
(1998) 01 AHC CK 0081
In the Allahabad High Court
Case No : Special Appeal No. 871 of 1995

Naresh Pratap Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Citation : (1998) 2 UPLBEC 997

Hon'ble Judges : D.P. Mohapatra, C.J;G.P. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This Special Appeal has been preferred against the judgment and order dated 26.9.1995 of a learned Single Judge by which Writ Petition No. 36177 of 1991 preferred by the appellant was dismissed. The relief claimed in "the writ petition was that a writ of mandamus be issued directing respondent No. 3 to take the writ petitioner (appellant) back in service and to appoint him permanently on the sanctioned post of gardener.

2. The case of the appellant, as pleaded in the writ petition, was that he had been working regularly since 1983 on various jobs, mostly as gardener on daily wage basis with respondent No. 3. He worked till May, 1991 when his services were terminated orally. It was further pleaded that he had worked for more than 240 days in a year and he was a workman as defined in the Industrial Disputes Act. In the counter affidavit, it was asserted that the petitioner had worked on daily wages but with break in every week during the course of his service. He had not worked for 240 days in a calendar year and he was not a workman under the Industrial Disputes Act. It was denied that the petitioner (appellant) had been working as gardener upto May, 1991. It was further pleaded that the petitioner did not work after the year 1987-88 as no post of gardener had ever been sanctioned by the Director, Defence Estates.

3. We have heard Sri G.R. Jain for the appellant and Sri R.C. Shukla for the

respondents.

4. Sri Jain has submitted that the appellant had worked continuously from 1983 till May, 1991 and, therefore, his services had been wrongly terminated and he was entitled to be regularised in service. In support of his submission learned Counsel has placed reliance upon a decision by a learned Single Judge of this Court in *Satya Deo Mishra Vs. State of U.P. and Another*, and *Daily Rates Casual Labour Employed under Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, . The appellant claims that he had been appointed in 1983 and worked as such till May, 1991 which has been denied in paras 3 and 8 of the counter affidavit. The case of the respondents is that the appellant did not work after the year 1987-88 and that even when he was working, he was doing so on daily wages with bread in every week of his service. The appellant has not adduced any evidence to substantiate his claim that he had worked continuously for about eight years or that his services were terminated in 1991. Annexure-1 to the writ petition is a certificate dated 21.7.1987 given by the Cantonment Executive Officer, Fatehgarh, which only says that the appellant has served in the Board for about four years as daily labour. Annexure-2 is a certificate dated 31.10.88 given by the same Officer which says that the appellant and worked as gardener and on some other posts on daily wages for about one year in the year 1987-88. There is no evidence on record to show that the appellant worked in the Board after October, 1988 and thus his claim that he worked continuously upto May, 1991 is not established. If the appellant had been engaged on daily wages and no further work was given to him after 1988, he cannot claim to have acquired any right to be re-instated in service and mandamus as prayed by him cannot be issue.

5. The claim for regularisation in service made by the appellant cannot be granted as he is out of service for a long time. There are many factors which have to be considered by an employer while regularising the services of an employee and the conditions requisite for issuing a direction for regularisation in favour of the employee are not at all satisfied in the present case. This question has been considered by a Division Bench of this Court in *Zakir Hussain Vs. Engineer-in-Chief, Irrigation Dept. and Others*, where after noticing several judgments of Apex Court, it was held as follows-

"A person who is appointed on daily wages or on ad hoc basis does not have any right to the post and his services can be terminated at any time. He cannot claim regularisation of his services merely because he has completed 240 days in service. Position as now stands is that for regularisation of service of an ad hoc employee or a daily wages there must be regular or permanent post and funds must also be available for payment of the salary. That apart, he should be qualified and there must be the necessity, according to the requirement of the work, for retaining him and his work and conduct in the past must also be satisfactory."

In view of the settled position of law, it is not possible to give any relief to the

appellant.

6. The appellant has claimed that he has worked continuously for 240 days in a year and, therefore, he has acquired some rights. Learned Single Judge has held that the appellant can raise an industrial dispute under the provisions of U.P. Industrial Disputes Act. We are in agreement with the view taken by learned Single Judge in this regard.

7. No other point was urged.

8. The appeal lacks merit and is dismissed. No order as to costs.