
(1995) 02 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No 5055 of 1995

Gulab Tiwari and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 22-02-1995

Acts Referred:

Citation : (1995) 02 AHC CK 0077

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

Final Decision : Allowed

Judgement

B. R. Mehrotra, J.—The petitioners are seven in numbers. The petitioner Nos. 1 to 4 were appointed on different dates in the year 1976 and 1977, and the petitioner Nos. 5 and 6 were appointed in the year 1985 and 1983 respectively as well as petitioner No. 7 was appointed in the year 1983 as daily wagers in permanent maintenance crew for carrying on the regular maintenance and repair work related to the construction of Audyogic Awas Yojna Colonies which were constructed by the Labour Department in the State Government.

2. All the petitioners were employed by the Executive Engineer, with permission of the Labour Commissioner, Uttar Pradesh. Since the date of their employment, the petitioners continued to be in service of the Labour Department as daily wagers till the year 1987, when the petitioners filed the present writ petition. All the petitioners have been continuing in service since 2nd July, 1987, in pursuance of the interim order passed by this Court in their favour, in the instant petition. These dates give out that at least the petitioners 1 to 4 in were employment, of the respondents as daily wagers continuously for the last 10 years, on the date, they filed the writ petition. The petitioners were being paid their monthly salary at the rate of Rs. 14 per day. In computing the aforesaid monthly salary, weekly holidays permissible to the daily wagers under the Government Order were also included in accordance with the circular, dated 28th January, 1987, which has been filed as Annexure 2 to the writ petition. It is also not disputed that the petitioners have been receiving bonus for the last four

years to which they are entitled as per Government circular. The petitioners have contended in para 10 of the writ petition, that the works and. responsibilities of the petitioners are the same as that of regular class IV employees of the Labour Department, and there is no difference in their work and responsibilities in comparison to the regular class IV employees of the department, aforesaid. This statement, made in para 10 of the writ petition have been replied in para 12 of the counteraffidavit, wherein it has been stated that the daily wagers are engaged on workcharge basis, and their engagement comes to an end alter the work is end. Their duties cannot be equated with that of Class IV regular employees. This averment in the counteraffidavit, does not in effect, deny that the work and responsibilities of the petitioners were the same as that of regular class IV employees of the Labour Department. Only distinction between the two, as pointed put in the counteraffidavit is that; one is engaged on regular basis and other is engaged on work charge basis. This difference has nothing to do with the purpose of duties and responsibilities of the two, as such, the petitioners" statement that their duties and responsibilities are the same as that of regular class IV employees in the Labour Department, remains uncontroverted.

3. The petitioners have further stated in their writ petition that in the past all the persons employed on daily wage basis, who had completed three years" service, have been regularised in pursuance of the Government Order and order issued by the Labour Commissioner. This statement of the petitioners, is also admitted in the counteraffidavit, wherein it is stated that earlier, those dailywage workers, who had completed three years" service, were absorbed and regularised and at present there is no vacancy as such the petitioners cannot be regularised.

4. The petitioners have further contended that they were appointed prior to 1983 and possessed requisite qualification for appointment at the time of their initial appointment. The petitioners claim regularisation of their services in pursuance of the Government circular after completing three years" service, as was done in the case of other daily wage workers who were regularised by the Department, under the Government circular.

5. The petitioners have also stated in para 23 of the writ petition, that after appointment of the petitioners, a large number of regular appointment have been made to the Office of the Labour Commissioner on class IV posts including the post of Chowkidar, Sweepers, Chaprasi, Beldars and such regular appointments have been made every year. The petitioners have given details of these regular appointments, made since the year 1980, viz. In the year 1980, 20 regular appointments, in the year 1981, 10 regular appointments ; in the year 1993, 25 regular appointments ; in the year 1983, 30 regular appointments in the year 1986, 25 regular appointments ; had been made, while in the year 1987 12 posts bad been filled up. These factual averments have also not been denied in the counteraffidavit. In reply to the aforesaid averments, the counteraffidavit only says that at the time of regular selection for regular post names from Employment Exchange are requisitioned. The candidates who observed the

formalities and fulfil the requisite conditions are allowed to face the Selection Committee. Even daily wagers like the petitioners are also allowed to face the selection. The petitioners have specifically stated that they were not considered for the appointments. The counteraffidavit is absolutely vague in replying to the aforesaid averments. The counteraffidavit does not disclose, under what ruled, the regular selection for 4th class employees, was made and how the posts were duly advertised giving the due opportunity to the petitioners also to appear in the selection. No such documents or specifications, have been given in the counteraffidavit. The bald statement made in the counteraffidavit, cannot be treated to be correct. The statement made in para 21 of the counteraffidavit, has been sworn on the basis of record. High Court Rules prescribe that if in an affidavit, paragraph is to be sworn on the basis of record, the record itself must be referred in the statement, in affidavit, no such reference having been specified, said bald statement made in the counteraffidavit, cannot be accepted to be correct. The learned Standing Counsel, in the present matter, ought to have filed the appointment rules under which the class IV employees were required to be filled in the Labour Department. In any case, no details has been given to show that regular selection for 4th class employees was made. It is inferable from the perusal of the statement of pleadings that the regular appointments were made ignoring the petitioners' claim for regularisation.

