
(2003) 04 AHC CK 0147

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27517 of 1993

Asta Bhujia Dubey

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Citation : (2003) 04 AHC CK 0147

Hon'ble Judges : R.B.Misra, J

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri V.S. Dwivedi, learned Counsel for the petitioner and Sri Khurshid Alam, holding brief of Sri B.D. Madhyan for Respondent Nos. 3, 4, and 5 and Sri Raj Kumar, learned Standing Counsel for respondent Nos. 1 and 2.

2. In this petition the order dated 28.7.1993 (Annexure15 to the writ petition) has been challenged, whereby the service of the petitioner was dismissed. It appears that the petitioner was initially appointed as Clerk in the Tax department of Municipal Board on 15.6.1982 and was working as daily wager up to 31.8.1982, thereafter the petitioner along with few others was given appointment on adhoc basis which was extended from time to time on the basis of sanction of the post given by the State Government. The Uttar Pradesh Regularisation on adhoc Employees (out side the purview of U.P. Public Service Commission, Rules, 1979 was extended from time to time. According to the petitioner, petitioner and four other coemployees were continuously working and they were not regularised but they were stopped without any written order from attending the work. The petitioner and others filed writ petition and this Court directed on 21.10.87 to represent the State Government. However, the petitioner had made a representation to the Deputy Secretary of the State Government who requested the State Government for sanctioning some posts for absorption of the petitioner and his coemployees., The Deputy Secretary of State Government also wrote on 8.2.88 to Nagar Mahapalika or the ViceChairman of Development Authority for regularisation of the petitioner and his colleagues and

the petitioner was deployed for some times in Gorakhpur Development Authority on daily wage. According to the petitioner a letter dated 12.2.1992 was also written by the ViceChairman of Gorakhpur Development Authority to the State Government for regularisation of the services of the persons in which the name of the petitioner was placed at Serial No. 11. The petitioner was deployed to the Development Authority, Gprakhpur at the relevant time to the post of clerk as a daily wagers and was assigned for receiving the application for allotment of house constructed by the "Authority" while so working, the petitioner had given report in respect of house No. 269 in Shastri Nagar Avasiya Yojna relating to economically weaker sections that same had fallen vacant due to the cancellation of its allotment of one Mohd. Israil but the "Authority" had not taken its possession, therefore, Smt. Bindu Srivastava and Smt. Durgawati Pandey applied for allotment on 29.1.1993 and 25.5.1993 respectively. The petitioner made a report on the application of Smt. Durgawati Pandey that the house is not available as the possession was not taken by the "Authority" and the petitioner had given a report in favour of Smt. Hindu Srivastava then the explanation was sought from the petitioner as to why he had given the report on Durgawati Pandey's application that the possession was not taken, whereas the same was already taken over on 23.5.1993. Keeping in mind this irregularities the petitioner's deployment as a daily wager working as clerk was dispensed with by the impugned order 28.7.1993.

3. According to the petitioner, daily wagers have no right to the post as they are not appointed according to the proper procedure for recruitment as they are appointed by back done entry. The principle of natural justice cannot be said to be infringed in the dispensation of the service of daily wager simply because the daily wager have rendered only 240 in a calendar year (which fact is disputed by the respondent). According to the respondent, daily wager cannot be regularised on the basis of exparte award which did not consider the materials and evidences. The counter affidavit on behalf of Respondent No. 2 daily wager has been filed endeavoring to controvert the contents of the writ petition and further submitted in support of the award.

4. Learned Counsel for the petitioner has placed reliance on the order dated 26.3.1997 in SLP No. 7957 of 1996, Himansu Kumar Vidyarthi and others v. State of Bihar and others, 1997 (76) FLR 230, where the Court has observed that:

"Admittedly, they were not appointed to the posts in accordance with the Rules but were engaged on the basis of need of the work. They are temporary employee working on daily wager. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."

