

(2014) 11 AHC CK 0151

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 35425 of 1997, 16497 of 2012, 15850 of 2013 and 15067 of 2014

Murari Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2015) 2 ADJ 238 : (2015) 5 ALJ 524 : (2015) 2 AWC 1382 : (2015) 144 FLR 582 : (2015) 2 LLJ 199 : (2015) 1 UPLBEC 191

Hon'ble Judges : Rajan Roy, J

Bench : Single Bench

Advocate : Bhupendra Nath Singh, Advocates for the Appellant

Judgement

Rajan Roy, J.—These connected petitions have been heard together and are being decided by this common judgment. WRIT - A No. - 35425 of 1997 is the leading case.

Heard Sri B.N. Singh, learned Counsel for all the petitioners and Sri Harish Chandra Pathak, learned Standing Counsel for the respondents.

The petitioners herein were engaged as part-time tube-well operators on different dates between 1981 to 1983 in the Irrigation department of the State.

2. Other similarly appointed part-time tube-well operators, raised an industrial dispute before the Labour Court claiming parity of pay with regularly appointed tube-well operators on the ground that their duties, qualifications and working hours etc. were similar to each other. The Labour Court recorded a finding in their favour and allowed the claim. On a challenge being made by the State Government before the High Court, the findings recorded by the Labour Court were affirmed. Matter went up to the Supreme Court and there also, the findings recorded by the Labour Court as well as the High Court, were affirmed. Consequently, part-time tube-well operators were given pay parity.

3. In one of the special appeals arising out of such writ petitions, the benefit of pay parity was ordered to be given w.e.f. date of judgment i.e. in the case of Suresh Chandra Tewari, decided on 18.5.1994, which was the leading case, not from the date of initial appointment. The claim for pay parity from the date of initial appointment was declined by this Court vide judgment dated 26.4.2001 passed in Writ Petition No. 155 (S/S) of 2001, Rajendra Prasad Misra v. State of U.P. and others and said benefit was given prospectively.

4. The petitioners herein also filed a writ petition bearing No. 17350 of 1992 claiming the same benefit of pay parity as was claimed in the case of Suresh Chandra Tewari (supra). Their writ petition was also allowed in the same terms.

5. Thereafter, the petitioners herein filed Writ Petition No. 16249 of 1996 claiming regularization of their services and grant of service benefits w.e.f. the date of their initial appointments, which was disposed of on 19.7.1996 (Annexure 6 to the writ petition) with a direction to the concerned respondents to consider and decide representation of the petitioner in accordance with law by a reasoned order.

6. Thereafter, in pursuance of certain orders of this Court, the State Government framed regularisation rules in the year 1996 for regularization of services of such part-time tube-well operators and circulated the same vide Government Order dated 17.12.1996. One of the conditions mentioned in the said rule, was that the part-time tube-well operator should have been appointed prior to 1.10.1986 and should have been working on the date of promulgation of the said rules. The cut of date mentioned above was amended in the year 2008 and the same was made 13.6.1998.

7. The services of the petitioners herein were regularised vide order dated 10.3.1997 in terms of the G.O. Dated 17.12.1996, w.e.f. 17.12.1996. Subsequently, said order was superseded by the impugned order dated 9.5.1997 to the extent that such regularisation of the petitioners herein was made effective w.e.f. 1.3.1997 and not from 17.12.1996. It is under these circumstances that this writ petition was filed by the petitioners challenging aforesaid order dated 9.5.1997.

8. During pendency of this writ petition, an amendment was made on 2.9.2011 challenging the order dated 10.3.1997 to the extent it granted regularisation of services w.e.f. 17.12.1996 and to the extent the order dated 9.5.1997 granted it w.e.f. 1.3.1997. Another amendment application was filed for adding certain grounds and reliefs for challenging the vires of Rules 4, 5 and 6 of the Regularisation Rules 1996. The said amendment application was allowed in the year 2013 and thereby, the vires of the rules is also under challenge.

