

(2017) 05 AHC CK 0113
In the Allahabad High Court
Case No : 177 of 2003

Jagdish Prasad Mishra

APPELLANT

Vs

Principal Chief Conservator, Of Forest U.P. Lucknow

RESPONDENT

Date of Decision : 23-05-2017

Acts Referred:

Citation : (2017) 05 AHC CK 0113

Hon'ble Judges : Vivek Chaudhary

Bench : Single Bench

Advocate : P.K. Jaiswal, Tushar Verma

Judgement

1. The present writ petition has been filed by petitioner challenging the order dated 26.10.2002 passed by Divisional Forest Officer, Shravasti and for a writ of Mandamus directing opposite party no. 2 to consider and regularize the services of petitioner ignoring the artificial break of short period. By impugned order dated 26.10.2002 representation of petitioner for regularization has been rejected on the ground that while working as a daily wager there was a gap of 32 months and hence, he was not entitled for regularization under Regularization Rules of 2001.

2. Case of petitioner is that he was appointed as a Daily Wage employee on Class IV post in the year 1977 with Forest Department and he continues to be working till filing of writ petition and even thereafter. In para-5 of writ petition has given details of his working on the said post: "January 1992 to May 1992 worked at Charda Range.

June, 1992 to February 1993 worked at Chakiya Range.

March 1993 worked at Chakiya Range, but certificate was not issued. For verification Cash Book may be called.

April, 1993 to July, 1993 work was not allowed by the department (four months).

August, 1993 to January 15, 1994 worked at Kakardari Range.

January 16, 1994 to 22nd August, 1994 worked at Bhinga Range.

23rd August, 1994 to 30.6.95 at Abdullaganj Range (Charda Range).

July, 95 to August 95 work was not allowed for a period of two months by the employer.

September, 1995 to December, 1995 worked at Bhinga Range.

January, 1996 to May, 1997 worked at Bhinga Range.

June, July and August work was not allowed for three months.

September, 1997 to October, 2000 worked at Kakardari Range.

November, 2000 worked at Bhinga Range.

December, 2000 Head Office Shrawasti.

January, 2001 worked at Bhinga Range.

February, 2001 Head Office Shrawasti and after that he is working at the Barriear as Gateman."

Thus it is shown that from January 1992 to February 2001 there were short breaks totaling 9 months which were on part of employer and not on part of petitioner."

3. For his regularization petitioner filed writ petition no. 5050 (S/S) of 2002 which was disposed of by order dated 13.09.2002 directing respondent no. 2 to decide the representation of petitioner. In compliance of said order of High Court, representation of petitioner has been considered and rejected on ground of there being break in his work. Petitioner claims that impugned order has been wrongly passed and the same is contrary to the Regularization Rules. He relies upon Rule 4 of U.P. Regularisation of daily wages appointments on Group "D" posts Rules 2001 (hereinafter referred to as "Rules 2001"). Said Rule 4 reads as follows: "4. Regularisation of daily wages appointments on Group "D" posts.-(1) Any person who-

(a) was directly appointed on daily wage basis on a Group "D" post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group "D" post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or order.

(2) In making regular appointments under these rules, reservations for the

candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Schedule Caste, Schedule Tribes and Other Backward Classes) Act, 1994 and the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 as amended from time to time and the orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of sub-rule (1) the Appointing Authority shall constitute a Selection Committee in accordance with the relevant provisions of the service rules.

(4) The Appointing Authority shall, having regard to the provisions of sub rule (1), prepare an eligibility list of the candidates, arrange in order of seniority as determined from the date of order of Appointment on daily wage basis and if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with such relevant records pertaining to the candidates, as may be considered necessary, to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their record referred to in sub-rule (4), and if it considers necessary, it may interview the candidates also.

(6) The Selection Committee shall prepare a list of selected candidates in order of seniority, and forward the same to the Appointing Authority."

