
(2004) 12 AHC CK 0086
In the Allahabad High Court
Case No : C.M.W.P. No. 316 of 2000

Kedar Nath

APPELLANT

Vs

Director General, Prantiya Rakshak Dal/Vikas Dal Avam Yuva
Kalyan Directorate and Others

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 38, 38(1), 39

Citation : (2005) 5 AWC 3920 : (2005) 1 ESC 704

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : H.N. Singh and B.N. Singh, for the Appellant; M.C. Chaturvedi, S.S. Sharma, S.P. Singh and Mohan Yadav, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Sri H.N. Singh, learned counsel for the petitioner and Sri S.P. Singh, learned Standing Counsel for the respondents.

2. In this petition prayer has been made to regularise the service of the petitioner as Driver in Zila Yuva Kalyan Avam Prantiya Vikas Dal, U.P. Mirzapur and for payment of salary equivalent to the regular employee.

3. It appears that repeated directions were made by this Court on 27.10.2004, 24.11.2004, 1.12.2003, 27.1.2004, 17.3.2004; 30.4.2004 and 19.8.2004 where the instructions were to be provided on behalf of the respondents in respect of creation to the post of driver against which the petitioner is rendering work. According to the petitioner, the undisputed facts emerging from the pleadings and the records are that petitioner after his deployment from the year 1987, he has been continuously working as a driver on daily wages and his conduct and performance throughout is satisfactory. At the relevant time while being engaged as daily wager in the year 1987, he was in possession of required qualification of a regular employee. Since the petitioner had been rendering work and is

deployed for more than one and half decades, therefore, according to the petitioner the post is treated to be in existence however this aspect is being denied by the respondents. The denial of existence of post is on the Instructions of the respondents or the State Government to the Standing Counsel. According to the petitioner when the petitioner is deployed as a driver since very long time, by no stretch of imagination it could be said that post is not in existence. According to him undisputedly, the work is available and fund is being disbursed for driving vehicle. In these circumstances, the petitioner is entitled to be regularised in view of the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts (outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998 which provides as under :

Regularisation of daily wages appointments on Group "C" Posts--(1) Any person who--

(i) was directly appointed on daily wage basis on Group "C" posts in the government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(ii) possessed requisite qualifications prescribed for regular appointment for that post at the time of such appointment under the relevant service rules on daily wage basis, shall be considered for regular appointment on group "C" post in permanent or temporary vacancy as may be available 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 orders.

(2) In making regular appointments under these rules, reservations of the candidates belonging to the Scheduled Castes, Scheduled Tribes, other Backward Classes and other categories, shall be made in accordance with the Uttar Pradesh Public Service (Reservation for Scheduled Caste, Scheduled 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 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 Service Rules.

(4) The appointing authority shall, having regard to the provisions of Sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of order of appointment 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 their character rolls and such other records, pertaining to them, 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 records referred to in Sub-rule (4) and if it considers necessary, it shall interview the candidates also to assess their suitability.

(6) The Selection Committee shall prepare a list of selected candidates arranging (their names in order of seniority and forward the same to be appointing authority.

4. Following submissions were made for and on behalf of respondents by Sri S.P. Singh, learned Standing counsel.

5. The daily wagers may be regularised, provided vacancies, posts are existing and in consonance to rules, regulations, scheme or government order, for the purpose compatible with the constitutional provisions particularly those embodied in Articles 14, 16, 38, 39, 41 and 43 of the Constitution with particular reference to the doctrine of "social justice" which the Supreme Court as expatiated upon in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], as under :

"Social justice, equality and dignity of persons are cornerstone of social democracy. Social justice is a dynamic device to mitigate the suffering of the poor, weak, Dalits, tribals, and deprived sections of the society and to elevate them to the level of equality to live their lives with dignity of person.....Social security, just and humane conditions of work and leisure of workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity."

6. The learned Counsel in support of the aforementioned contentions has relied upon the decision of *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, ; *Sushil Kumar Yadunath Jha Vs. Union of India (UOI) and Others*, ; *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, and *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, as well as the decision of *A.K Jain v. Union of India*, 2 SC Service Law Journal 203 (sic) and *Rajbinder v. State of Punjab and Ors.*, 2 SC Service Law Journal 521 (sic).

7. The references were made on behalf of the petitioner on *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, *Bharat Petroleum (erstwhile Burmah Shell) Management Staff Pensioners and others Vs. Bharat Petroleum Corporation Ltd. and others*, *Dhirendra Chamoli and Another Vs. State of U.P.*,

8. Learned Counsel for the petitioner has claimed petitioner's regularisation on the strength of judgment of this Court (Hon'ble Om Prakash, J.) in *Tejpal and Ors. v. Director of Education and Ors.*, where this Court has observed that regularisation is imperative under Constitutional philosophy when the daily wagers have put in deployment for several years, however, the decision of this Court in *Tejpal* (supra) cannot be a binding precedence in view of large number of subsequent decisions of this Court and Supreme Court.

