

(2024) 07 UK CK 0111

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 2586 Of 2017

Hafiz Khan

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 20-07-2024

Acts Referred:

Citation : (2024) 07 UK CK 0111

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Sanjeev Kumar Sah, Sachin Mohan Singh Mehta

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Heard learned Counsel for the parties.
2. Delay in filing the rejoinder affidavit is condoned. Delay condonation application (IA/17284/2023) made therefor, stands allowed. Rejoinder affidavit is taken on record.
3. Supplementary Counter Affidavits and Supplementary Rejoinder Affidavit are taken on record. Miscellaneous applications (IA/17285/2024, IA/17287/2024 & IA/17286/2024) made therefor, are allowed.
4. Petitioner has sought indulgence of this Court seeking a writ of certiorari for quashing the order dated 01.06.2017 passed by respondent no.5 (Annexure No.1 to the writ petition), whereby the claim of petitioner for regularization has been rejected.
5. It is the case of petitioner that he was engaged as a Driver on 13.11.2008 in Minor Irrigation Division, Pithoragarh. Petitioner is still continuing against the said post without any break. He preferred WPSS No.2272 of 2016 seeking regularization in view of 'Daily Wages, Work-Charge, Fixed Pay Scale, Part Time

and Ad-hoc Employees Regularization Rules, 2013' (to be referred to as Rules of 2013) according to his qualifying service mentioned in the Rules. The said writ petition was disposed of vide order dated 29.03.2017 and the respondents were directed to consider the case of petitioner for regularization, if he is eligible under the Regularization Rules of 2013. The claim of petitioner for regularization has been rejected by the respondent-Department simply for the reason that he was engaged through 'Prantiya Rakshak Dal' (PRD) and not directly by the Department, and accordingly, it was found that he was not eligible for regularization. The petitioner has challenged the said rejection order dated 01.06.2017 in this writ petition.

6. A counter has been filed by the respondent nos.4 and 5 wherein, by referring to Annexure Nos.CA2, CA3 & CA4 to the affidavit, it is stated that petitioner was engaged through PRD and therefore, he was not eligible for regularization.

7. Petitioner has also filed his rejoinder affidavit, wherein, the contention raised by respondents has been refuted and it is submitted by him that he has been working continuously since 2008 and is being paid remuneration through State exchequer. In paragraph no.4 of the rejoinder, it is stated that petitioner was never engaged through PRD and for the purpose of such engagement, as per the U.P. Pradeshik Rakshak Dal Act, 1948 and Rules framed there-under, every volunteer of PRD has to go for training after being registered as volunteer in PRD. Petitioner has, on oath, submitted that he was neither registered with PRD as volunteer nor was ever sent for any training. Petitioner has never been issued any certificate which is issued by PRD to its volunteers.

8. It is contended by learned Counsel for petitioner that the stand taken by the respondents is just to defy the claim of petitioner for regularization.

9. Per contra, learned State Counsel has supported the averments made in the counter affidavit arguing that petitioner is not engaged by the Department, rather he was engaged through PRD.

10. Having considered the submissions made by learned Counsel for either party, this Court finds force in the submission put forth by learned Counsel for petitioner that petitioner can only be engaged through PRD once he is registered as a volunteer with PRD and has undergone any training with PRD. The stand taken by the State is nothing but is an eyewash to defeat the claim of petitioner for regularization. The Rules of 2013 have been framed by the State to regularize the service of such daily wagers and similarly situate persons on the post if he has put in sufficient length of 05 years' service on the said post on the date of publication of Rules of 2013. However, vide judgment and order dated .passed in WPSB No.616 of 2018, Narendra Singh v. State and others and batch, while disposing of the writ petition(s)/special appeal(s), by modifying the 2013 Rules, it has been held that after 04.12.2018, 10 years' period will be taken into consideration for regularization. Thus, having considered the purport of Rules of 2013 as well as the very nature of appointment of petitioner, this Court is of the

opinion that petitioner is eligible for regularization keeping in view his longstanding, regular and uninterrupted service as a daily wager with the respondents with effect from 13.11.2008.

11. Thus, the writ petition is allowed. Order dated 01.06.2017 passed by respondent no.5 (Annexure No.1 to the petition) which is under challenge in this petition, is hereby set aside by issuing a writ of certiorari. A writ of mandamus is further issued to the respondents to regularize the services of petitioner on the post in question at the earliest but not later than eight months from today. No order as to costs.

12. Pending application(s), if any, stands disposed of accordingly.