
(2003) 10 AHC CK 0199

In the Allahabad High Court

Case No : C.M.W.P. No"s. 36911 and 47043 of 2002 and 8320 of 2003

Jagannath and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Citation : (2003) 6 AWC 5243

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.B. K. Srivastava, for the Appellant;

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The aforesaid writ petitions have been filed with a prayer to direct the Respondents to regularise the services of the Petitioners as Class IV employees with effect from the date they were given permanent employment in muster roll and to provide them all other consequential benefits and privileges attached with a regular employee with effect from the said date.

3. The Petitioner Nos. 1 to 6 and 8 to 11 in Writ Petition No. 8320 of 2003 were appointed on permanent muster roll with effect from 1.11.1989 and the Petitioner No. 7 was appointed on permanent muster roll with effect from 25.7.1990 and Petitioner Nos. 12 to 18 were appointed as permanent muster roll with effect from 1.9.2001.

4. The Petitioners in Writ Petition No. 36911 of 2002 are working on Daily Wages Basis (T.M.R.) since 1988 and 1989 but they are not getting salary like minimum scale of pay. Petitioner Nos. 1 to 13 are working on the post of Mallah and Petitioner No. 14 is working on the post of mate. It is alleged that since the Petitioners are working in the P.W.D. department under the control and supervision of Respondents since long, as such they are entitled for regularisation and minimum pay scale.

5. It is submitted that in similar circumstances Dinesh Kumar and Ors. v. Chief Engineer and Ors., Writ Petition No. 36094 of 1994 was filed and same was dismissed by this Court on 5.8.1999. The validity of judgment dated 5.8.1999 was challenged by means of Bimal Chand Pandey and Ors. v. Engineer in Chief and others, Special Appeal No. 922 of 1999 which was allowed vide judgment dated 15.9.1999 (Annexure-15 to the writ petition). The State Government challenged the validity of judgment dated 15.9.1999 passed in Special Appeal No. 922 of 1999 before Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) No. 5224 of 2000.

6. The Petitioners are aggrieved by order dated 1.1.2000 by which appointment on work charge establishment has been stopped by the State Government as a matter of policy. The order dated 1.1.2000 is reproduced below:

other language

7. In view of order of this Court, letter dated 2.8.2000 was issued by the Chief Engineer (H.O.) to all the Superintending Engineers stating that the minimum pay scale should be given to the employees as per the directions of the High Court.

8. The only point argued is that the Petitioners have moved representations for giving them minimum pay scale and for regularisation. On 21.12.2001 the State of U.P. has framed Rules on 21.12.2001 known as the Uttar Pradesh Regularisation of Daily Wages Appointment on group "D" post Rule, 2001 in which it is mentioned that the employees who are appointed directly on daily wages group "D" before 29th June, 1991 and are working regularly on 21st December, 2001 may be considered for regularisation.

9. A Daily Wager has no right to a post who is not appointed against a substantive post. The relief cannot be granted by the Court by passing an order of regularisation where the appointment is under a scheme/ project/programme or the workcharge establishment which is continued and the post is not available. There are 40 (forty) Petitioners in these connected writ petitions. All the Petitioners were appointed on daily wages much prior to 1991 in various schemes/projects and programmes from time to time. The State has taken a policy decision to close down/stop work charge establishments bringing the engagement of the Petitioners as daily wagers. The claim of the Petitioners for payment of minimum pay scale cannot be accepted as they are daily wagers and not appointed against any substantive vacancy. In the case of Ramchander and Others Vs. Additional District Magistrate and Others, , it has been held by the Apex Court that unless termination is set aside an employee cannot be regularised. There is no evidence before this Court that the order of their disengagement has been set aside.

10. Since the State Government has framed Rules for regularisation, it can be done only in accordance with the said Rules. The Respondents are directed to consider their regularisations, if they fulfil the conditions laid down in the U.P.

Regularisation Daily Wages Appointment on Group "D" Post Rules, 2001. This writ petition is disposed of with the aforesaid direction. This judgment will also govern the connected Pappu and Ors. v. State of U.P. and others Writ Petition Nos. 36911 of 2002, and Ram Jee and Ors. v. State of U.P. and Ors. Writ petition no. 47043 of 2002. No order as to cost.