
(1990) 10 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19069 of 1990

Rajendra Singh and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Citation : (1990) 10 AHC CK 0032

Hon'ble Judges : N.L.Ganguly, J

Final Decision : Allowed

Judgement

N.L. Ganguli, J.—14 petitioners have jointly filed this petition under Article 226 of the Constitution seeking a writ of mandamus commanding the respondents not to terminate the services of the petitioners. The respondent No. 2 Nagar Palika Gulawati, District Bulandshahr have filed a counteraffidavit. Rejoinderaffidavit has also been filed. The G.O., dated 31/7/1990 (Annexure CA3) has been issued by the State Government. The State Government directed that Octroi, toll tax and traffic tax be abolished in the State. Thus all the employees of the Corporation and Municipal Board working under the Octroi, toll tax department concerned were liable to be terminated on account of the abolition of the said tax. This order was to come into force with effect from 13/1/1990. In the order itself it was clearly stated that on account of the abolition of Octroi and toll tax and removal of the barriers by the Municipal Board and Corporation, the regular employee working in the Octroi, Toll tax and at barriers were liable to be declared as surplus. It was stated that inspite of the fact although such persons would become surplus but they shall not be removed and shall be accommodated in other departments.

2. In the present writ petition, the petitioners initially were appointed as daily wagers. The petitioners have filed a chart showing that each of them have worked for the last more than 240 days each year. The chart is marked as Annexure 1 to the writ petition. The fact that 14 petitioners have continuously worked for 240 days for three years, is not disputed in the counteraffidavits. The

counsel for the Nagar Palika urged that the petitioners were daily wagers and were not regularised. The counsel for petitioners pointed out to annexure "III" to the writ petition which is a Government order indicating that all the employees were working on the daily wage posts and have worked for more than 240 days, may be regularised. A direction was issued by the Secretary of the State Government Department to regularise the daily wagers and to this effect an order be communicated within a fortnight. However, there is nothing on the record to indicate that the petitioners were regularised as regular employees of the Nagar Palika. The present writ petition was filed on 30/7/1990, on which date the petitioners were continuously working in the Nagar Palika. The counsel for the respondent urged that on account of the G.O. the services of petitioners automatically came to an end with effect from 18/1/1990. Counsel for the petitioners produced a copy of the order of the writ petition No. 22497 of 1990, *Mukesh Kumar Rishi v. Chairman, Nagar Palika Hathras, Aligarh and others*, in which an interim order dated 4/9/1990 was passed by this Court. By the said order it was directed that the services of the petitioners shall not be terminated, provided their services already been terminated by any written order. The respondents shall pay their salary regularly provided they are continuing in services and their services have been terminated by the oral order and not by any written order.

3. After hearing the learned counsel for both the parties. I am of the opinion, that the petitioner must have already worked for more than 240 days continuously for three years, their services shall be deemed to have been regularised. It would be highly improper and unjust to throw them out of employment on the basis of the G. O. dated 31/7/1990 (Annexure C. A. "III") filed with the counteraffidavit. As already indicated in the G.O. by the Government, the regular employees were to be accommodated in other departments. The petitioners' case stands on the same footing. They have been working for more than last three years and each year 240 days. In the eye of law they shall be deemed to have been regularised and are entitled to be accommodated or given any job in other department. They shall be entitled for their remunerations! from 1986 and thereafter. It is for the Municipal Board to write to the State Government for additional funds for payments of their remuneration who have been declared as surplus on account of the G.O. (Annexure C.A. "III"). The Municipal Board has already written to the State Government for sanctioning additional funds for payments to those who have become surplus on account of the abolition of Octroi, toll tax and traffic tax and also for the formal creation of posts in the Nagar Palika.

4. In the result, the writ petition is thus allowed. The respondents are directed to pay the salary to the petitioners for the current month within first week of next month. About the arrears of salary, the Nagar Palika shall take steps and arrange payments of arrears of salary within 4 months from today. The respondents shall engage the petitioners in other departments of Nagar Palika. Meanwhile, the State Government is expected to sanction the posts on which the petitioners are

being placed by the Nagar Palika.

5. There shall be no order as to costs.

6. A certified copy of this order may be given to the learned counsel for the petitioners on payment of usual charges within a week.