
(2015) 05 RAJ CK 0090
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2840 of 2010

Prakash Chandra	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0090

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : Kuldeep Mathur, for the Appellant; B.D. Sharma and Manish Patel, Dy. Govt. Counsels, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Gopal Krishan Vyas, J.—In this writ petition, following prayer has been made by the petitioner, which reads as under:--

"A. By an appropriate writ order or direction, the record of the case may kindly be called for;

B. By an appropriate writ, order or direction, the communication dated 11.11.2008 (Annexure-7) may kindly be declared illegal and the same may kindly be quashed and set aside.

C. By an appropriate order or direction, the respondents may be kindly directed to extend benefit of selection Grades on completion of 9 and 18 years and 27 years of service to the petitioner.

D. In the alternative, it is prayed that by any appropriate order writ or direction the respondents may kindly be directed to regularize the promotion of the petitioner on the post of Assistant Agriculture Officer w.e.f. 01.08.1977 and allow him selection grade on completion of 9, 18, and 27 years of services."

2. As per facts, the petitioner was initially appointed on ad-hoc basis on the post of Fieldman (Agriculture)/Fieldman Assistant in the pay-scale of Rs. 110-230 vide

order dated 28.11.1975. Just after two years of service on the said post, the petitioner was promoted on the post of Assistant Agriculture Officer on ad-hoc basis for three months vide order dated 1.8.1977. As per facts of the case, till his retirement on 31.10.2009, the petitioner was allowed to work on ad-hoc basis without regularizing his services upon initial post.

3. In view of the fact that no employee can be granted selection scale after completion of 9, 18 and 27 years of service without regular appointment, the claim of the petitioner for the purpose of granting selection scale at this stage is not sustainable in the eye of law in view of the judgment rendered by Hon''ble Supreme Court in the case of State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, AIR 2010 SC 157 : (2009) 13 JT 9 : (2009) 8 SCALE 28 : (2009) 12 SCC 49 : (2010) 1 SCC(L&S) 105 : (2009) 9 SCR 1011 : (2009) 8 SLR 505 . However, this Court cannot lose sight of the fact that no employee can be compelled to work on ad-hoc basis in the whole tenure of service without regularizing service because it is the duty of the employer to consider the case of the ad-hoc employee for the purpose of regularization, which has not been done in this case and due to inaction on the part of the respondents, the petitioner was retired from service while working on ad-hoc basis.

4. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , the Hon''ble Supreme Court gave certain directions in para 53 of the judgment to consider the case of regularization of those employees who were appointed on ad-hoc basis and remain in service without intervention of the Court for more than 10 years of service. In the year 2006, petitioner was in service, therefore, respondents were under obligation to consider the case of petitioner for regularization of his service.

5. Learned counsel for petitioner submits that before the retirement date of petitioner, the Hon''ble Supreme Court in case of Uma Devi (supra) gave certain directions for regularization of ad-hoc employees but inspite of that the respondents did not regularize the services of the petitioner, therefore, direction may be issued to the respondents to consider the case of petitioner for regularization.

6. I have perused the judgment rendered by Constitutional Bench of Hon''ble Supreme Court in case of Uma Devi (supra) in which following directions were issued in para -53 of the judgment, which reads as under:--

"One aspect needs to be clarified. There may be cases of irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such

employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within a six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

7. In view of above and upon the fact that in whole service tenure, the petitioner was treated as ad-hoc/temporary employee and retired as such, therefore, the respondents are directed to consider the case of the petitioner for regularization in service in the light of the judgment of Hon"ble Supreme Court in case of Uma Devi (supra) within a period of three months from the date of receipt of certified copy of this order and after considering his case for regularization, if it is found that the petitioner is entitled for regularization then the case of the petitioner for other service benefits may also be considered in accordance with law.

8. The writ petition is disposed of in above terms.