
(2000) 09 AHC CK 0023

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32581 of 1999

Rajendra Bahadur Katiyar and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Citation : (2000) 87 FLR 837 : (2000) 3 UPLBEC 2757

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Yog, J.—Rajendra Bahadur Katiyar and Mohan Singh Bisht, two petitioners have approached this Court by filing writ petition under Article 226, Constitution of India, praying for issuing a writ of mandamus directing the respondents to treat the petitioners as having been regularised with effect from 22.3.1984 or in the alternative from the date their juniors have been regularised in accordance with the provisions of U.P. Regularisation of Adhoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979, and grant them all "consequential benefits including seniority and also a writ of mandamus directing the respondents to extend the benefit of higher pay scale prescribed from time to time including Government Order dated 15.10.1988, copies of which have been annexed with the writ petition as Annexure Nos. 5 and 9 to the petition. Petitioners claim to have submitted their representations for aforesaid relief dated 19.12.1994 (Annexure 7 to the writ petition).

2. Contents of para 22, regarding filing of representation have been replied vide para 14 of the counter affidavit but aforesaid fact has not been disputed. Petitioners submit that they were initially appointed as adhoc Lecturer on the basis of their respective appointment letters (Annexure Nos. 1 and 2 to the writ petition) issued by Director, Technical Education, U.P., Kanpur on the post of Lecturer (Chemistry) and Lecturer (Commercial Practical) in the Government owned and managed Polytechnics at Bijnor and Dwarhaat (Almora).

3. It is not disputed by the respondents that said petitioners were regularised under aforementioned Adhoc Regularisation Rules, 1979 as amended from time to time. Petitioner No. 1 stood regularised w.e.f. 15.10.1988 (Annexure 3 to the writ petition) and Petitioner No. 2 stood regularised w.e.f. 28.8.1991 (Annexure 4 to the writ petition). In para 8 of the on names of certain persons. Who were Junior to the petitioners were considered and given regularisation earlier in point of time as compared to the date of regularisation of the petitioners. Petitioners grievance is that by conferring benefit of regularisation upon similarly situated adhoc junior employees in the Polytechnics working in different branches. They have non-suited inasmuch as apart from the Seniority of Lecturer in different branches. Their common inter-se seniority amongst teachers of all the branches in those Polytechnics in the State of U.P. is relevant for deciding appointment on the post of principals of these Polytechnics in future. Respondents do not dispute the averment contained in para 8 (both the paras numbered as 8). The defence offered for the anomaly pointed out by the petitioner is that procedure involves unavoidable delay to follow various formalities. The necessary averments to this effect find place in paras 6 to 9 of the counter-affidavit. The respondents have deliberately failed to point out any single circumstance which would have made otherwise it impossible for adhoc Lecturers working in the said Polytechnics to be considered and conferred benefit of regularisation on the basis of their eligibility in view of existing regularisation rules at the relevant time at one point of time. In any view of the matter a defense like the present cannot be approved or justified. It shall otherwise confer validity upon the action of the respondent to disturb the seniority of petitioners vis-a-vis others who are identically situated. It shall provide an unbridled rider to act capriciously and arbitrarily to pick and choose different disciplines and take up matter of those who are favourites and ignore the others who may not have blessings of the high ups.

4. Action of the respondents in treating the petitioner differently so as to non-suit them and by their "actions" conferring advantage upon some juniors, smacks of arbitrariness and makes such an action unreasonable and unfair since it adversely affects valuable rights of the petitioners.

5. Situation will be different if none of junior-adhoc-Lecturer is considered for regularisation over and above any senior-adhoc-Lecturer and all are considered together for regularisation.

6. Learned Standing Counsel appearing on behalf of the respondents raised plea of laches and referred to the averments contained in para 15 of the counter affidavit. Plea of laches at this stage, when parties have already exchanged counter and rejoinder affidavits lose significance. Even otherwise plea of laches, on the part of respondents, does not hold good inasmuch as the respondents miserably failed to deny averments of the petitioners regarding their attempt of pursuing remedy by filing representation. The plea of laches fails.

7. In view of the above, it is directed that petitioners regularisation Orders dated 15.10.1988 and 28.8.1991 shall be deemed, to the extent they relate to the

petitioners, to have come in force w.e.f. 22nd March, 1984 when Rule 9 of U.P. Regularisation Adhoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979 came in force vide Notification dated 22.3.1984 and petitioners shall be deemed to have been regularised as lecturer and placed above all who were junior to them as adhoc Lecturers. Petitioners shall also be entitled to all consequential benefits, advantages privileges etc. as may be available under relevant Government Orders including entitlement of revised pay scales (as may have been issued from time to time) annual increments seniority etc.

8. Writ petition is allowed subject the observations and directions given above.

9. No order as to costs.