
(2010) 08 AHC CK 0191
In the Allahabad High Court

Nar Singh Chauahan

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0191

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard Sri Virendra Singh, learned Counsel for the petitioner and the learned standing counsel.

2. The petitioner was engaged as clerk- typist with effect from 1.9. 1988 on daily wage basis. The petitioner continuously kept on working without any complaint till 3.9. 1994 when he fell ill and remained absent till 22.2. 1995. When the case of other colleague for regularization was being considered in the year 2001, the petitioner was not considered, on the pretext that the absence with effect from 3.9.1994 to 22.2. 1995 was a gap in service and hence the petitioner had not completed continuous service as contemplated in Regularization of Daily Wage Appointment on Group C Post (outside the purview of U.P. Public Service Commission) Rules, 1998. Petitioner thereafter filed W.P. No. 6 (SS) 2001. An order was passed in the writ petition that the case of the petitioner should be considered treating this absence as continuous service because the opposite parties could not place any material before the Court to show that the leave was unauthorized absence and later by allowing the petitioner to continue after coming back from the leave, the opposite parties forfeited their rights to be treating the absence of the petitioner as a gap in continuous service.

3. Again in the year 2002 when his other colleagues were being considered for regularization, the opposite parties did not consider the case of the petitioner, despite the Court's order dated 19.11. 2001.

4. It is strange that plea of absence without permission could be taken as a gap in the service of the petitioner by the opposite parties, despite the clear finding given by this Court in its judgment dated 19.11. 2001. The Court had categorically stated in the judgment: "Although in the counter-affidavit, it is said that the absence was unauthorized. If the contention of the petitioner about his ailment is accepted to be correct, as respondents have not taken any action against the petitioner, then it cannot be said that the petitioner was not continuously serving the department. The seniority list, which has been annexed as annexure- 3 to the writ petition, clearly shows that in the month of August, 1988, the petitioner was engaged and the persons mentioned in para- 21 of the writ petition, were engaged after about one year of the petitioner's engagement. It appears that the stand, as has been taken by the respondents, that the petitioner is not in continuous service, cannot be accepted unless the respondents demonstrate that the absence of the petitioner was without justifiable reason. As there is no pleading or any charge in this respect by respondents the absence of petitioner cannot be held to be without justification."

5. In view of this categorical finding, it was not open to the opposite parties to have treated this presence as gap in the service of the petitioner. Non consideration of the petitioner was not only the infringement of the petitioner's right, but also in the teeth of the judgment of the High Court. It appears that the opposite parties have deliberately discriminated the petitioner against the directives of the High Court and contrary to its findings. This cannot be permitted.

6. It is admitted case of both the parties that the exercise for regularization of the persons junior to the petitioner was carried out on 11.9.2002, in which petitioner's case was not considered for the aforesaid reason while many juniors to the petitioner were regularized.

7. Accordingly, this Court directs the opposite parties to consider the case of the petitioner for regularization with effect from 11.9.2002, the date when the services of juniors to the petitioner were regularized and the petitioner was illegally left out. The petitioner shall be entitled for all consequential benefits.

8. The writ petition is, thus, allowed.