
(2004) 12 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 44442 of 2003

Jagat Prasad Prajapati and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Citation : (2005) 5 AWC 4106 : (2005) 1 ESC 669 : (2005) 105 FLR 13 : (2005) 2 UPLBEC 1580

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : H.P. Misra, for the Appellant; B.D. Madhyan and Satish Madhyan and Umesh Vats, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—Petitioners were initially engaged on temporary basis in the year 1986 and have been regularised on the post of Pump Operators vide separate orders dated 4.11.1996, of the Nagar Nigam, Gorakhpur. By the impugned order dated 9.9.2003, the Respondent No. 5 Chandra Bhushan Mani has been regularised on the post of Fitter and Respondent No. 6 Ram Gati has been regularised on the post of Meter Mechanic in the Nagar Nigam, Gorakhpur. The petitioners submit that since the said two posts of Fitter and Meter Mechanic, on which Respondent Nos. 5 and 6 have been regularised, are of higher grade, they ought to have been promoted on the said posts. Hence the petitioners have filed this writ petition challenging the order dated 9.9.2003 whereby Respondent Nos. 5 and 6 have been regularised on the post of Fitter and Meter Mechanic, and have also prayed for being promoted to the same post from the post of Pump Operators on which they are working.

2. Having heard Sri H.P. Misra, learned counsel for the petitioners, as well as learned Standing Counsel appearing for Respondent No. 1, Sri Satish Madhyan for Nagar Nigam-authorities Respondent Nos. 2, 3 and 4 and Sri Umesh Vats for private-Respondent Nos. 5 and 6 and on perusal of record and considering the

facts and circumstances of this case, in my view, the petitioners are not entitled to the prayers made in this writ petition.

3. It is not disputed that the petitioners were initially engaged on temporary basis and the Respondent Nos. 5 and 6 on daily wage basis. A seniority list was prepared as per the directions of the State Government so that in accordance with the Government Orders issued from time to time, the regularisation of such workers may be completed strictly on the basis of seniority and on the recommendations of the selection committee. In pursuance thereof the services of the petitioners had been regularised vide separate orders of the Nagar Nigam dated 4.11.1996 which were passed in compliance of the instructions dated 10.10.1996, issued by the Mukhya Nagar Adhikari, Nagar Nigam, Gorakhpur.

4. As regards the case of the petitioners for promotion on the post of Fitter and Meter Mechanic, what is to be first considered is as to whether such posts were to be filled up by promotion from amongst the Pump Operators or not. The services of the petitioners are governed by Palika Sewa Niyamawali, 1963. Relevant extract of the said rules have been filed as Annexure-7 to the writ petition and a bare perusal of the same would go to show that the post of Meter Mechanic is to be filled up by direct recruitment and the post of Fitter is to be filled up by promotion from amongst Junior Fitters. The promotional post for Pump Operators, as per the said Rules, would be the post of Pump Driver. It is not disputed that the regularisation of the daily wagers is being done for the last several years strictly on the basis of seniority. The petitioners were initially appointed on temporary basis in the year 1986 and have been regularised as Pump Operators in the year 1996. The petitioners have already taken advantage or benefit of the regularisation in services. According to the Rules, the petitioners, not being Junior Fitters, cannot be promoted on the post of Fitters. Even the post of Meter Mechanic is to be filled up by direct recruitment and is not a promotional post. The petitioners having once already taken the benefit of regularisation, cannot claim for fresh appointment or regularisation another time, or claim promotion on a post which is not meant for promotion from the post on which they are working. The only post on which they can claim promotion is that of Pump Driver for which they may be considered as and when the same falls vacant. The other post of Meter Mechanic, on which the petitioners are claiming promotion, is a post to be filled up by direct recruitment. The same is not at all meant to be filled up by promotion, set aside by promotion from amongst Pump Operators. As such the second prayer of the petitioner for promotion on the post of Fitter and Meter Mechanic cannot be granted as the same would not be permissible under the Rules governing the service conditions of the petitioners.

5. As regards the other prayer for quashing the regularisation of Respondent Nos. 5 and 6 on the posts of Fitter and Meter Mechanic respectively, it may be stated that the said posts have been filled up on the recommendations of the Selection Committee duly constituted by the Nagar Nigam as per the relevant Regularisation Rules. On the recommendations had been made, the competent

authority, after considering the resolutions of the Nagar Nigam, has issued the order for their regularisation on Group-D post as per The Uttar Pradesh Regularisation of Daily Wagers Appointments on Group-D Post Rules, 2001. It is not the case of the petitioners that Respondent Nos. 5 and 6 were junior to other daily wagers and hence they ought not to have been appointed. The only contention of the petitioners is that they were senior to the Respondent Nos. 5 and 6 have been placed in the pay scale of Rs. 2600-10-3540 whereas the regularisation of Respondent Nos. 5 and 6 is being made on a post which is in the pay scale of Rs. 2750-4400. As such it has been contended that the Respondent Nos. 5 and 6 should first be regularized on a post which is in the lower pay scale and then only they can be promoted on the higher post. The said contention of the petitioners is not worthy of acceptance. Regularisation on Group-D posts are to be made in accordance with the qualifications possessed by the applicants and their seniority as daily wage employees subject to the availability of post. Since the selection committee found that the Respondent No. 5 was duly qualified for regularisation as Fitter and Respondent No. 6 was duly qualified for regularisation on the post of Meter Mechanic, and such posts were available, their regularisation having been made strictly on the recommendation of the Selection Committee on the basis of the seniority of the daily wagers, the same cannot be faulted.

6. For the foregoing reasons the petitioners are not entitled to the reliefs prayed for. This writ petition is, accordingly, dismissed. No order as to cost.