
(2001) 08 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P. No. 30411 of 1990

Krishnavatar Shukla

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2001) 4 AWC 2652

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : D.S. Srivastava, R.K. Pande, S.K. Shukla and B.N. Tiwari, for the Appellant; S.C. and S.S. Sharma, for the Respondent

Judgement

Ashok Bhushan, J.—Heard Sri D. S. Srivastava, counsel for the petitioner and Sri S. S. Sharma, standing counsel appearing for the respondents.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the parties the writ petition is being finally decided.

3. This writ petition has been filed by the petitioner praying for issue of a writ, order or direction in the nature of certiorari quashing the order dated 16th August, 1990, passed by the Executive Engineer, Rural Engineering Services, Banda Division, Banda. The aforesaid decision was taken in pursuance of the direction issued by the Chief Engineer that in the office no work charge employees or daily wage employees be allowed to continue.

4. The petitioner's case is that he was appointed in the department of Rural Engineering Services as work charge chowkidar in the year 1988 at the rate of Rs. 300 per month. The petitioner worked from 6th April, 1988 to 3.1.1989. Petitioner's case is that the Chief Engineer passed an order in his favour on 15th June, 1989, that petitioner may be regularised if any post exists and till such time, he may be paid Rs. 20 per day. Petitioner further refers to order dated 3.7.1989 passed by the Executive Engineer by which petitioner was engaged at

the rate of Rs. 20 per day on the post of clerk in work charge establishment. Petitioner states that he has been continuously working from 15th June, 1989 till the order of termination was passed on 16th August, 1990. Petitioner's case is that he was continuing from April, 1988, except breaks of 2 or 3 days. Petitioner has stated that he has completed 240 days during his regular appointment. Petitioner has further stated that inspite of order dated 15th June, 1989, passed by the Chief Engineer, his services were not regularised.

5. The respondents have filed a counter-affidavit in which it has been stated that petitioner was appointed as daily wager on fixed rate and his working period was for fixed periods on the basis of sanction. It has further been stated that there is no post of clerk-cum-chowkidar sanctioned in the work charge establishment. Petitioner was engaged on the basis of sanction by Chief Engineer. Petitioner is not working since April, 1990.

6. The petitioner has filed a rejoinder-affidavit and has again reiterated that he has been working from April, 1988 and has completed 240 days prior to 16th August, 1990. Petitioner has alleged that his services have been terminated without complying the provisions of Section 6N of the Industrial Disputes Act, 1947. The petitioner has further placed reliance on judgment of this Court in W.P. No. 8148 of 1990. H. M. Rizvi and others v. Rural Engineering Service. U.P. and others.

7. The counsel for the petitioner in support of his submissions has stated that termination of the services of the petitioner was illegal being in violation of Section 6N. The petitioner has further stated that he is also entitled to the benefit of judgment given by this Court in H. M. Rizvi's case (supra). The petitioner has placed reliance on another judgment of this Court in W.P. No. 31498 of 1990, Kailash Kumar Verma v. State of U.P. and others. In the aforesaid judgment of Kailash Kumar Verma (supra), this Court has followed the order of Lucknow Bench of this Court passed in H. M. Rizvi's case (supra).

8. Learned standing counsel has refuted the submissions made by counsel for the petitioner. Learned standing counsel has stated that the petitioner was engaged only on daily wage basis and department has every jurisdiction to terminate daily wage engagements and no error was committed by the department in dispensing with daily wage and work charge employees. With regard to violation of Section 6N of the Industrial Disputes Act, 1947, learned standing counsel submitted that for that, petitioner ought to have raised industrial dispute. Learned standing counsel has also relied on a judgment of this Court in Babu Ram and another v. Town Area Committee, Hasayan, district Aligarh and others 1994 (3) UPLBEC 1460 and judgment of the Apex Court in Notified Area Council, Pipili and another v. Gahar Mohammad and another 2001 (2) UPLBEC 1249.

9. After having heard counsel for the petitioner and learned standing counsel and perusing the record, it is clear that petitioner's period of working is only from

April, 1988 to 16th August, 1990. On the basis of the aforesaid period, petitioner does not become entitled for regularisation in service. Regularisation in service on the post falling outside the purview of the Public Service Commission can be claimed only in accordance with provisions of U.P. Regularisation of Ad-hoc Appointments (on posts outside the purview of Public Service Commission) Rules, 1979. In the aforesaid Rules, the cut off date for regularisation original is 1.10.1986. The decision which has been impugned in the writ petition is a general decision taken by the department for dispensing with daily wage employees and work charge employees. The judgment of learned single Judge in H. M. Rizvi's case (supra) do support the contention of the petitioner but after the aforesaid decision of learned single Judge, there are several pronouncements of Apex Court which hold that disengagement of daily wage employees does not give any right to him. In State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another, , the Apex Court held that the regularisation of daily wage employees can be made only when post are created. The recent decision of Apex Court in Notified Area Council's case (supra), it has clearly been laid down that abolishing the engagement of daily wage worker is within the power of employer and the said decision is not available to be interfered by the Court unless it is held to be vitiated by mala fide or arbitrary. In paragraph 4 of the said judgment the Apex Court has laid down as under :

"(4) From the discussions in the judgment, it is manifest that the High Court "has not appreciated" the resolution of the N.A.C. abolishing the engagement of daily wage workers and has also taken exception to the Executive Officer terminating the appointments of the respondents who were appointed by resolution passed by the council. From the materials available on record, it is clear that on both the counts the High Court fell into error. The position is fairly well-settled that continuance or abolition of posts is within the power of the employer and any decision in that regard is not available to be interfered with by the Courts unless it is held to be viliated by mala fide or arbitrary. From the discussions in the judgment under appeal, we do not find that the High Court took into consideration any material on record to come to the conclusion that the resolution passed by the N.A.C., dispensing with the engagement of daily wage workers, was vitiated on any count. If the employees could not continue as daily wage workers, then the question of their regularisation in the post did not arise. It is relevant to note here that the regular appointments purportedly made by the letter dated 22nd March, 1995, had been cancelled within a week, by the letter dated 29th March, 1995. Therefore, when the matter was being considered by the High Court, the case of the respondents could only be considered as daily wage workers and not as regular employees."

10. There is no allegation in the writ petition that decision of respondents to discontinue the petitioner's engagement was mala fide or was arbitrary.

11. In view of the clear pronouncement of the Apex Court on the subject, I am not persuaded to follow the judgment of this Court in H. M. Rizvi's case (supra).

With regard to contention of the petitioner's counsel that petitioner's services have been terminated in violation of Section 6N of the Industrial Dispute Act, learned standing counsel is right in his submission that for the aforesaid, it was open to the petitioner to raise an industrial dispute. The petitioner, however, having worked on daily wage basis in the department is entitled to be considered for any future vacancy as daily rated worker or regular employee according to law by waiving age bar if any. The aforesaid directions were also issued by the Apex Court in the case of Notified Area Council (*supra*).

12. In view of the above, it is held that the order dated 16th August, 1990, impugned in the writ petition does not suffer from any error. However, it is provided that petitioner will be considered for any future vacancy in the department by waiving age bar as and when any engagement is made by the department on daily wage basis or regular vacancy.

13. With the aforesaid observations, the writ petition is finally disposed of.