
(2004) 08 AHC CK 0093
In the Allahabad High Court
Case No : C.M.W.P. No. 35936 of 2001

Jai Prakash Chaurasiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Uttar Pradesh Regularisation of Daily Wages Appointment on Group C Posts (Outside the Purview of Uttar Pradesh Public Service Commission) Rules, 1998 — Rule 3, 5

Citation : (2005) 5 AWC 4231

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.C. Budhwar and Vikas Budhwar, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—By an order dated 23.11.1990, the Petitioner was appointed as a clerk-cum-typist on a daily wage basis by the Respondent No. 2. The services of the Petitioner on daily wages basis was extended from time to time and by an order dated 1.8.1991, the services of the Petitioner was extended till further orders. It transpires that the Petitioner was threatened that his service would be dispensed with and, therefore, he filed a Writ Petition No. 30672 of 1991 praying that the Petitioner be treated as a quasi employee in the service of the Respondents. An interim order dated 4.2.1992 was passed by this Court directing that the employment of the Petitioner would continue on daily wages till a regular selection was made by the Respondents. On the basis of this interim order, the Petitioner continued in service till 7.6.2001.

2. On 4.7.1998, the State Government promulgated "U.P. Regularisation of Daily Wage Appointments on Group C Post (Outside the Purview of U.P. Public Service Commission) Rules, 1998" (hereinafter referred to as the Rules of 1998) for regularisation of daily rated workers, who were outside the purview of the Commission. These Rules indicated that those daily rated workers, who were working on 29.6.1991 and worked continuously till 9.7.1998, i.e., the date of

issuance of the Rules, their cases would be considered for regularisation.

3. In paragraphs 9 and 10 of the writ petition, the Petitioner has categorically stated that he had been working prior to 29.6.1991 and worked continuously till the issuance of the Government order dated 9.7.1998 and even thereafter and therefore, he was entitled to be regularised as a regular clerk-cum-typist in the service of the Respondents. On the basis of the Rules of 1998, the Petitioner made a representation for regularisation of his services. Since his representation was not being considered by the Respondents, the Petitioner filed a Writ Petition No. 1094 of 1999, in which a direction was issued by this Court on 28.1.1999, directing the authority concerned to decide the representation of the Petitioner. Based on the direction of the Court, the authority concerned rejected the representation of the Petitioner by an order dated 18.6.1999, against which, the Petitioner again approached this Hon''ble Court in Writ Petition No. 28552 of 1999. This writ petition was again disposed of by this Hon''ble Court vide its order dated 2.1.2001 directing the authority to decide the representation of the Petitioner again in the light of the judgment of Supreme Court in Khagesh Kumar and Ors. v. Inspector General of Registration and Ors. 1996 (1) UPLBEC 23 Writ Petition No. 30672 of 1991. Prior to the aforesaid direction, this Court also decided Writ Petition No. 30672 of 1991 by judgment dated 21.11.2000, directing the authority concerned to consider the case of the Petitioner for regularisation of service on the basis of the Rules of 1998.

4. Based on the aforesaid two directions of this Court, the Petitioner again filed a fresh representation before the authority concerned, which was rejected again by the impugned order dated 7.6.2001, wherein not only the Petitioner's representation for regularisation of his service has been rejected, his services on ad hoc basis was also dispensed with.

5. The Petitioner has now filed the present writ petition for quashing of the impugned order dated 7.6.2001 and has prayed that he should be reinstated and that his services be regularised.

6. Heard Sri Vikas Budhwar, the learned Counsel for the Petitioner and the standing counsel for the Respondents.

7. From a perusal of the impugned order, it is clear that inspite of a specific direction given by the Court to consider the Petitioner's representation for regularization on the basis of the Rules of 1998 the authority concerned has rejected the representation on frivolous ground and has not considered the Rules of 1998. This Court had directed the Petitioner on three occasions to make a fresh representation to the authority concerned and on each occasion the representation has been rejected on frivolous ground and the Respondents while rejecting the representation has not considered the Rules of 1998. Consequently this Court has no option but to consider the said Rules framed by the State Government.

8. In paragraphs 9 and 10 of the writ petition, the Petitioner has categorically

stated that he was working on daily wage basis prior to 23.11.1990 and worked till 9.7.2001, when his services were dispensed. The Rules of 1998 clearly stipulates that a person working on a daily wage basis between the period 29.6.1991 and 9.7.1998, would alone be considered for regularisation. Paragraphs 9 and 10 of the writ petition have not been denied by the Respondents and in fact the contents of the said paragraphs have been admitted in paragraph 9 of the counter-affidavit. The only ground urged by the learned Counsel for the Respondents was that the Petitioner was not entitled to be considered for regularisation as he was working on daily wage basis on account of an interim order granted by this Court.

9. In my view, the submission of the learned Counsel for the Respondents is devoid of any merit. The fact remains, that the Petitioner worked continuously without any break in service from 1991 to 1998 and was, therefore, entitled to be considered for regularization on the basis of the Rules of 1998. It is immaterial that he was working on the basis of an interim order of the Court.

10. In *Kamal Kant Gautam and Ors. v. District Registrar/Additional District Magistrate (Finance and Revenue), Muzaffarnagar and Ors.* 1996 ALJ 1928, a Division Bench of this Court held that the employee continuing in service under an interim order of this Court for eleven years was entitled to be regularised and the action of the Respondents in terminating his service was unfair.

11. In *Rajmani Mishra Vs. State of U.P. and Another*, , in similar circumstances, this Court quashed the impugned order and directed the authority to consider the case of the Petitioner for regularization in accordance with the U.P. Regularisation of Daily Wages on Group C Posts (Outside the Purview of Uttar Pradesh Public Service Commission) Rules, 1998.

12. The learned Counsel for the Respondents further submitted that against the judgment dated 2.1.2001, the Petitioner has also filed a special appeal and, therefore, submitted that he could not be permitted to pursue two remedies and the representation filed pursuant to the judgment dated 2.1.2001 could only be considered after the disposal of the special appeal.

13. In my view, the pendency of a special appeal does not debar the Petitioner to pursue the remedy as directed by the learned single Judge especially in view of the fact that there was no interim order staying the judgment of the learned single Judge.

14. In view of the aforesaid the impugned order dated 7.6.2001, cannot be sustained and is hereby quashed. The writ petition is allowed and the Respondent No. 2 is directed to appoint the Petitioner on the post of clerk-cum-typist on the basis of the Rules of 1998, within one month from the date a certified copy of this judgment is produced before him. The Petitioner shall, however, not be entitled to any wages for the period 7.6.2001 to 2.8.2004. So far as the period in which the Petitioner had worked on daily wage basis is concerned, the same will be counted for the purpose of seniority, promotion,

other benefits, etc. In the circumstances of the case there shall be no order as to cost.