9. Sri B.N. Singh, learned Counsel for the petitioners contended that the rules in question are violative of Articles 14 and 16 of the Constitution of India. He further submitted that in view of the findings recorded by the Labour Court, this Court as well as the Supreme Court, to the effect that the petitioners, though

designated as part-time tube-well operators were in fact performing the same duties and were putting in same working hours and possessing same qualifications as the regularly appointed tube-well operators, there is no reason why they be not treated as regularly appointed w.e.f. the date of their initial engagement/appointment, accordingly he submitted that the regularisation of their services w.e.f. 1.3.1997, in pursuance of the provisions contained in the regularisation rules of 1996, is unreasonable and arbitrary. The regularisation rules, in fact, should have permitted the regularisation of services w.e.f. the date of initial appointment and only that could have been a just and reasonable provision.

10. In this regard, he submitted that a perusal of the Government Order dated 17.12.1996 (contained in Annexure 8 to the supplementary-affidavit) reveals that the State Government had created a separate cadre of so called part-time tube-well operators, which, by means of regularisation rules 1996, in effect, was merged with the regular cadre of tube-well operators. Based on said theory of separate cadre having been created, he submitted that separate posts of part-time tube-well operators had been sanctioned in the said cadre and the appointment of the petitioners was made against the sanctioned posts in a duly created cadre.

11. He further submitted that the appointments of the petitioners herein were made after following due process of selection, as indisputably advertisements were issued, pursuant to which, eligible candidates applied, selections were held by the selection committees, which ultimately resulted in issuance of appointment letters to them on different dates between 1981 to 1983. He also submitted that in view of the procedure followed for selection of the petitioners, their appointments having been made in a cadre separately created for them, there is no reason or justification as to why they should not be treated as regularly appointed from the date of their initial appointment or as regularised from the said dates.

12. He also submitted that the regularisation rules of 1996 are unreasonable, unjustifiable and arbitrary in this regard, specially, Rule (6) thereof, which provides that seniority of such part-time tube-well operators shall be determined from the date of their regularisation under such rules meaning thereby that the date of initial appointment is not to be treated as the date of regular appointment, which is unjust and unreasonable.

13. He also submitted that the promulgation of the regularisation rules of 1976 is mala fide as it amounts to taking away the vested rights of the petitioner, which had accrued in their favour under the judgments of this Court wherein they were held to be similarly situated to the regularly appointed tube-well operators, with parity in pay with them.

14. Sri Singh, learned Counsel for the petitioners also submitted that the regularisation rules of 1996 were also violative of Article 16 of the Constitution of

India, as, in spite of the fact that the petitioners were similarly situated to the regularly appointed tube-well operators, they have been differently treated, thus, likes have not been treated alike.

15. He also submitted that on account of arbitrariness and unreasonableness of the regularisation rules of 1996, despite having put in more than 25/30 years" continuous satisfactory service, the part-time tube-well operators have retired without getting several service benefits including the benefit of time scale and ACP etc. as well as retiral benefits including pension etc. for want of requisite qualifying regular satisfactory service.

16. In support of his submissions, learned Counsel for petitioners relied upon unreported judgments of Lucknow Bench of this Court dated 22.11.2006 passed in Writ Petition No. 2557 of 1999, Rama Shanker Dubey v. State of U.P. and others, judgment dated 18.12.2009 passed in Writ Petition No. 1114 of 2007, Kailash Pati Tripathi v. State of U.P. and others, judgment dated 18.5.1994 passed in Writ Petition No. 3558 of 1992, Suresh Chandra Tiwari and others v. State of U.P. and others and unreported judgment of Supreme Court dated 27.3.1995 passed in SLP No. 6119 of 1994, State of U.P. and others v. Magra Prasad Verma and others as well as reported judgments of the Supreme Court in the case of Tamil Nadu Teachers Association Vs. Association of the Heads of the Government (B Wing) High and Higher Secondary Schools and Others, , and Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, .

17. Sri Harish Chandra Pathak, learned standing Counsel, on the other hand, submitted that the services of all the petitioners have been regularised w.e.f. 1.3.1997 under the regularisation rules of 1996, therefore, now it is not open for them to challenge vires of the said rules after taking benefits thereunder. There is always presumption of constitutionality of the rules and the burden of proof lies on those who allege it to be unconstitutional i.e. the petitioners herein in the instant case. He further submitted that merely because the persons have put in long years of service, does not by itself entitle them to regularisation w.e.f. the date of their initial appointment, rather it is the nature of their appointment, which is determinative of their entitlement to regularisation. The nature of appointment of the petitioners herein, being purely temporary, it did not confer on them, any right to regularisation from the date of their initial appointment. No such vested right accrued in their favour nor has it been taken away by regularisation rules of 1996.