5. Learned Counsel for the petitioner has placed reliance on the order dated 16.12.1992 passed in Writ Petition No. 5582 of 1992, Channey Lal and others v. Director, Malaria Research Centre, New Delhi and another, 1999 (82) FLR 76, where it was held that the provision of Article 311 does not apply in the case of daily wagers they are treated not to hold any civil post admittedly, they are not members of any Civil Services, therefore, workman employed on a daily wage basis in a project does not hold a civil post under the State unless the persons hold a post, there is no question of distinction of temporary or permanent.

6. Learned Counsel for the petitioner has placed reliance on the judgment dated 17.9.1998, passed in Writ Petition No. 108 of 1993, State of UP. v. Labour Court, Haldwani and others, 1999 (81) FLR 319, where in it was held that the engagement of daily wagers in the Irrigation Department comes to an end every evening. Refusal to employ him from a particular day, his disengagement was not under the provision of Section 25F of Industrial Disputes Act. It was observed in Para 6 of the above case as below:

"Employment to Government service in the Irrigation Department is regulated by statutory Rules. Presently, the Respondent No. 2 was not employed in accordance with the Rules. For engaging a person casually on daytoday basis the statutory Rules are not required to be followed under which the posts have to be advertised and only the best from the market have to be picked up keeping in view reservation provided for certain classes. Thus, every eligible persons has an opportunity to participate in the recruitment process. This is not so in the case of daily wagers in whose case even regularisation regarding age, medical fitness, character roll etc. are not observed. Therefore, daily and casual workers who are engaged in disregard of all Rules cannot be allowed to enter Government service through the back door and the Labour Court cannot be allowed to be used as a legal means for such back door entry. The anomalous situation that the impugned award creates can be seen from the fact that till before his alleged retrenchment the Respondent No. 2 was on engagement from day today. The impugned award makes him a permanent employee with the necessary consequence that he would have to be paid salary for all the 365 days as regular employee and the order benefits of regular employment can also not be denied to him. Thus, the award put him, in as much better position that he was before the alleged retrenchment. Such a result is not conceived."

7. Nonrenewal of contractual employment and dispensation of engagement of at any stage without any reason in terms of appointment does not amount retrenchment under Section 2(oo) of Industrial Disputes Act as held by the Supreme Court in (1997) 11 SCC 521, Escorts Ltd. v. Presiding Officer and another. The similar view was also taken by the Supreme Court in (1994) 11 SCC 323, "M. Venugopalv, Divisional Manager. L.I.C..

8. Undisputedly the petitioner was a daily wagers, the daily wagers has no right to the post 1997 (4) SCC 391, Himanshit Kumar Vidyarthi v. State of Bihar and 1993 (1) AWC (172), Bipin Bihari Srivastava v. District Judge. Basti because

appointment is made by not complying or observing the procedural formalities in consonance to any Rules, regulations or by observing the procedures prescribed for the recruitment, the engagement of daily wage commences in the day and comes to an end on evening of every day. This is a contractual deployment for every day. It is up to the employer to allow to continue the employment or disengage at any time the daily wage in absence of work. There is no rule for regularisation and governing the service condition of daily wages. The daily wage has no right or protection under Article 311 of the Constitution of India. AIR 1967 SC 884, State of Assam v. Kanak Chandra Dulla; Jagdev v. State of U.P. 1998 LIC 1088 (AP) Para 16 and 1999 (82) FLR 76 (Paras 8 and 10). Channey Lal v. Director, Malaria Research Centre, New Delhi.

9. Keeping in view the past performance of the daily wage, the employer may dispense with the service of daily wage, however, no protection, statutory or legal right is available to the daily wage. It is not necessary that disciplinary inquiry to be conducted against the daily wage to dispense his service for even any irregularity or if his performance is not found satisfactory. Therefore, I do not find any illegality in the order dated 28.7.1993. Therefore, the Court is not inclined to invoke its extraordinary discretionary jurisdiction under Article 226 of the Constitution. The writ petition is dismissed.