
(1995) 01 AHC CK 0110
In the Allahabad High Court
Case No : C.M.W.P. No. 5671 of 1987

Chandra Prakash Trivedi and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-01-1995

Acts Referred:

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

Citation : (1997) 3 LLJ 320 : (1995) 3 UPLBEC 1896

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

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Mehrotra, J.—The present writ petition has been filed jointly by 21 petitioners.

2. The petition is pending for admission since 1987. Counter-affidavit and rejoinder-affidavit have already been filed in the writ.

3. With the consent of parties under Rules of Court the petition is being disposed of finally at the admission stage itself.

4. I have heard Sri Ashok Khare learned counsel for the petitioners and the Standing Counsel for Respondents.

5. According to petitioners they all are Government Employees of State of U.P. and are working as fourth class employees on different posts from 1977-79 under Labour Commissioner. U.P. The present writ petition had been instituted in 1987 and up to the date of filing the petition the petitioners had performed their duties as daily wage earners for a period 7 to 9 years to the satisfaction of the respondents. The main contention of the petitioners is that the petitioners had been appointed as daily wage workers by respondents, and on that basis they are entitled to same pay which was being paid to regular employees of equal

rank and further contention of the petitioners is that having worked as daily wagers for a long span of time they are entitled to be regularised on their respective posts.

6. Respondents have admitted the fact that the petitioners are working regularly as daily wage workers since 1977-79 and under the order of this Court the petitioners are continuing on their posts working satisfactorily. The main objection set out in the counter-affidavit is that for regularisation of employees regular selection has been made at times and the petitioners were afforded opportunity to face the selection. In this connection the bare contention of the respondents is that only those employees are entitled for regularisation who have been appointed according to rules and on that basis according to respondents the petitioners are not entitled to be regularised. This statement has been made in para 15 of the counter-affidavit, however, the learned Standing Counsel for respondents has been unable to explain as to under what rules the class four employees are to be regularised? It has also not been clearly mentioned as to when opportunity was afforded to petitioners to participate at regular selection. The facts mentioned in para 15 of the counter-affidavit are wholly vague and it has not been clarified in the counter-affidavit as to according to which rules the petitioners were afforded opportunity for regularisation. I find no justification to deny relief to petitioners on the basis of the above vague assertion. No such fact has been mentioned in the counter-affidavit on the basis of which it may be said that the petitioners are not entitled to equal pay like regularised employee nor it can be said that employee serving regularly for 14 years is not entitled to regularisation. Today the position is that the petitioners are working on their posts regularly working for the last 12-14 years satisfactorily and valuable period of their life has been spent in the service of the State. In the light of the above mentioned facts and case 2 points arise for determination.

1. Whether daily wages fourth class employees are entitled to equal pay like regular fourth class employees?

2. If any daily wage worker who has served satisfactorily as daily wager for 12-14 years, then such daily wage employee is fit to be regularised on his posts?

7. So far as the first question is concerned, a detailed analysis of the counter-affidavit does not indicate any fact which may throw light that fourth class daily wage employees like the petitioners are not performing duties similar to regularised fourth class employees of Labour Department. The petitioners have clearly mentioned in the writ petition that they are performing duties similar to other fourth class employees of the Labour Department and there is no difference in their work and the work of fourth class regular employees, this fact has not been specifically denied in the counter-affidavit.

8. In this context it is necessary to refer to para 10 of writ petition. In para 10 of the writ petition, the petitioners clearly averred that there is no difference in regard to the duties performed by the fourth class daily wage employees and

responsibilities of regular fourth class employees of labour department. The petitioners are performing the same responsibilities and duties which are being performed by the fourth class employees of labour department. The said para 10 of the writ petition has been replied in para 11 of the counter- affidavit and in para 11 it is merely mentioned that it is not necessary to reply to the allegations mentioned in para 10.