18. Learned Standing Counsel further submitted that the judgments of the Labour Court, High Court and the Supreme Court relating to the pay parity given to the part-time tube-well operators with the regularly appointed tube-well operators, are based only on the principle of equal pay for equal work and did not entitle the petitioners for regularisation from the date of their initial appointments.

19. He also contended that separate service rules i.e. The Irrigation Department

Tube-well Operators Rules, 1953 were in force for regulating the conditions of service including recruitments to regular cadre of the tube-well operators. The petitioners herein were not appointed under the said rules. They were engaged on purely temporary basis as part-time tube-well operators. Their services have been regularised under the regularisation rules of 1996 w.e.f. 1.3.1997 and they are not entitled to be treated as regularly appointed nor are they entitled to regularisation w.e.f. the date of their initial appointments. The rules in question are neither discriminatory nor arbitrary nor unreasonable nor violative of any Article of the Constitution. All part-time tube-well operators are treated alike and there is no question of any discrimination in this regard. He placed reliance on judgments of the Supreme Court in the cases of R.K. Garg and Others Vs. Union of India (UOI) and Others, , and Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc., .

20. I have heard learned Counsel for the respective parties and perused the record.

21. In view of the judgment of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , there is no vested right of regularisation. The nature of initial appointment is relevant factor to be considered in this regard. The Constitution Bench has categorically held that a person who is temporarily appointed knows fully well about the nature and fate of his appointment and also that the same is terminable on the expiry of such period as mentioned in the appointment letter itself or as per the conditions mentioned therein. No vested right of regularisation accrues in his favour on a subsequent stage also merely on account of having put in long years of service. It has also been held that regularisation is not and cannot be a mode of recruitment.

22. A fortiori, there cannot be a right of regularisation with retrospective effect from the date of initial appointment.

23. Temporary, adhoc, contractual appointments can also be made for carrying out regular work but this does not entitle such appointees to the status of regular employees. A reference may again be made in this context to the pronouncement of the Supreme Court in Uma Devi's case (supra) as also to the case of ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Ltd. and Others, .

24. A perusal of the letter of petitioners' appointment as contained in Annexure S.A. 4 to the supplementary-affidavit filed by them clearly reveals that their appointment was referred as part-time service on payment of Rs. 150/- per month for performing the duties of part-time tube-well operators on purely temporary basis and was terminable at any time without any notice. Admittedly, there was a regular cadre of tube-well operators. The conditions of service including recruitment in such cadre was governed by the rules of 1953. It is not the case of petitioners that they were appointed in accordance with said rules of

1953 nor that they were appointed in the regular cadre under such rule. It is admitted case of the petitioners that they were appointed as part-time tube-well operators, though after following a process of selection, such as issuance of advertisement and selection thereunder. Thus, the nature and mode of appointment of the petitioners herein was different from that of the regularly appointed tube-well operators in the regular cadre who were governed by the Rules of 1953, as such, they form two different classes as far as their nature of appointment is concerned. Such employees are not similarly situated to the regularly appointed persons in the regular cadre and are not entitled to regularisation of their services w.e.f. the date of their initial appointment nor to be treated as regularly appointed from such date.

25. In pursuance of directions of this Court, Rules for regularisation of services of part-time tube well operators were framed by the State Government in exercise of powers under the proviso to Article 309 of the Constitution of India and were circulated vide Government Order dated 17.12.1996, which clearly mentioned that for such regularisation additional posts were being created/sanctioned. As per Rule 3(d), "Part-time Tube-well Operator" included a person who was designated or appointed as Tube-well Assistant by Government Order dated 20.2.1992. As per Rule 4(I) any person who was appointed on the post of part-time tube-well operator before 1.10.1986 and was continuing in service, as such, on the date of commencement of these Rules, possessed requisite qualifications prescribed for regular appointment to the post of Tube-well Operator at the time of such part-time appointment shall be considered for regular appointment to the post of Tube-well Operator before any regular appointment is made on such post in accordance with the service Rules. Rule 6(I) provided that a person appointed under these Rules shall be entitled to seniority only from the date of the order of appointment after selection in accordance with these Rules and shall in all cases be placed below the persons appointed on the post of Tube-well Operators in accordance with the service Rules prior to the appointment of such persons under these Rules.

