
(2000) 11 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 14012 of 1991

Betu Prasad and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 196 : (2001) 88 FLR 138 : (2001) 1 UPLBEC 475

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Mr. Mool Behari Saxena, for the Appellant;

Final Decision : Allowed

Judgement

A. K. Yog, J.—Betu Prasad, Ram Swarup, Rajju and Smt. Urmila (Petitioner Nos. 1, 2, 3 and 4) approached this Court by filing present writ petition under Article 226 of the Constitution of India praying for a writ of certiorari quashing appointment letters in favour of respondent Nos. 4, 5 and 6 issued by respondent No. 3, Principal, State Ayurvedik College and Hospital Attarra, district Banda (Annexures 6, 7 and 8 to the writ petition) alleging, inter alia, amongst others that petitioner No. 1 was engaged as daily wager in the year 1984-85, petitioner No. 2 on 1.10.1986 and petitioner No. 3 on 8th July, 1981 and Smt. Urmila on 1.7.1982, and they have been working continuously except few artificial breaks and were paid wages. Respondent Nos. 4, 5 and 6 have been appointed subsequently against temporary sanctioned posts without considering the case of the petitioners and hence feeling aggrieved, these petitioners seek regularization of the employment, payment of salary as such and quashing of the appointment orders in favour of respondent Nos. 4, 5 and 6.

2. At the outset, learned counsel for the petitioner stated with reference to paragraph 6 of the counter-affidavit of respondent Nos. 1, 2 and 3 that petitioner No. 3 had died and no relief is required to be given with respect to the deceased petitioner No. 3.

3. It has also been brought to the notice of the Court that service of respondent Nos. 4, 5 and 6 were also determined during the pendency of this petition and they have filed Writ Petition No. 43938 of 1998 which is still pending and that this Court has granted an interim order. By virtue of this interim order, respondent Nos. 4, 5 and 6 (in the present petition] are still working. In view of the above, namely pendency of the Petition No. 43938 of 1998 [filed by present respondent Nos. 4, 5 and 6) and also in view of the relief ultimately to be granted by this Court, it shall not be necessary to go into the validity of their appointment in this case and the same, if required, may be got adjudicated by the parties in the aforesaid Writ Petition No. 43938 of 1998 and no observations made in this writ petition shall affect the merit of said Writ Petition No. 43938 of 1998.

4. Heard learned counsel for the petitioners, advocate Sri S. L. Singh, Sri S. C. Verma, learned standing counsel appearing on behalf of respondent Nos. 1, 2 and 3. No one appears on behalf of respondent Nos. 4, 5 and 6 inspite of the fact that case has been taken in the revised list. However, counter-affidavit filed on behalf of respondent Nos. 4, 5 and 6 has been perused. Requisite averments regarding engagements and working of the petitioners have been made in paragraph Nos. 4, 5, 6, 8, 9, 13, 14, 15, 18, 19 and 20. Requisite averments regarding sanction of new posts during the financial year 1990-91 and 1991-92 against which certain persons including respondent Nos. 4, 5 and 6 are alleged to have been appointed may be found in paragraphs 23 to 30, of the writ-petition.

5. Subsequent averments regarding working of the petitioners during the relevant period as daily wagers have not been specifically denied in paragraphs 5, 8 and 10 of the counter-affidavit filed on behalf of the respondent Nos. 1, 2 and 3. It is alleged that engagement of daily wagers was for specific period and after expiry of the specified period, their services came to an end automatically. It is also not denied that certain posts were sanctioned and respondent Nos. 4, 5 and 6 were appointed and specifically on termination of their services, they have obtained an interim order from this Court by filing a writ petition as disclosed above (See paragraph 15 of the counter-affidavit of respondent Nos. 1, 2 and 3). The allegations contained in the counter-affidavit of the respondent Nos. 4, 5 and 6, apart from the fact that denial is highly vague and evasive, cannot be given any credence inasmuch as the requisite reply on the subject ought to have come from respondent Nos. 1, 2 and 3. In paragraph 11 of the counter-affidavit of respondent Nos. 4, 5 and 6, it is rather admitted that petitioners were engaged on daily wages and were not paid from budget grant but from contingency grant. The said respondent, in paragraph 18 of their counter-affidavit, made an allegation to the effect that the nature of work of the answering respondent is totally different from the work done by the petitioners and as such no comparison can be made by the petitioners with the work of the answering respondents.

