

(1996) 11 AHC CK 0069
In the Allahabad High Court
Case No : Writ Petition No. 6954 (S/B) of 1992

Narendra Kumar Srivastava

APPELLANT

Vs

State of U.P.through Its Secy.,Rural Development,U.P.Civil
Secretariat,Vidhan Bhawan,Lucknow & Ors.

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Industrial Disputes Rules, 1947 — Rule 77
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (1996) 11 AHC CK 0069

Hon'ble Judges : S.C.Verma, J

Final Decision : Dismissed

Judgement

S.C. Verma, J.—By this Writ petition under Article 226 of the Constitution, the petitioner has prayed for direction commanding the opposite parties to regularise the services of the petitioner as Junior Engineer Civil before any selection and appointment is made in pursuance to the advertisement contained in Annexure No. 9 to the Writ Petition.

2. The petitioner claims to have joined the Rural Engineering Services department in 1989 being Diploma Holder in Civil Engineering as Work Supervisor. It is alleged that the petitioner joined the post with effect from 1281989 and he worked till 31101989. The petitioner was again appointed as Work Supervisor by order dated 20101989 on a consolidated pay of Rs. 400 per month and he joined the services at Bara Bankion 61189. By order dated 1421990 passed by the Superintending Engineer, Rural Engineering Services, Faizabad Circle, Faizabad, the services of the petitioner were extended upto 1451990. The petitioner was not allowed to continue after 1551990 and as such he approached this Court claiming similar benefits as has been given to the petitioners of writ petition No. 7357/1990, 5307/90, 11178 of 1990 and 11183 of 1990. The petitioner claimed that he had completed more than 240 days in a Calendar year and as such he has attained the status of temporary employee and is entitled for regularisation under the provisions of Rule 77 of the Rules framed

under the Industrial Disputes Act. The petitioner has further alleged that his work and conduct has always been excellent and there was no reason for not providing further work to the petitioner when the posts were lying vacant. The petitioner has also alleged that the existence of the vacancy is established by the fact that the department has requisitioned for recruitment of 450 posts of Junior Engineers through U.P. Public Service Commission by advertisement No. 5/9192, contained in Annexure No. 9 to the Writ Petition.

3. A Counteraffidavit has been filed on behalf of respondents in which it has been stated that the petitioner was initially employed for three months as Work Supervisor (Mate) on a consolidated pay of Rs. 400 per month on a new construction site. The respondents have further taken the stand that after the work at site was completed the services of the petitioner were dispensed with, with effect from 1451990 and as there was no work available the petitioner, was not provided any further work. The respondents have also denied the claim of the petitioner for regularisation of services merely on the ground that he has completed 240 days in a Calendar year. It has been alleged on behalf of the respondents that the petitioner did not fulfil the requisite requirements of the regularisation Rules, nor any ad hoc employee has been considered for regularisation of services. In fact the department is making regular recruitment through U.P. Public Service Commission and the posts have been advertised for which the petitioner could have also applied on the basis of his eligibility.

4. In the Rejoinder Affidavit filed on behalf of the petitioner, it has not been denied that he was initially given appointment by an order dated 20101989 on the basis of which he joined on 6111989 and he was allowed to continue till 1451990. The petitioner has not placed any material on record to establish that after 1451990 he was taken in employment. The main reliance placed by the petitioner is on the basis of judgment of the learned Single Judge dated 2171993 passed in Writ Petition No. 7357 of 1990 Shiv Dhani Singh Yadav and others v. State of U.P. through The Secretary, Gramya Vikas Civil Secretariat, Lucknow and others. The petitioner has also placed reliance on another order dated 1421996 passed in Writ Petition No. 6031 (S/S) of 1994 providing benefit to the petitioner of the Writ Petition as given in Writ Petition No. 8148 of 1990.

5. I have heard the learned Counsel of the petitioner and the learned Standing Counsel.

6. The material on record fully establish that the petitioner has worked on the post of Work Supervisor (Mate) with effect from 6111989 to 1451990. The initial appointment of the petitioner was for three months which ended on 31101989 but thereafter it was extended by another order dated 20101989. The petitioner was being paid a consolidated salary of Rs. 400/ per month. The above fact further establish that the petitioner was not appointed on a regular post or in a regular pay scale nor his appointment was on ad hoc basis. The claim of the petitioner that he has worked for more than 240 days in a Calendar and as such he is entitled for regularisation is misconceived as held by Hon"ble Supreme

Court in Khagesh Kumar and others v. Inspector Genenu of Registration and others, 1995 Supp. (4) Supreme Court Cases 182. Their Lordships have held as under:

"It has been urged on behalf of the petitioners that many of them have rendered continuous service for more than 240 days in a year and that they are entitled to be regularised. We find no merit in this contention. In Delhi Development Horticulture Employees' Union v. Delhi Admn. 4 (1992) 4 SCC 99, this Court has not accepted the principle that an employee can seek regularisation only on the ground that he has put in work for 240 or more days. Similarly in State of Haryana v. Piara Singh, this Court while setting aside the direction of the High Court that all those ad hoc/temporary employees who had continued for more than a year should be regularised has observed: (SCC p. 142 para 33).

"None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no "rule of thumb" in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications. It cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and consideration"

In that case, this Court has, however, observed: (SCC p. 153, para 51).

"If a casual labourer is continued for a fairly long spellsay two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation."

Regularisation in service in the State of U.P. is governed by the Regularisation Rules which prescribes a period of three years' continuous service. We cannot say that the said period of three years prescribed under the Regularisation Rules is unreasonable. In these circumstances, it must be held that unless the petitioners fulfil the requirement, of the Regularisation Rules, they can not be regularised.

7. The benefit of work of 240 days only entitles a workman to claim benefits of retrenchment as provided under Section 6N of the U.P. Industrial Disputes Act. The tenure of the service put in by the petitioner in no manner enables consideration of his case for regularisation of his services on the post of Junior Engineer in the department. The petitioner has not been able to place on record the Service Rules of the department nor the Rules relating to the regularisation of the services under which the petitioner is claiming regularisation of his services.

8. In so far as the claim of the petitioner for parity on the basis of the orders passed by the learned Single Judges dated 2171993 and 1421996 is concerned, I am of the opinion that the learned Judges have not provided even to those petitioners the regularisation of their services. It has only been observed that the opposite parties would consider the case of the petitioners for regularisation of their cases in accordance with law. The petitioners in the above cases were only given salary which was admissible to the incumbent working on the same post and performing the same duties. The respondents were also restrained to pass orders to provide intermittent breaks in the services of the employees. The above benefits, in my opinion, are not available to the petitioner on the facts and circumstances of the case. The only relief claimed by the petitioner is for regularisation of his services which in my opinion cannot be granted on the facts stated above. However, in case the department provides further employment either parttime or on ad hoc basis, the case of the petitioner be considered, considering his qualifications, past experience and the tenure of service he has rendered to the department in the past.

9. For the above reasons, the petition is devoid of merits and is accordingly dismissed.