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**(2009) 07 AHC CK 0096**  
**In the Allahabad High Court**

Prem Prakash Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 20-07-2009

**Acts Referred:**

**Citation :** (2009) 4 AWC 3493 : (2009) 122 FLR 859

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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### Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioners, the learned standing counsel appearing for the State-respondents and also perused the record.

2. This writ petition has been filed by four petitioners challenging the order dated 27.3.2002 by which the services of the petitioners have been terminated by the respondent No. 4. The said orders of their termination are appended as Annexures-10A, 10B, 10C and 10D to this writ petition. The petitioners have also sought a writ of mandamus for commanding the respondents not to disturb them in their peaceful working in their respective trades (Electrician and Helpers) in Public Works Department, regularise their services and to pay them the salary equal to other employees.

3. At the time of admission, the Court while granting time to the learned standing counsel for filing counter-affidavit, indicated that this writ petition will be listed on 2.5.2002 for consideration of the interim relief. It appears from the order sheet and the stay application that no interim order had been granted to the petitioner, thereafter. The counter and rejoinder-affidavits have been exchanged and the matter has been listed today for admission. With the consent of the parties, the matter is being heard at the admission stage itself.

4. The contention of the learned Counsel for the petitioners is that petitioners No. 2, 3 and 4 were working as Generator Helper in Public Works Department,

Mathura from 1.11.1998, 21.9.1997 and 1.8.1998 respectively and the petitioner No. 1 was appointed in October, 1997 as Electrician on daily wage basis in the same department; their services have been terminated on the basis of the Ordinance dated 24.12.2001, Annexure-8 to this writ petition, informing them that their services are not required in view of the said Ordinance. It has been urged by the learned Counsel for the petitioners that the petitioners were working in the said department on daily wage basis and their termination is contrary to the provision of Section 3(3) of the said Ordinance. According to him, the said Ordinance provides that Section 2(a), 2(b) and 2(d) are relevant for this purpose which defines "ad-hoc employee" and "daily wage employees" respectively. The definition in Clauses 2(a), 2(b) and 2(d) referred to above are as under:

(a) "Ad-hoc employee" means a person employed, engaged or appointed on or after the commencement of this Ordinance, to a post in a public service, without following the procedure provided in the relevant enactment, service rules, regulations bye-laws or executive instructions, as the case may be, for recruitment and appointment!, or in contravention of the provisions of this Ordinance, and includes an appointment made on officiating basis on or after such commencement;

(b) "Appointment" means an appointment made by direct recruitment or by promotion to a post in a public service on or after the commencement of this Ordinance;

(c) "Daily wage employee" means a person who is engaged or employed on or after the commencement of this Ordinance to a post in a public service on daily wages, by whatever designation called, and includes a person engaged or employed on the basis of nominal muster roll or on consolidated pay, either on full time or part time or piece rate basis, or as work charged employee on or after such commencement.

5. Learned Counsel for the petitioners has relied upon a newspaper item which is appended as Annexure-R.A. 1 to the rejoinder-affidavit. It has been reported in the news item that the aforesaid Ordinance could not be passed by Legislature. He also submits that since the petitioners have received bonus, therefore, they have right for regularization in service.

6. Learned standing counsel, appearing on behalf of the State-respondents has urged that the petitioners were never appointed on a substantive vacancy but their engagement was on daily wage basis only in the event of availability of work and fund. It has been emphatically urged that appointment of the petitioners was not in accordance with the prescribed rule and regulations as such their claim for continuance in service or regularization cannot be accepted.

7. It is also urged by the learned standing counsel that since the engagement of the petitioners was purely on dally wages basis they have no legal right to continue in service. Reliance has been placed in this regard upon the judgment

rendered in *Himanshu Kumar Vidyarthi and Ors. v. State of Bihar* 1997 (76) FLR 237 in which it has been held that the daily wage employees have no legal right to continue in service who have not been appointed in accordance with rule and regulations.

8. No other point has been argued by the counsel for the parties.

9. The question which arises for consideration is as to whether engagement in service of daily wage employee can be brought to an end by dis-engagement irrespective of fact that his disengagement is based on the provisions of the Ordinance which are not applicable and has later on not being made into an Act.

10. It is settled law that a daily wage employee does not have any legal right to continue in service or for regularization de hors the rules for recruitment if there is no vacancy or in absence of financial sanction for the post. If the daily wage employee has been appointed in accordance with law against a permanent post his claim for regularization and to continue in service only can be considered on availability of post and financial approval and qualification.

11. A perusal of the aforesaid Ordinance clearly indicates that the Ordinance was promulgated by the Government to provide for regularization or appointment in public service. Even if under the provisions of U.P. Public Service (Regularization or Appointment), Ordinance, 2001, their services can be disengaged as they have no legal right to continue in service.

12. The High Court cannot direct regularization of an employee working on daily wage basis. Even otherwise there is no material before the Court filed by the petitioner to establish that he was engaged on or against a vacant sanctioned post. It has been held in the case of...that entitlement of regularization cannot be claimed on the basis of even instructions and directions issued by the department. In that case the petitioners were also daily wage employees. Their cases were turned down by the Apex Court holding that the recruitment cannot be made contrary to the recruitment rules. Therefore, even if impugned order of disengagement mentions that services of the petitioners are being disengaged in view of the provisions of the Ordinance, it would not have any legal effect as they being daily rated employees could always be disengaged even without aid of the provisions of the Ordinance which applies to the appointment of persons prospectively. I, therefore, do not find any force in the contention of the counsel for the petitioner that since the petitioners were appointed prior to promulgation of the Ordinance their services cannot be terminated by way of disengagement even though their engagement was on daily wages.

For all the reasons above, the writ petition has no force and it is accordingly dismissed. No order as to costs.