
(2012) 02 AHC CK 0165

In the Allahabad High Court

Case No : Contempt Application (Civil) No. 469 of 2011

Rajendra Singh

APPELLANT

Vs

Chanchanl Kumar Tiwari, Secretary, Forest Deptt. and Others

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Uttar Pradesh Regularization of Daily Wages Appointments on Group D Posts Rules, 2001 — Rule 4(1)

Citation : (2012) 02 AHC CK 0165

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Judgement

Hon"ble Vikram Nath, J.—The applicant claims to be a daily wager in class-IV in the Forest Department having worked from 1990 till December, 2003. He claimed regularisation, which was not being entertained as such he was compelled to file writ petition no.49225 of 2004. The said writ petition was disposed of by order dated 20.11.2004 directing the Divisional Forest Officer, Allahabad to pass appropriate orders with regard to claim of the applicant regarding regularisation. The said claim was rejected by order dated 15.03.2005 on the ground that the applicant did not fulfill the conditions required under the Uttar Pradesh Regularisation of Daily Wages Appointments on Group D Posts Rules, 2001 (here-in-after referred to as "Rules 2001"), as the applicant did not work in the year 1991 in the department, but had worked only in the years 1995 to 1997 and thereafter in the year 2003. The applicant assailed the correctness of the said order by way of writ petition no.30643 of 2007. After exchange of affidavits, learned single Judge vide judgment dated 22.09.2010 allowed the writ petition. The judgment dated 22.09.2010 is reproduced below :

The petitioner has been discontinued as a daily wager in the Forest Department and simultaneously an order has been passed on 15th March 2005 refusing the benefit of regularization to the petitioner on the ground that the petitioner's claim does not fall within the provisions of The Uttar Pradesh Regularisation of Daily Wages Appointments on Group D Posts Rules 2001.

Learned counsel for the petitioner contends that the impugned order proceeds on erroneous assumption of facts and law inasmuch as the petitioner was working as a daily wager since 1990 prior to the cut off date of 29th June 1991 and was also working on the date of the 2001 Rules which were enforced on 21st December 2001. He submits that in view of the provisions of the aforesaid rules particularly Rule 4(1)(a), the petitioner is entitled for regularization and the facts in support of such a claim have been completely ignored as such the impugned order is vitiated.

Learned Standing Counsel on the other hand contends that factually the petitioner has been unable to establish his case with regard to functioning so as to entitle him the benefit of regularization and therefore the impugned order does not suffer from any infirmity. He submits that in the absence of any proof of his functioning in the manner as provided for under the rules the petitioner cannot be allowed the benefit of regularization.

I have perused the records and the affidavits have been exchanged between the parties.

The petitioner has come out with a clear case that he was working since 1990 and the petitioner relies on a certification by the Forest Range Officer dated 1st June 1994 Annexure-1 to the writ petition. The said certificate recites that the petitioner continuously worked on daily wages from September 1990 to May 1994.

The aforesaid annexure has been narrated in Paragraph 5 of the writ petition. The respondents have given their reply in paragraph 8 to the same which is quoted hereinbelow:

Para 8. That, the contends of para no. 5 of the writ petition are not correct as they are stated. The petitioner had never been paid salary by the department but he has been given wages as admissible to the dailywager. The service of the dailywager start from morning and came to an end in evening automatically. Certificate which has been annexed by the petitioner as annexure-1 to the writ petition is no relevancy with the regularisation of the petitioner on group "D" post.

A perusal of the said reply given in the counter affidavit clearly indicates that the petitioner was given wages as admissible to a daily wager. The said paragraph does not deny the working of the petitioner as certified by the Forest Range Officer from 1990 to 1994, nor is it stated that the said certificate is fake or forged. The petitioner therefore has led evidence to indicate that he has worked as a daily wager on the cut off date.

The stand taken is that the certificate is of no relevancy keeping in view the 2001 regularization rules.

In the opinion of the Court the aforesaid stand taken in the counter affidavit is untenable in law inasmuch as if the petitioner was factually working in the year

1991 particularly on the cut off date i.e. 29th June 1991 then he falls for consideration for the benefit of regularization and payment of minimum wages as a Group-D employee keeping in view the 2001 Rules as well as the decisions rendered by this Court and by the Apex Court.