4. A bare perusal of Rule 4(1) of Rules 2001 shows that there are 4 requirements to be fulfilled by a daily wager for being entitled to be considered for regularisation which are, (I) He was appointed on daily wage basis on a Group "D" post before 29.06.1991;

(II) In his capacity as a daily wager he was continuing in service on the date of commencement of Rules, i.e. 21.12.2001;

(III) He possessed requisite qualifications prescribed for that post at the time of initial appointment; and

(IV) a permanent or temporary vacancy is available for the post on the date of commencement of Rules, i.e. 21.12.2001.

5. Petitioner states that as per Rule 4 there is no condition that he is required to have continuously worked on the post without any break from date of his appointment till 21.12.2001, i.e. the date on which Rules 2001 came into force. Hence, the ground on which his representation has been rejected is incorrect.

6. A bare perusal of Rule 4 of Rules 2001 which is quoted above, clearly shows that there is no such condition that for the entire period without any break, petitioner had to be in service continuously. As per Rule-4 appointment of petitioner is required to be prior to 29.06.1991 and he is required to be in service

on 21.12.2001. It is not disputed in the impugned order or at bar that petitioner does not fulfill the qualifications. In fact, there is nothing in the counter affidavit to dispute that petitioner does not fulfill the 4 requirements, as stated above. Hence, he is entitled to be regularised under Rules 2001.

7. A similar view has been taken by this Court in case of Ram Naresh Vs. State of U.P. and others, reported in 2013(1) ADJ 618, Rakesh Srivastava Vs. State of U.P. Ors., 2008 (1) ADJ 371, Dukhi Singh Vs. State of U.P. and others, 2007(4) ADJ 86, Janardan Yadav Vs. State of U.P. & Others, 2008(2) ESC 1359 .

8. In Janardan Yadav case (supra) in paras 5, 6 and 8, this Court has considered this matter in detail and for convenience, the same are being quoted below: "5. Since the facts are not in dispute and it is also not disputed that the petitioner was engaged on daily wage basis in 1984, i.e., before 29.6.1991 and was also working on the date of commencement of Rules 2001, i.e., on 21.12.2001, thus it is evident that he was entitled to be considered for regularization under the said Rules. The only question up for consideration is whether the said Rules require continuous service throughout, i.e., from the date of initial engagement till the commencement of the Rules. In my view, there is no such requirement under the Rules as is apparent from perusal thereof.

6. The only requirement under Rule 4(1)(a) are that the incumbent was directly appointed on daily wage basis on a Group "D" Post in a Government Service before 29.6.1991 and is continuing in service as such on the date of commencement of the said Rules. The further requirement under Clause (b) of Rule 4(1) is that he must have possessed requisite qualification required for regular appointment on that post at the time of such employment on daily wage basis."

"8. The said stand is contrary to the Rules and it amounts to reading certain words in Rule 4(1) which is not provided therein by the Rule framing authority. The rule framing authority has not framed the aforesaid Rules in manner as are being read by the respondents. Since the Rules are applicable only to daily wage employees, the Rules framing authority was aware that such employee could not have worked continuously throughout and, therefore, has clearly provided that the engagement must be before 29.6.1991 and he is continuing as such on the date of commencement of the Rules. If a daily wage engagement has been made before 29.6.2001 and was continuing on 21.12.2001, meaning thereby the daily wage engagement remained necessity of the department or the requirement thereof for more than 10 years, for such a person only, the benefit of regularization under 2001 Rules has been provided, and it nowhere requires further that the incumbent must have worked continuously from the date of initial engagement till the commencement of these Rules and to read these words would amount to legislation, which is not permissible in law. While interpreting the statute, it is well settled that neither any word shall be added nor be subtracted but if a plain reading of the statute is clear and unambiguous, the same has to be followed as such. This Court does not find any ambiguity in

Rule-4(1) providing as to which kind of persons would be entitled for regularization and it nowhere requires that the incumbent must have worked throughout from the date of initial engagement till the date of commencement of the Rules."

Thus, impugned order dated 26.10.2002 passed by respondent no.2 cannot stand and is set aside.

9. The writ petition is allowed. Respondent no. 2 shall consider the case of petitioner for regularization in view of observations made above and pass appropriate order also taking into consideration, while passing order for regularisation, the date from which persons junior to him have been regularised."

10. With the aforesaid directions, the writ petition is allowed.