9. It is clear from the pleadings of the parties that there is no dispute between the parties that the petitioners who are daily wage fourth class employees of Labour Department are performing the same duties and discharging the responsibilities which are being performed by the regular fourth class employees of Labour Department. Under the circumstances the only question in this connection that falls for determination is whether the petitioners are entitled to equal pay for equal work?

10. In Jagdish Prasad Mamgai v. State of V.P. Writ Petition No. 8515 of 1991 (1) I have analysed all the relevant judgments and held that the Supreme Court has laid down the principle in various cases that equal pay for equal work is not only the directive principle of Constitution but also according to Article 14 of the Constitution there is the guarantee of the right of equal pay for equal work.

1. Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others,

2. State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others,

In the light of the above decisions, I am satisfied that the petitioners are entitled to same pay which is being drawn by the regularly appointed fourth class employees of Labour Department.

11. The second question that arises for determination in this petition is whether the petitioners are entitled to be regularised on their post and whether this Court by virtue of the powers vested under Article 226 of the Constitution is competent to order by way of writ of mandamus that the respondents should regularise the petitioners on their posts? In connection with the above points the averments made in paras 3 and 4 of the writ petition and its annexures and Annexure 1 to the writ petition, different dates have been mentioned on which dates the petitioners had been appointed as daily wage employees. A perusal of Annexure 1 makes it clear that all the petitioners were appointed in the labour department by the order of Executive Engineer in between 1977 and 1979 as daily wage employees. In para 8 of the writ petition it has been averred that bonus has been paid to petitioners for the last 8 years like the regular employees of Labour Department. In para 14 it has been mentioned that for the last 7-10 years the petitioners have been discharging their duties on their posts regularly to the satisfaction of their superiors and never gave any cause of complaint to their superiors at any occasion. It has also been mentioned that the petitioners have been making representations to the Labour Commissioner, U.P. that petitioners on account of long span of working on their post as appointed daily wage employees be regularised. In para 15 of the writ petition it has been averred that

from time to time the fourth class employees of Labour Department have been given regular appointment however, the petitioners have always been ignored for regularisation. With respect to above averments it has not been denied in paras 5 and 6 of counter-affidavit that the petitioners were appointed in Labour Department between 1977-79 as daily wage employees. It has only been alleged that Executive Engineer has no right to make appointment. Daily wage employees, in terms of need are employed with the consent of Labour Commissioner and every year the Labour Commissioner gives approval to the appointment of daily wage employee. In para 15 of the counter-affidavit it has been mentioned that the facts mentioned in para 14 of the writ petition are admitted, petitioners were approved for appointment and it was further admitted that when any regular post gets created then the daily wage employees are absorbed on those posts, In para 16 of the counter-affidavit it was mentioned that the fourth class employees are selected according to departmental selection rules and the daily wages employees are afforded opportunity to appear at the selection.

12. In the whole counter-affidavit, it has no where been mentioned that the writ petitioners who had been appointed 10 years before the filing of writ, were given any opportunity to participate at regular selection and they were unsuccessful at that selection. The counter-affidavit also no where mentions that the petitioners are not possessed of the requisite qualification required for fourth class employees nor it has been mentioned that the Labour Department is not in need of those posts which are being manned by the petitioners. It is also worth mentioning that in the counter-affidavit it has also not been mentioned as to according to which rule the fourth class employees are employed in the Labour Department. From an analysis of allegations of writ and counter-affidavit it is clear that on the date of filing of the writ the writ petitioners have been working as daily wage employees for the last 8-10 years to the satisfaction of their superiors. The posts on which the petitioners had been working are still available in the department. It is admitted by respondents that on the occurrence of vacancy the daily wage employees can be regularised on the posts. No objection has been raised in the counter-affidavit that the petitioners had faced any selection and were unsuccessful at that selection. Nor any objection has been raised that the petitioners are not possessed of requisite qualifications for said posts. In context of the above factual matrix the question to be considered is whether in case of long term tenure of daily wage employee working on the post and fit to hold the post possessing requisite qualifications and in any circumstances having not been found unfit for the post, are they entitled to regularisation on the post? In this connection the learned counsel for the petitioner has referred to different Government Orders which mention that daily wage employees working for more than 3 years should be regularised on their posts; different rules have also been pointed out which contemplate the regularisation of ad hoc employees.