Coming to the relevancy part as stated in Paragraph 8 of the counter affidavit suffice it to say that such a daily wagger has to be continued in service on the date of the commencement of the rules. The rules have commenced on 21st December, 2001. There is no denial that the petitioner was working on 21st December 2001 and has been paid his wages. In view of this the impugned order dated 15th March 2005 and 8th March 2005 Annexure 6 to the writ petition is unsustainable and it is hereby quashed. The matter is remitted back to the respondent no. 3 for reconsideration of the claim of the petitioner in the light of the observations made hereinabove within a period of three months of the date of presentation of a certified copy of this order before him.

So far as the claim of payment of minimum wages is concerned reference may be had to the Division Bench judgment of this Court given in Special Appeal No.1205 of 2010 (Chanchal Kumar Tiwari and others Vs. Shri Hari Shankar).The writ petition is allowed.

2. When the said judgment was served upon the opposite parties, the opposite party no.3 passed an order dated 07.01.2011 again rejecting the claim of the applicant on the ground that the Cash Book did not disclose the name of the applicant during the period September, 1990 to May, 1994. The said order has been filed as Annexure-"5" to the affidavit filed in support of the contempt application. Aggrieved by the decision, as according to the applicant it was directly in-contravention of the findings recorded by the learned single Judge, the present contempt application was filed. Upon issue of notice, the opposite parties have filed their affidavit of compliance stating that they have already taken a decision and as such there is neither any disobedience nor any noncompliance and as such the notices be discharged and the application be dismissed.

3. I have heard Sri Ditptiman Singh, learned counsel for the applicant and Sri K.R. Singh, learned Standing Counsel representing the opposite parties and also perused the material on record.

4. Sri K.R. Singh, learned Standing Counsel representing the opposite parties has sought to justify the order of the opposite party no.3 dated 07.01.2011 on the ground that sufficient material has been placed on record in the form of the Cash Book for the period 1990-1994 to show that it does not contain the name of the applicant and secondly that if the record so speaks then opposite parties would be entitled to benefit of Section 13(b) of the Act. In the opinion of the Court it is too late for the opposite parties to go into these questions. All these facts ought to have been placed before the writ Court where ample opportunity had been given and the State respondents had filed their counter affidavit. Benefit of Section 13(b) of the act is admissible where the defence is bonafide and in public

interest. The judgment of the learned single Judge interse parties has become final and is binding on the parties. In contempt proceedings the findings of the writ Court cannot be tested. The conduct of the opposite parties does not appear to be bonafide, nor is it in public interest to reopen the concluded findings of the writ Court. Therefore, I am not inclined to accept the argument of Sri K.R. Singh, learned Standing Counsel.

5. From a perusal of the judgment of the writ Court the findings recorded are that "the petitioner therefore has led evidence to indicate that he has worked as a daily wager on the cut off date". This finding relates to the working of the applicant in the year 1991. The further finding recorded is that "there is no denial that the petitioner was working on 21.12.2001 and has been paid his wages". This finding is with regard to the date of the commencement of the Rules. The Rules of 2001 specifically provided that any daily wager working on these two dates would be entitled to be considered for regularisation subject to other conditions being fulfilled. These two findings have been sought to be side tracked and overreached by the opposite party no.3 in his order dated 07.01.2011. The order dated 07.01.2011 records the details of the certificates furnished by the applicant with regard to his working for different periods, but does not record that such certificates are either fake, forged or manipulated. The only statement made in the order dated 07.01.2011 is that it has been verified from the Cash Book for the period September, 1990 to May, 1994 and that it does not contain the name of the applicant. It has further been observed that the representation of the applicant has been found to be forged for the period other than September, 1995 to May, 1996, September, 1996, December, 1996 to March, 1997. The basis for finding the representation to be forged is not given. The certificates submitted by the applicant have not been separately dealt with, nor there is any report or certificate of the Officer who had issued the said certificates stating that it does not bear his signatures. Further the claim of the applicant has been rejected on the ground that he was not working on the two cut off dates i.e. 29.06.1991 and 21.12.2001. The reasons given in the order dated 07.01.2011 are in the teeth of the findings recorded by the learned single Judge dated 22.09.2010, which has attained finality interse between the parties and has not been assailed any further. In that view of the matter, the opposite party no.3 is prima facie guilty of having committed contempt and is likely to be proceeded against for framing of charges.

6. List this case on 28.02.2012. On the said date, the opposite party no.3 shall remain present before this Court for framing of charges. Copy of the order may be provided to Sri K.R. Singh, learned Standing Counsel free of cost within twenty four hours for necessary compliance.