9. In view of three Judge's Bench decision of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, the learned Counsel for the petitioner has submitted that the writ petitioners were having relevant educational qualification and were serving for long period with artificial breaks in service, could be considered for regularisation in phases in accordance with seniority by ignoring the artificial breaks of three months while purpose of computing their past service, however, this case shall have no binding precedence and has not decided any law and only under the facts and circumstances has directed the respondent authorities to consider the case of regularisation.

10. The petitioner has claimed regularisation on the strength of a judgment of this Court (Hon'ble D.K. Seth, J.) in Ram Sundar Yadav and Anr. v. Regional Sports Officer, Sports Stadium, Meerut and Ors. 1998 (78) FLR 100, where the writ petitioners after having worked about 7-8 years in the sports stadium were directed for being considered for regularisation following the decision of Bhullar Nath Yadav and Ors. v. Mayo Hall Sports Complex Allahabad and Ors.. 1990 (61) FLR 68. The facts of Ram Sundar Yadav (supra) are different and distinguishable and the decision is in per incuriam as the same is not taking upto date decision of the Supreme Court on the subject of regularisation while passing above judgment.

11. In Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, the Supreme Court observed that daily rated labourers engaged dehors the rules as plumbers, carpenters, sweepers, pump operators, helpers and masons by fully State-aided University were allowed to continue as such for a long period of 10 years, therefore, non-regularising the services of such daily wagers by University was held as an unfair labour practice and the daily rated labourers were indicated to be considered for absorption against existing vacant posts in accordance with the rules and if necessary by relaxing qualification and creating necessary number of posts.

12. In Hindustan Machine Tools and Others Vs. M. Rangareddy and Others, the Supreme Court following the decisions of Piara Singh (supra); Raj Narain Prasad and Others Vs. State of U.P. and Others, and Niadar and Anr. v. Delhi Administration and Anr., (1992) 4 SCC 112 where the casual labourers deployed (3 to 10 years) in such multi unit public sector undertaking of Central Government claiming regularisation while undertaking was facing great financial difficulties, the direction of the High Court to prepare an absorption scheme to such undertaking in the light of the provisions of Articles 38(1), 39(e) and 43 of Constitution was not interfered with, however, the liberty was granted to such undertaking, while framing the scheme, to assess the requirement of regular work force and necessity to alleviate the suffering of such workers and then to fix the strength of force to enable the workers to get the benefit of regularisation within a reasonable time and only those, who were fulfilling the conditions or eligibility with relaxation of age in prevailing rules, were directed to be

considered for regularisation.

13. In *M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd. and another*, the question regarding regularisation of ad hoc appointees came up for consideration before the Supreme Court. It was held that normal rule would be regular appointment through the prescribed agency but exigency of administration may sometime call for an ad hoc and/or temporary appointment to be made. Such ad hoc or temporary appointee, the Supreme Court held, if allowed to continue for a fairly long span, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and service record and appointment does not run counter to the reservation policy of the State. Direction given by the High Court in that case for regularisation of every ad hoc or temporary employees who had been continued for one year was held to be totally "untenable" and "unsustainable". In the case of *Piara Singh (supra)* the Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary appointment by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee, he must be replaced by only regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation.

14. This Court (D.B.) in *Bhullar Nath Yadav and Ors. v. Mayo Hall Sports Complex and Ors.* 1990 ACJ 429 following the judgment of the Supreme Court in *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, has held that by virtue of petitioners working for last several years on daily wages in Mayo Hall Sports Complex cannot be denied regularisation even in absence of sanctioned post and the respondents were expected to device ways and means to absorb the writ petitioners on permanent basis, specifically those writ petitioners, who had put three years or more in service on daily wages, were entitled to be absorbed and regularised. This Court in *Bhallar Nath Yadav (supra)* has further observed that paucity of funds and absence of posts cannot be a ground for denying the benefit of regularisation to the writ petitioners.

15. In *M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd. and another*, the question regarding regularisation of ad hoc appointees came up for consideration before the Supreme Court. It was held that normal rule would be regular appointment through the prescribed agency but exigency of administration may sometime call for an ad hoc and/or temporary appointment to be made. Such ad hoc or temporary appointee, the Supreme Court held, if allowed to continue for a

fairly long span, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and service record and appointment does not run counter, to the reservation policy of the State. Direction given by the High Court in that case for regularisation of every ad hoc or temporary employees who had been continued for one year was held to be totally "untenable" and "unsustainable". In the case of Piara Singh (supra) the Court noted that the normal rule is recruitment, through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary appointment by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee, he must be replaced by only regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation.

16. Despite the directions of this Court, the Director General, Prantiya Rakshak Dal or any of the senior officer for or on behalf of the respondents have neither indicated anything contrary to the availability of work or at least class-IV post nor has said in respect of creation of the post for the person, from whom the work of driver is being taken away from the day of his deployment. A presumption is being made that the work, post and fund is available. In these circumstances petitioner is entitled to continue and is entitled to be considered for regularisation under the existing prevailing rules at least to the post of Class-IV category in future or to the post of driver. Petitioner is entitled for regularisation in the light of above observation for this purpose respondents have to consider and pass appropriate order for regularisation as indicated above within three months from today.

In view of the above the writ petition is allowed.