26. The petitioners herein being covered by the said Rules were considered and their services were regularised vide order dated 10.3.1997 w.e.f. 17.12.1996 i.e. the date of issuance of the Rules of 1996, however, as the opposite parties realized their mistake, they modified the order dated 10.3.1997 by order dated 9.5.2007 clarifying that the regularisation was w.e.f. 1.3.1997 but the benefits shall be given from the date of joining on the Government Tube-well. The seniority inter se shall be determined separately. Needless to say that these petitioners had already been given parity in pay with regular employees from an earlier date in compliance of the directions of this Court, as already stated herein above, but not from the date of their initial appointments.

27. Appointment with retrospective effect is normally not permissible. One of the reasons being it will adversely affect others, who have been appointed in the interregnum, in matters of seniority, promotion etc. In a case of regularisation of

service also retrospectivity will adversely affect such rights of others who have already been regularly appointed in the regular cadre as per the service Rules and are better placed. It is with this object that Rule 6 of the Regularisation Rules of 1996 contains a stipulation that those regularised under these Rules will be placed below those appointed in accordance with service Rules prior to them. The Rule makes a valid distinction between two different classes of employees, one which is regular and other not so. There is a rationale basis for such objective as also nexus with an object, as referred above. The Supreme Court in the case of Registrar General of India and Another Vs. V. Thippa Setty and Others, , has already held that the regularisation should be prospective and not retrospective so that seniority of those, who are already in service, is not affected. This judgment has been followed in the case of Union of India (UOI) and Others Vs. Sheela Rani, . Reference may also be made to the case of State of Haryana Vs. Jasmer Singh and others, .

28. Regularisation of services from an anterior date/retrospective effect, apart from the legal aspect of the issue, also has a financial implication. The State would be burdened with huge financial liability in terms of claims of Time scales/Promotional Pay Scales/Financial up-gradations under ACPS with retrospective effect resulting in enhanced salaries and post retirement benefits.

29. So far as violation of Article 14 of the Constitution on the basis of the findings recorded by the Labour Court, this Court and the Supreme Court on the ground of similarity in the nature of duties and qualifications etc. of part-time tube-well operators and full time tube-well operators, is concerned, in my view, said findings have relevance only for the purpose of pay parity and that would not by itself entitle the petitioners herein to be treated as regularly appointed from the date of their initial appointments nor for regularisation of their services from such dates. Undeniably, pay parity has been given to the petitioners herein with the regularly appointed tube-well operators and there is no dispute in this regard. In fact the petitioners at the time of filing of Writ Petition No. 17350 of 1992 etc. claiming parity in pay with regular employees could have claimed regular appointment or regularisation of services from their initial date of appointment but they did not do so, nor was any such relief granted. Even pay parity has not been granted from the initial date of appointment.

30. As far as the other contention of Sri Singh with regard to violation of Article 16 of the Constitution of India on the ground that the petitioners herein being similarly situated have been treated differently, is concerned, the same is also not acceptable in view of the dictum laid down by the apex Court in Uma Devi's case (supra), as, the nature of appointments of the petitioners herein was different to that of the regularly appointed tube-well operators in the regular cadre, which was made under the rules of 1953. The appointments of the petitioners herein was not made in the regular cadre whereas that of the regularly appointed tube-well operators was in the regular cadre. There cannot be parity between the two for the purposes of claiming regularisation or regular

status with effect from the respective dates of their initial appointments. Though the petitioners herein have been granted pay parity with the regularly appointed tube-well operators way back in the year 1996, much water has flown down the river since then, now the field is occupied by the pronouncement of the Supreme Court in Uma Devi's case (supra) and therefore, the right of petitioners herein to regularisation w.e.f. date of their initial appointments is to be seen in the light of the said pronouncement of the Supreme Court.

31. At this stage, in the midst of dictation, Sri Singh submitted that the ratio of Uma Devi's case (supra) applies only in respect of irregularly and illegally appointed persons to check the back door entries, which is not the case herein. The appointments of the petitioners herein cannot be said to be back door entries as the process of selection was followed.

