
(2008) 07 AHC CK 0070
In the Allahabad High Court

Prem Prasad Gupta

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 119 FLR 78

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Shri Arvind Kumar Srivastava, the learned Counsel for the petitioner and Shri M.H. Chauhan, the learned Counsel, holding the brief of Shri Satish Chandra Rai, the learned Counsel for respondent Nos. 3, 4 and 5 and the learned Standing Counsel for the remaining respondents.

2. The petitioner was appointed as a Driver-cum-Mechanic on 1st of August, 1980, as is clear from paragraph 3 of the writ petition and Annexure T to the writ petition. The petitioner contends that he is working on that post, since then, without any break in service. The petitioner alleged that from 7th March, 1998 onwards, the respondents stopped his salary and that juniors to the petitioner were also regularised in service and that the same benefit was not extended to the petitioner.

3. Accordingly, the petitioner filed a writ petition, which was disposed of with a direction to the authorities to consider and decide his representation. Based on the said order, the authorities rejected the claim of the petitioner for regularisation of his service and payment of regular salary on the post of Driver-cum-Mechanic, by an order dated 28th September, 1999, on the ground that there was no sanctioned post of Driver-cum-Mechanic. The petitioner, being aggrieved by the said order, filed Writ Petition No. 29999 of 2000. During the pendency of the said writ petition, the respondents passed another order dated

4th March, 2002 stating therein that the petitioner would be absorbed as a Class IV employee, provided he gives up his claim on the post of Driver-cum-Mechanic and withdraws his earlier writ petition. The petitioner, being aggrieved by the said order, filed the present Writ Petition No. 37901 of 2003.

4. The Learned Counsel for the respondents submitted that there is no sanctioned post of Driver-cum-Mechanic, and therefore, his services cannot be regularised on a non-existing post, nor can he be paid the salary of a Driver-cum-Mechanic. The learned Counsel submitted that the management had rightly issued the order of 4th March, 2002 offering the petitioner for the regularisation of his service on a class IV post. The respondents in the counter affidavit have admitted that the petitioner was appointed as Driver-cum-Mechanic even though there was no sanctioned post, and therefore, the appointment letter should be treated to be a void appointment letter. The State Government in their counter affidavit have admitted that the petitioner was appointed as a Driver-cum-Mechanic on a non-existing post.

5. Having considered the submissions of the learned Counsel for the parties, this Court is appalled by the issuance of the letter dated 4th March, 2002, issued by the Principal of the Town Polytechnic, Ballia (respondent No. 5). The audacity of the authority in threatening the petitioner to withdraw his writ petition and withdraw his claim for the post of Driver-cum-Mechanic, and only then he would be absorbed on a class IV post, is writ large and speaks volume of the arbitrariness and feudal approach of the authorities in matters of public employment.

6. Admittedly, the petitioner was appointed in the year 1980 as a Driver-cum-Mechanic and his services were utilised by the respondent No. 5 continuously for 20 long years, and during this period, the respondents never batted their eyelids even for a single second in permitting the petitioner to work on a non-existing post, and now when the petitioner asked for regularisation of his services and payment of regular salary, the authorities stopped his salary and further promised to appoint him on a class IV post, provided the petitioner withdraws his claim on the post of driver. This attitude of the respondent is nothing but an unfair labour practice, which is violative of Articles 14 and 16 of the Constitution of India.

7. Admittedly, the petitioner has been working since 1980 and there is a requirement of work which has not been denied by the respondents. Consequently, it is not open to the respondents to allege that the petitioner is not entitled for the regular salary or for the minimum pay-scale on the post of Driver-cum-Mechanic on the ground that there is no sanctioned post. The fault is not of the petitioner and lies solely with the Principal of the College and its institution. The State Government in its counter affidavit has categorically stated that the appointment was made by the institution without there being a sanctioned post.

8. that as it may. The petitioner having worked for more than 20 years since

1980 continuously, cannot be deprived of his employment on the sole ground that there does not exist a sanctioned post. The respondents have never alleged that the work of a Driver-cum-Mechanic is not required in the institution. If there is requirement of work, the respondents are required to create a post of a Driver-cum-Mechanic. Simultaneously, the service of the petitioner cannot be dispensed with at this stage and he is liable to be regularised and be paid the regular salary on the post of Driver-cum-Mechanic.

9. In view of the aforesaid, the Writ Petition No. 29999 of 2000 is allowed. The order dated 28th November, 1999, passed by the respondent No. 2 is quashed. The respondents are directed to pay the salary to the petitioner since March, 1998 on the post of Driver-cum-Mechanic.

10. Consequently, the Writ Petition No. 37901 of 2003 is also allowed. The impugned order dated 4th March, 2002, issued by the respondent No. 5 is quashed.

11. A writ of mandamus is issued to the respondents to create a post of Driver-cum-Mechanic within three months from the date of the production of a certified copy of this order and regularise the services of the petitioner on that post. In the mean while, the petitioner would be paid the regular salary payable on the post of Driver-cum-Mechanic. It would be open to the State Government to initiate an enquiry against the erring officer/official and recover the amount vis-a-vis the wrongful appointment initially made in favour of the petitioner on the post of Driver-cum-Mechanic.