13. The contention of Sri Ashok Khare, the learned counsel for the petitioners is

that the rules which are in force for regularisation of ad hoc employees, the same rules should be held to be operative in case of daily wage employee. With reference to the above question I have dwelt at length in my judgment in Jagdish Prasad Mamgai case Writ Petn. 8515 of 1991 (1) above mentioned and laid down that if the Court is satisfied that in case daily wage employee has been working on his post for long term and was working on his post for long term and was working to the satisfaction of his authorities and was possessed of the requisite qualification for his post then in that event in exercise of the powers vested under Article 226 of the Constitution the Court has the authority to order by way of mandamus that petitioners authority to order by way of mandamus that petitioners be regularised on their posts.

Referring to:

1. Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others, .

2. Bhullar Nath Yadav v. Mayo Hall Sports Complex Allahabad 1990 All WC 1005.

3. Zakir Hussain Vs. Engineer-in-Chief, Irrigation Dept. and Others,

14. I have held that in the event if a daily wages employee has been appointed to work as post of permanent nature of regularisation and if the daily wages employee is denied claim, then the Court can order the regularisation of the employee.

15. In the end the Supreme Court case State of Haryana and others Vs. Piara Singh and others etc. etc., has also been referred in the above judgment. The following portion of the said judgment is relevant for the decision of the case.

"Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further there can be no "rule of thumb" in such matters, conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year"s service as far as possible and subject to fulfilling qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. In cannot be a mechanical act but a judicious one Judged from this stand point, the impugned directions must be held to be totally untenable and unsustainable."

16. It is clear from the above judgment, that if an ad hoc employee has been allowed to work for a number of years then Court can draw a presumption that there is need for regular post and in that event, the Court can issue mandamus for regularisation of employee.

17. In *Rakesh Kumar Srivastava v. State of U.P.* Writ Petition No. 21840 year 1991 dated November 24, 1992 a single Judge of this Court held that if petitioners have been allowed to work as daily wage employees more than 6 years and 12 years, then his regularisation cannot be withheld merely on the ground that there is no post available for the regularisation of petitioners.

18. In the present writ petition it has not been even averted from the side of the respondents that posts are not available for regularisation of petitioners.

19. From a consideration of the over all picture and circumstances of the case I am satisfied that in the present case the petitioners have been working as daily wage employees on their posts and are entitled to be regularised on their posts. In *Jagdish Prasad Mamgai v. State of U.P.* Writ Petn. No. 8515 of 1991 (1) (supra) I have held that after allowing a person to work on his post as temporary employee for ten years, there is no justification to contend after 10 years that the appointment of petitioner cannot be regularised. In the same way, under the circumstances of the present writ petition when the petitioners are working as daily wage employees for 14 years regularly humanitarian considerations deserve to be taken into account that if they are terminated from their posts under the present circumstances, they will be unsuccessful in getting appointment to any other service as they have become overage for other eligible posts.

20. In view of the total circumstances of the case, I am satisfied that the petitioners are entitled to be regularised on their posts.

21. Accordingly, the writ petition is allowed and that the respondents are directed to regularise the petitioners from the date of the institution of the writ on their posts, and from that very date the payment of salary to the petitioners equal to the salary paid to regular fourth class employees. Respondents must ensure the compliance of this judgment within a month of the receipt of certified copy of this judgment.

22. Under mandatory Section 7 of Official Language Act, it is directed to the Registrar of the Court that the judgment be got translated in English by a competent person and after having been approved by the Court the copy be made available to the parties within a month in accordance with rules. Without the English Translation the copy of the judgment should not be given to parties nor the copy of the judgment without its translation be sent to Lower Court.