
(2008) 07 AHC CK 0208
In the Allahabad High Court

Ishwar Deen and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 309

Citation : (2008) 119 FLR 307

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—In these writ petitions, affidavits have been exchanged between the parties.

Heard learned Counsel for the parties.

2. In these two writ petitions, since common questions of law and facts are involved, they are being decided with a common judgment at admission stage with the consent of the learned Counsel for the parties.

3. The brief facts of the case are summarised as under:

4. The petitioners, Sri Ishwar Deen and Sri Heera Lal of Writ Petition No. 6067 (S/S) of 2007 were appointed as Daily Wager on the post of Cattle Guard in Group "D" category on 7.8.1980 and 1.8.1980 respectively. Whereas the petitioners, Ram Swaroop, Dal Bahadur and Ram Hadal, of Writ Petition No. 6076 (S/S) of 2007 were appointed between 1986 to 1990.

5. It has been submitted by the learned Counsel for the petitioners that the petitioners have got unblemished service record. In Writ Petition No. 6067 (S/S) of 2007 in paragraph 20, it has been specifically pleaded that persons junior to the petitioners have been considered for regularization and some of them are Sri Neeraj Kumar Srivastava, Sri Janiuna Prasad and Sri Mahavir. The averments contained in paragraph 20 of the Writ Petition No, 6067 (S/S) of 2007 have not

been denied by the respondents. In Writ Petition No. 6076 (S/S) of 2007 also in paragraph 20, the names of these persons have been given as juniors, whose services were alleged to have been regularized in the year 2000.

6. It has further been submitted by the learned Counsel for the petitioners that in view of the Uttar Pradesh Regularisation of Daily Wages Appointments on Group "D" Post, Rules, 2001 (in short "Rules"), the petitioners are entitled to be considered for regularization. According to Rule 3(a) of the Rules, all the j incumbents who were appointed as Daily Wagers prior to 29.6.1991 shall be entitled for consideration for regularization subject to fulfilment of requisite conditions. In the present case, it has not been disputed that the petitioners were appointed prior to 29.6.1991. Accordingly, they are entitled to be considered for regularization under the Regularisation Rules subject to availability of vacancies.

7. On the other hand learned Standing Counsel submits that though the averments contained in paragraph 20 of the writ petition have not been denied but the competent authority may very well consider the petitioners' case for regularization. It has also been submitted by the learned Standing Counsel that the regularization can be done only against the sanctioned posts and in absence of vacancies it shall not be possible for the respondents to regularize the services of the petitioners.

8. It has been brought to the notice of this Court that the petitioners are getting minimum pay scale admissible to their cadre in compliance of the Government Order issued from time to time.

9. I have given, my anxious consideration to the argument advanced by the learned Counsel for the parties.

10. While approaching this Court, the petitioners have prayed that since they are serving since more than 25 years, the respondents may be directed to "regularize their services.

11. However, ordinarily it is not for this Court to direct for regularization. The incident of regularization is governed by Rules (supra). Hence, only the competent authority may take a decision to regularize the services in accordance to Rules (supra). It is not for this Court to usurp the power vested in the authorities under the Service Rules. It has not been disputed that some of the juniors have been regularized. It has been brought to the notice of this Court by the learned Counsel for me petitioners that there are 16 regular vacancies on which the respondents are proceeding ahead to make appointments. In case, the vacancies are filled up, the petitioners, who have worked with the department for about three decades, shall not be able to be considered for regularisation. Though, the State has got right to fill up the vacancies through direct recruitment but while doing so it shall always be necessary for the State to exercise the statutory power conferred by the Rules (supra) to consider the cases of the employees, who are serving in the department like in the present case for

about two decades or more. Needless to say that the Rules framed under Article 309 of the Constitution of India have got statutory force and once Rule 4(a) of the Rules enables the authorities to consider the cases of the employees for regularization who were appointed prior to 29.6.1991 then it shall always be incumbent upon the authorities to exercise power in just and fair manner to consider the case of the employees for regularisation. The experience and knowledge of the employees who are working in the department shall always be useful to run the administration and in case their case is covered by regularisation rules, they shall have right to be considered for regularisation under the Rules. Such employees will have edge over the freshers in the matter of recruitment. The freshers may be appointed through direct recruitment but that should be done only after considering the case of old employees working in the department in accordance to statutory provisions.

12. Right to live with dignity, right to quality of life and right to livelihood are fundamental rights guaranteed under Article 21 of the Constitution of India vide *Air India Statutory Corporation v. United Labour* 1997 (76) FLR 119 (SC) *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* 1990 (61) FLR 768 (SC), *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.* 1985 (3) SCC 454, *Hindi Lal Tewari v. Kamla Devi.* 2001 (6) Emp cannot be deprived of their statutory rights available under the service rules (*supra*) to be considered for regularisation, which co-relate with their livelihood. Accordingly, it shall be unjust and improper to make-direct recruitment without considering the case of the old employees for regularisation against the existing vacancies under Rules (*supra*).

13. In view of above, the writ petitions are allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 10.9.2007 and 17.8.2007 (Annexure Nos. 1 & 2) with consequential benefits. A writ in the nature of mandamus is issued commanding the? opposite parties to consider the cases of all the serving employees in accordance to regularisation rules (*supra*) for regularisation and only thereafter they may proceed to fill up the remaining vacancies through direct recruitment.

The writ petitions are allowed accordingly. No order as to costs.