
(2006) 12 AHC CK 0144
In the Allahabad High Court

Pragi Lal (Mate) and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

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

Citation : (2007) 112 FLR 1208

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Ram Kihore Gupta, learned Counsel for the petitioners and perused the record.

2. The petitioners have approached this Court by filing this writ petition under Article 226 of the Constitution against the order dated 18.12.2003 passed by the Executive Engineer, Provincial Division. UPPWD, Hamirpur rejecting their representation claiming regularization on Class-IV post in U.P.P.W.D. on the ground that neither the petitioners have worked continuously for 240 days in any year nor have worked continuously for three years and, therefore, are not entitled for regularization as per the Engineer-in-Chief's letter dated 4.4.1989.

3. Learned Counsel for the petitioners vehemently contended that it has been admitted by the respondents in para 16 of the counter affidavit that the petitioner -1, Pragi Lal, has worked between 1987 to 1990 for a total 479 days, the petitioner No. 2, Dalpat, has worked between 20.11.1985 to 13.7.1990 for a total 426 days, petitioner No. 4, Devideen, worked between 1985 to 06/1990 for total 715 days, petitioner No. 5, Ram Kishore, worked between 1985 to 1989 for 275 days and petitioner No. 6, Bachcha, worked between 11/1985 to 13.7.1990 for 479 days. Learned Counsel for the petitioners also relied on Engineer-in-Chief UPPWD's Circular dated 13.4.1989 which provides that such temporary muster roll employees, who have completed three years on 1.3.1988 or 1.3.1989 may

be enlisted as temporary muster roll employee and no further recruitment be made on daily wage basis and those, who have completed three years service, their list be sent to the Government so that the Government be requested for creation of regular posts.

4. In my view, the aforesaid order has no application in the case in hand inasmuch it provides that those temporary muster roll employee, who have completed three years on 1.3. 1988 or 1.3.1989 ought to be enlisted in the register and their names have to be sent so that the Government be requested to create regular posts. The aforesaid order neither provides as such that the said daily wage employees shall be regularized nor anything has been placed on record to show that Engineer-In-Chief UPPWD was competent to regularize the daily wage employees. It has rightly been pointed out by the learned standing counsel that in the absence of any provision made by the State Government, regularization could not have been permissible and in any case, the aforesaid order issued by the Engineer-In-Chief UPPWD does not help the petitioners at all. In *Mahendra L. Jain and Ors. v. Indore Development Authority and Ors.* 2003 (1) SCC 639 , it was held that a daily wager in the absence of a statutory provision in this behalf would not be entitled to regularization. The same view has been reiterated in *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, Recently a Constitution Bench of the Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, of the judgment held as under

We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent

5. Again in para-43 of the judgment it was held:

Thus, it is clear that adherence to the rule, of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would

come to an end when it is discontinued. Similarly, a temporary employee could no claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

6. In the absence of any statutory provision, thus, the petitioner in the instant case also cannot be given any benefit by directing the respondents to consider him for regularization which would be in the teeth of the law laid down in the aforesaid precedents.

7. Further mere continuance of a person for 240 days in a year does not has any relevance with the concept of regularization or permanence. In M.P. Housing Board and Another Vs. Manoj Shrivastava, relying upon a catena of decision on the subject the Court held as under-

It is now well settled that only because a person have been working for more than 240 days he does not derive any legal right to be regularized in service.

8. The same view has been reiterated in State of U.P. Vs. Neeraj Awasthi and Others, The Haryana State Agricultural Marketing Board Vs. Subhash Chand and Another, and Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, .

9. Moreover, even the fact that the petitioners have worked for 240 days in a years is not supported by any material. It has been considered by the authorities concerned and while rejecting the representation of the petitioners the Executive Engineer has recorded a finding of fact that the petitioners did not work for 240 days in a year and, therefore, it could not be said that they have been continuously working on daily wage basis for a period of three years or more. The learned Counsel for the petitioners could not place anything to discredit the findings of fact recorded by the Executive Engineer in the order impugned in the writ petition and even from the averments made in para-16 of the counter affidavit, I do not find that the same supports the case of the petitioners to claim regularization merely for the reason that for sometime they have been engaged on daily wage basis. Accordingly, I do not find any error in the order impugned in the writ petition and in my view, the petitioners are not entitled for any relief.

10. The writ petition, therefore, lacks merit and is accordingly dismissed.