6. In the counter-affidavit referred to above, it has not been elaborated as to the

work pertaining to Class-IV post discharged by petitioners versus respondent Nos. 4, 5 and 6 is different.

7. In view of the admitted fact that petitioners were engaged as daily wagers and have been allowed to work as such for couple of years and their salary is being paid (may be against contingency fund as alleged by respondent Nos. 4, 5 and 6). It is clear that work load justified engagement of additional hands and Government has capacity to bear the financial brunt. It is not relevant from the point of view of the petitioners. When engagement of daily wagers continue as regular feature, it assumes characteristics of permanency and, therefore, such engagements have to be treated accordingly.

Moreover, experience gained by such a daily wager who were allowed to continue for such long time should not be allowed to be wasted.

8. The learned counsel for the petitioner in support of his contention has placed reliance upon the decision of the case in Bimal Chand Pandey and another Vs. Engineer-in-Chief, P.W.D. Lucknow and others, and the case of Awadesh Kumar Yadav v. Divisional Forest Officer (D.F.O.), Social Forest Division (2000) 1 UPLBEC 129 .

9. The Apex Court has time and again propounded that said authorities must frame schemes/ regulations providing for regularization of daily wager who have been continued for a long time. Reference have been made to Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, . In another decision, the Courts have held that daily wagers are also entitled to minimum of regular scale subject to satisfaction of certain conditions, namely, qualifications and mode of selection being made as that of regular employment. The Apex Court has further held that in case of regularization of daily wagers, care should be taken to provide for age relaxation, etc, and condition of minimum qualification should not be enforced and treated as waived. Ready reference be made to the decision 2000 (3) ESC 1779 (LB)) and 1998 (1) UPLBEC 313.

10. Keeping in mind, undisputed facts of the present case, as well as the law propounded by this Court and the Apex Court, denial of right to be considered for regularization to the petitioners, particularly in view of the fact that some posts were sanctioned and hence respondent Nos. 4, 5 and 6 were appointed cannot be justified. The petitioners had worked as daily wagers for considerable long time. The respondents should not have acted arbitrarily in permitting strangers to be inducted without any justifiable cause ignoring claim of petitioners to be considered for the same. Petitioners even if doing same work as regular employees do not automatically become entitled to get same salary as regular employees and/or entitled to be considered for regularization because of difference and disparities due to different mode and standards adopted in the case of the two. Reliance is placed on the decision in 1999 ID UPLBEC 254. The learned standing counsel pointed out that the appointments are governed by "Group D Service Rules, 1985."

11. In view of the above, the writ petition is allowed in part. The respondents are directed to consider the case of the petitioner Nos. 1. 2 and 4 for regularization in accordance with the aforementioned "Group D Service Rules, 1985" or any other Service Rule/Schemes in accordance with law and confer upon them, on the contingency of such regularization being granted, seniority over and above respondent Nos. 4. 5 and 6. The relief regarding quashing of appointment letters in favour of respondent Nos. 4, 5 and 6 is refused and the petition fails to that extent. No order as to costs.

12. In case, the petitioners files within six weeks from today before concerned authority/respondent certified copy of this judgment along with a comprehensive representation, the same shall be decided by the concerned authority, exercising its unfettered powers without being prejudiced by any observation in this judgment, by passing a reasoned order, within a period of four months from the date of receipt of the aforesaid representation.

13. The writ petition is allowed in part to the extent indicated above.

14. No costs.