar v. State of U.P., decided on 19.9.2011.

7. In my view, neither of the above authorities would lend any help to the

petitioner nor the petitioner is otherwise entitled for any relief since the order passed by Director, impugned in this writ petition, cannot be said to be erroneous in any manner, legally or otherwise, warranting interference.

8. There are three conditions for attracting the above provision (i) ad hoc appointment before a particular date; The petitioner admittedly fulfil the said condition. (ii) The incumbent must possess requisite qualification prescribed for regular appointment at the time of such ad hoc appointment. Admittedly, this condition is not fulfilled since petitioner did not possess prescribed qualification for regular appointment at the time of ad hoc appointment. The third condition, i.e., completion of three years of service would be attracted only when the above two conditions are fulfilled.

9. It cannot be said that if any of the above conditions is not fulfilled yet a person can be considered for regular appointment under 1979 Rules. When a benefit is sought under a particular statute, the same can be granted only if all the conditions prescribed in statute are fulfilled and not otherwise. It is not permissible to any person to suggest that even if one, two or more conditions are not satisfied though contemplated in the statute yet ignoring that part, benefit under that statute must be conferred. No one can take benefit under statute in piecemeal. Either it applies as a whole or not at all. Moreover, what the petitioner is seeking from this Court to be granted would amount to directing the authorities to give benefit to a person under statute by simultaneously ignoring some part of that statute. Such a direction which would compel the authorities to violate the statutory provisions cannot be issued.

10. It is well-settled that when a benefit is claimed under some provision, the claimant cannot choose or opt under the same statute for adhering to one or two part thereof and to ignore or reject the other part. The entire provision will apply as a whole or not at all. It is not permissible to split a statute providing for something to confer benefit upon an incumbent who otherwise is not squarely covered for claiming such benefit. It is also well established that when a statute required a thing to be done in a particular manner, then it should be done in that manner alone and not otherwise. The principle was recognized in AIR 1936 253 (Privy Council) and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which we do not propose to refer all but would like to refer a few recent one.

11. In Dhananjaya Reddy etc. Vs. State of Karnataka, of the judgment the Court held:

It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all.

12. In Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, it was held:

It is a normal rule of construction that when a statute vests certain power in an

authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

13. The judgments in Anjum M.H. Ghaswala (supra) and Dhananjaya Reddy (supra) laying down the aforesaid principle have been followed in Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others,

14. In Competent Authority Vs. Barangore Jute Factory and Others, it was held:

It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning.

15. In State of Jharkhand and Others Vs. Ambay Cements and Another, in para 26 of the judgment, the Court held:

It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

16. In effect a similar question was considered by Division Bench of this Court [in which I was also a member with Hon'ble S.R. Alam, J., (as His Lordship then was)] in Daya Shankar Singh and Others Vs. State of U.P. and Others, and this Court has observed:

A modification, amendment etc., therefore, is permissible by exercising the power in the like manner and subject to like sanction and conditions in which the main provision was made initially. Since, Staff Regulations were framed admittedly with the previous sanction of the State Government and by publication in the official Gazette, same can be amended only following the same procedure and not otherwise. Therefore, the proposal/resolution passed by the Board of Directors, U.P.S.W.C. by no stretch of imagination can be said to have the effect of either amending Regulation 12 of Staff Regulations or to bind U.P.S.W.C. and its employees to be governed by such resolution/proposal which are inconsistent with the existing provisions contained in Staff Regulations.

17. The judgment of this Court in Rakesh Muni Tripathi (supra) has not at all discussed the requirement provided under Rule 4 of 1979 Rules in order to attract the consideration for regularization thereunder. The judgment therefore, in my view, does not lay down any binding precedent.

18. So far as decision of Apex Court in Bhagwati Prasad and others (supra) is concerned, therein the employees were not claiming benefit under a statutory provision for regularization by simultaneously violating the requirement which constitute condition precedent for that benefit under that statute. Similar was a case in Budhi Nath Chaudhary and others (supra) which also has no application to the present case.

19. In Om Ram Kinkar (supra) the Court has not adjudicated anything but has simply directed the authorities to consider application of Judgment in Rakesh

Muni Tripathi (supra) therein. None of the above authorities in fact have considered the requirement of Rule 4 of 1979 Rules and the question whether statutory requirement, if not fulfilled yet can a mandamus be issued requiring the authorities to give benefit to a person under same statute.

20. If minimum qualification is prescribed yet an appointment has been made ignoring the same, it would be illegal. In *Dr. Bhanu Prasad Panda Vs. The Chancellor, Sambalpur University and Others*, the Court said that eligibility qualification cannot be ignored. The same view was reiterated in *Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others*,

21. In *Mohd. Sartaj and Another Vs. State of U.P. and Others*, , the Court said "It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it." There the candidate lack training qualification on the date of appointment but subsequently acquired it. The Court declined to give any benefit on account of subsequent acquiring of qualification and held the appointment illegal since on the date of appointment, the incumbents lack-requisite qualification of training.

22. Same is the view reiterated in *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, : *Dr. Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, and *Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others*,

23. Moreover, in *Bhagwati Prasad and others (supra)* giving benefits of experience acquired by worker during the course of service, the Apex Court issued direction to consider them for regularisation. These directions have been held overruled by the Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and this has been noticed in *State of Rajasthan and Others Vs. Daya Lal and Others*, where in para 12 of the Judgment the Court said:

The decision relied upon by the High Court namely the decision in *Anshkalin Samaj Kalyan Sangh* of the High Court no doubt directed the State Government to frame a scheme for regularization of part-time cooks and chowkidars. It is clear from the said decision, that such scheme was intended to be an one-time measure. Further said decision was rendered by the High Court prior to *Uma Devi*, relying upon the decision of this Court in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, : *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, and *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, These directions were considered, explained and in fact, overruled by the Constitution Bench in *Uma Devi*. The decision in *Anshkalin Samaj Kalyan Sangh* is no longer good law. At all events, even if there was an one time scheme for regularisation of those who were in service prior to 1.5.1995, there cannot obviously be successive directions for scheme after scheme for regularization of irregular or part-time appointments.

Therefore, the said decision is of no assistance.

24. In view of the above authenticated decision, it cannot be said that petitioner, who does not come within four corners of requirement of Rule 4 of 1979 Rules so as to claim regularisation yet he can be directed to be so considered ignoring the said provision. The Director has rightly considered that petitioner having failed to satisfy requirement of statute is not entitled for regularisation thereunder and this Court find no fault in the impugned order warranting interference. Dismissed.