

(2007) 05 AHC CK 0211
In the Allahabad High Court

Raj Kishore

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Citation : (2007) 4 AWC 3492

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—The brief facts of this case are that the petitioner was initially engaged on 5.2.1996 to work on daily wage basis as a Computer Operator in the office of Superintendent of Police, Ghazipur. The petitioner continued to work on such post. After completion of one year period, the petitioner made a representation to the Superintendent of Police, Ghazipur for regularizing him in service as a Computer Operator. On 17.1.1997 the Superintendent of Police, Ghazipur recommended to the Deputy Inspector General of Police (Karmik), Police Headquarters to regularize the petitioner in service, as his work and conduct was very satisfactory. In 1997 the Principal Secretary, Home, recommended for creation of post of Computer operator. However, even though no post was created, the petitioner continued to work on daily wage basis as Computer Operator and he is still continuing to work as such. Over the last several years, he has been regularly issued letters of appreciation by the police officials of the district. Since the petitioner was still not considered for being regularized in service, he has filed this writ petition with the prayer for a direction to the respondents to regularize him in service as Computer Operator in the Police Department and pay him regular salary month by month.

2. I have heard Sri A.K. Malviya, learned Counsel for the petitioner as well as learned Standing Counsel appearing for the respondents. Pleadings have been exchanged and with consent of the learned Counsel for the parties. this writ petition is being heard and finally disposed of at this stage.

3. The case of the petitioner is that in the year 1996, by order of the Governor of U.P., computers were provided at all the district headquarters of the Police Department and consequently, when a computer was installed in the office of Superintendent of Police, Ghazipur, the petitioner was engaged to work as Computer Operator on daily wage basis, even when no such post of Computer Operator had been sanctioned. From 1996 till date, the petitioner has been continuously working, though without there being any sanctioned post, and to the full satisfaction of the respondents, who have throughout appreciated the work and conduct of the petitioner. Even though recommendations had been made from time to time for the past over a decade for sanctioning the post of Computer Operator and for regularizing the petitioner in service, but till date no such post has been sanctioned. Recently the posts of Computer Operators have been sanctioned in the district headquarters of NOIDA and Lucknow but not in District Ghazipur but still, since the work is available, the petitioner is continuing to work on daily wage basis.

4. Learned Standing Counsel states that the prayer made in this writ petition cannot be allowed as till date no post of Computer operator has been sanctioned in the district and thus the question of regularization of the petitioner does not arise.

5. It is surprising that the State is taking work of Computer Operator from the petitioner for the last more than a decade and the officials, under whom he has been working, have been regularly issuing letters of appreciation to the petitioner and also recommending for sanction of post of Computer Operator in the district, but the same has not been done till date. Normally this Court does not appreciate or allow back-door entry by way of regularization of daily wage workers who have not been engaged initially through any selection process, but the facts of the present case are quite unusual and as such normal rule would not be applicable in this case. While applying any rule, the Courts have to do so in the facts and circumstances of each individual case. The facts of this case reveal that the work for a Computer Operator has been there in the office of Superintendent of Police, Ghazipur for the last over a decade. The petitioner has been working on such post on daily wage basis continuously, without any break, which is not denied by the respondents in their counter affidavit. The work and conduct of the petitioner has been to the total satisfaction of the officers, inasmuch as in the past decade several officers came and went, but all appreciated his work. It is true that in a normal case, the principle of legitimate expectation would not be applicable in the case of a daily wage worker as he knows that he has come through back door and cannot expect regularization in service except in accordance with law. But in the peculiar facts of this case, such normal rule will not apply. The distinction is because when work was needed to be done, and even though there was no sanctioned post, the services of the petitioner had been utilized and are still being utilized. In such circumstances, the petitioner would have a legitimate expectation of being regularized in service when the post is sanctioned, specially when he has been working for over a

decade.

6. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Apex Court has observed as under:

...In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise 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....

7. The said view has been followed in the case of Mineral Exploration Corporation Employees' Union Vs. Mineral Exploration Corporation Limited and Another,

8. In the aforesaid cases the Supreme Court had, as a one time measure, directed for regularization of services of such person, who had worked for ten years or more on duly sanctioned post. The difference in the present case would be that though the petitioner has worked as Computer Operator on daily wage basis regularly for more than ten years without cover of any order of Court or Tribunal, but the said post of Computer Operator has not been sanctioned by the Government. The very fact that the work has been taken, and is still being taken from the petitioner as a Computer Operator for the last over a decade, confirms that there is requirement of such work in the office of Superintendent of Police, Ghazipur. The recommendation for sanctioning such post of Computer Operator has already been made by the competent authorities, which is still pending. The same requires immediate attention of the State Government, as the State cannot and also should not exploit persons by continuing to take work on daily wage basis and not create a regular post even though work for such post is available.

9. In such peculiar facts of this case, applying the ratio of the judgment in the case of Secretary, State of Karnataka v. Umadevi and Mineral exploration Corporation Employees Union (supra), it is directed that the State Government shall take a decision with regard to creation of a post of Computer Operator in the office of the Superintendent of Police, Ghazipur. and as and when such post of Computer Operator is sanctioned, the case of the petitioner for regularization on such post shall be considered in the light of the observations made hereinabove, and till then the petitioner shall be permitted to continue to work as Computer Operator on such terms as he has been continuing since 5.2.1996.

10. This writ petition, accordingly, stands allowed to the extent indicated above. No order as to cost.