6. It is also not disputed that the Labour Commissioner, U.P., Kanpur had written to the State Government as far back in the month of September 1984, to the effect, that these daily wagers should be absorbed as regular employees in the Labour Department. A true copy of the said letter has been filed as Annexure 3 to the writ petition, which is admitted to the respondents. The only stand taken in the counteraffidavit is that the matter is pending consideration at Government level. In view of the aforesaid facts, the petitioners claim two reliefs in the present writ petition, viz. firstly ; that they are entitled to get the same wages as are being given to the regular 4th class employees working in the Labour Department, as their work and duty is the same as that of the regular 4th class employees. This relief has been claimed on the principle of equal pay for equal work. The second relief which the petitioners have claimed in the present writ petition is that since the petitioners have been working for the last 10 years on the date, they filed the writ petition, the petitioners are entitled to be regularised in the aforesaid services.

7. I have heard the learned counsel for the petitioners Shri S. L. Singh and learned Standing counsel, in the matter.

8. The learned Standing Counsel, has placed reliance on a decision of the Hon'ble Supreme Court in the case of Madhyamic Siksha Parishad, U.P. v. Anil Kumar Mishra and others, AIR 1994 SC 1638. In the aforesaid decision, , the Hon'ble Supreme Court, was considering a situation where Madhyamic Siksha Parishad engaged the respondents for the work of preparing certificates to be issued to the successful candidates at the examination conducted by it. The

certificates were in printed forms and respondents were required to fill up the particulars such as the name of the candidate, name of the school, date of birth etc. in the appropriate space. The respondents were paid initially Rs. 12 for 100 certificates which was subsequently raised to Rs. 20. This was done to clear the backlog of certificates, and the services of the respondents were engaged to clear backlog on payment and quantum. In the background of the aforesaid facts, the Hon'ble Supreme Court, in the aforesaid case has that the back log having been cleared and the preparation of the certificates having been computerised, the Madhyamik Sikhsha Parishad was justified in not continuing the respondents to be in service. In the background of the aforesaid facts the Hon'ble Supreme Court has laid down that since the respondents were engaged only for the temporary assignment they were not entitled to be treated as casual workmen and were not entitled to be regularised on the basis that they had completed 240 days of service.

9. The other important aspect of the aforesaid decision which need reference herewith is given in paras 5 and 6, thereof, which is reproduced as under:

"Be that as it may, further discussion on the merits of the High Court's order is unnecessary as the appeal admit of being disposed of on a concession of the appellant on which both sides are agreed.

The appellant Parishad has offered to consider the cases of these 27 respondents, who were writ petitioners before the High Court, for purpose of recruitment to the post of Lower Division Clerks as and when vacancies arise and steps for filling up of those posts are taken up by the appellant. The appellant submits that if the respondents make appropriate applications at the appropriate time of filling up of the vacancies and if they possess the requisite minimum qualifications for the posts and if they were not beyond the prescribed maximum age limit as on the date on which utilisation of their services commenced in the year 1986, their cases would be duly considered, affording to them preference in the recruitment, other conditions being equal subject to the reservations policy. Appellant also requires registration of the respondents with the employment exchanges. For purpose of the age limit, their respective age as at the time of commencement of their earlier casual employment would be reckoned."

10. The aforesaid authority is no authority for holding that the daily wage workers, who have continuously worked for 10 years, are not entitled to be regularised.

11. The main contention of the learned Standing Counsel is that since there are no vacancies at present, no direction can be given for regularisation of those petitioners.

12. Exactly in similar circumstances, I had considered a matter being Writ Petition No. 3678 of 1987, decided on 5th January, 1985, wherein I have held that in view of the fact that daily wage workers were doing the same work which the regular class IV employees, were doing, they were entitled to same wages

which the regular 4th class employees were getting.

13. I have also held in the said decision that the daily wagers who were permitted to work for 10 years continuously, they were entitled to be regularised. The decision of the Hon"ble Supreme Court (supra) is not attracted in the present matter.

14. In the case of Prakash Narayan Sirothiya v. State of U. P. and others, (1994) 3 UPLBEC 1737, the learned single Judge of this Court in similar circumstances held, that daily wage employees in class IV cadre, have been working and 8 years have passed on since the date their working, are entitled to be regularised with all consequential benefits and they are also entitled to equal pay which similarly workers are getting. The aforesaid decision also fully supports my view that the petitioners are entitled for equal pay as the other regular class IV employees in the Labour Department, are getting, and they are entitled to be regularised.

15. In view of the fact that the respondents had been making regular appointments bypassing the claim of the petitioners to be regularised, and in view of the fact that in pursuance of the earlier Government Order, the daily wagers were regularised after completion of three years service, the respondents cannot be heard saying that the petitioners are not entitled on the ground that there are no vacancies available at present. The respondents have also admitted that earlier point of time, the other similarly daily wagers were regularised after completion of three year of service, and also admitted that right from 1980 to 1987 there were regular vacancies in which persons other than petitioners were engaged, thus it is clearly established that the petitioners have been deprived of their rights of regularisation when the vacancies were due, and at this stage they cannot be heard saying that petitioners are not entitled to be regularised as there are no vacancies.

16. In view of the facts, stated above, I allow the present writ petition directing the respondents to pay the petitioners the pay scale, which the petitioners' counterparts, as 4th class employees in Labour Department are getting, from the date of riling of the present writ petition, and the respondents are also directed to regularise the petitioners on the post on which they have been working so far. The petitioner are also entitled, hence forth, to all the benefits to which the regular employees in class IV cadres are entitled under the Rules.

17. The respondents ate further directed to comply with the aforesaid direction within a period of three months from the date of receipt of a certified copy of this order. The writ petition is allowed with costs.