32. A perusal of the pronouncement of Uma Devi's case especially paragraphs 19, 33, 45, 47 and 52 thereof makes it crystal clear that even temporary and ad hoc appointees are not entitled to be considered for regularisation except to the extent permissible in para 53 thereof. Therefore, this contention of learned Counsel for the petitioners herein is not acceptable. The petitioners were not appointed against duly sanctioned posts in the regular cadre of tube well operators created under the service rules made under the proviso to Article 309, but were appointed in addition to the said cadre strength. In the case of Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, , which was a matter pertaining to part-time tube well operators, the Supreme Court held as under:

"35. The High Court has also directed that the part-time Tube-well Operators shall be treated as permanent employees under the same service conditions as the Tube-well Operators as far as practicable. This direction runs in the teeth and the guidelines of the Constitution Bench Judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In fact, on this score alone the decision of the Division Bench of the High Court deserves to be set aside."

33. As far as the contention of the learned Counsel for the petitioner that in the instant case, neither the appointments are contractual nor time bound nor have been made under any scheme which itself is time bound, is concerned, from a perusal of the appointment orders of the petitioners herein, it is crystal clear that they were appointed on temporary basis and the appointment was terminable at any time without any notice and undoubtedly it was not a regular appointment in the regular cadre, therefore, the status of the petitioners herein is not any better than the temporary appointees as mentioned in Uma Devi's case (supra), as is also evident from the observations of Supreme Court in para 35 of U.P. Gram Panchayat Adhikari Singh's case (supra).

34. So far as the contention of Sri Singh that several part-time tube-well operators have retired after putting in a long period of service and they have become disentitled to pension etc. as they did not complete 10 years requisite

service, is concerned, this is not a public interest litigation. Petitioners herein can raise only their cause. All the petitioners have put in more than 10 years of regular service, therefore, no such prejudice is being caused to them. It is a different cause, which can be raised by concerned employees separately before the authority concerned but that cannot be a valid ground for interference herein and therefore, I am unable to accept this contention also.

35. I do not find that non-regularisation of the petitioners herein w.e.f. the date of their initial appointments is in any way arbitrary or unreasonable or violative of Articles 14 & 16 of the Constitution of India as there is no provision for regularisation w.e.f. the date of their initial appointments. The very concept of regularisation pre-supposes irregularity, obviously, which had occurred at the time of initial appointment. There is no such Fundamental or legal Right of regularisation from the date of initial appointment which could be enforced under Article 226 of the Constitution of India. The Rules in question cannot be said to be violative of Articles 14, 16 or any other provision of the Constitution merely on this count.

36. So far as the cases relied upon by the learned Counsel for the petitioners are concerned, there is no quarrel with the proposition of law laid down therein by their Lordships but in view of discussions made above, those cases are of no avail to the petitioners herein.

37. At this stage Sri Singh submitted that in fact, the petitioners herein are not claiming regularisation of their services w.e.f. the date of their initial appointments, but are claiming benefit of their past services for the purposes of certain service benefits such as selection grade, time scale, seniority etc. and in this regard invited attention of the Court to relief No. 2, which reads as under:

"2. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to give the benefits of past services to the petitioners."

38. A bare perusal of the above quoted relief, makes it crystal clear that it is vague. Even if, such submission of Sri Singh is accepted, unless the services of the petitioners are regularized w.e.f. the date of their initial appointments, the benefits claimed, cannot be granted to them, as past temporary services cannot be counted for grant of the benefits in question. Therefore, such submission is misconceived and hence, rejected.

39. Sri Singh has also raised a plea of merger of the two cadres i.e. part-time tube-well operators and the regular operators cadre, by means of regularisation rules of 1996. In this regard, he cited decision of the Supreme Court in the case of S.K. Rattan Vs. Union of India (UOI) and Others, . I have considered the submission and in my opinion, this judgment is not applicable to the facts of the instant case as no question of merger is involved herein. The question herein is veritably of regularization w.e.f. the date of initial appointments or counting of past temporary services that were rendered much prior to the date of regularization, which cannot be counted without regularisation w.e.f. the date of

initial appointments. In view of the above, I do not find any infirmity in the orders impugned dated 10.3.1997 and 9.5.1997, by which services of the petitioners have been regularised w.e.f. 1.3.1997. There is no valid ground for declaring the Rules in question as ultra vires Articles 14 & 16 of the Constitution for not providing for regularisation w.e.f. initial date of appointment. The writ petitions fail and are dismissed.