
(2009) 04 AHC CK 0156
In the Allahabad High Court
Case No : Special Appeal No: 461 of 2006

Rakesh Chandra Srivastava and another. APPELLANT
Vs
State of U.P.and others. RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0156

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Dismissed

Judgement

1. This special appeal challenges the order passed by the learned Single Judge, who has although issued a direction for considering the cases of the appellants for regularization under the provisions of U.P. Regularisation of Daily Wages Appointments on Group "D" Posts, Rules 2001 as amended up to date but the appellants feel aggrieved as the said direction was of no use to them since on the date when this direction was issued, they were admittedly not in service.

2. The learned counsel for the appellants has raised only one argument that because the appellants' counsel who was representing in the writ petition, could not reach when the case was taken up in the Court, therefore, the plea for quashing the oral termination order could not be brought to the notice of the Court and the same was not considered, and therefore, the matter be remanded.

3. We fail to appreciate the aforesaid argument but press our concern on the plea raised. A counsel who is supposed to be vigilant, sincere and dutiful, responsibility lies upon him to make himself available before the Court when the case is taken up and if for any reason whatsoever there is some genuine difficulty in appearing in the case, then either alternative arrangement is to be made or a request is to be made through some counsel bringing to the notice of the Court that for the given reason, the counsel is not in a position to argue the matter. But it cannot be a privilege that if a counsel did not appear in the case, that too, without making any mention or a request before the Court and he can not take it for granted that whenever he will appear, the case should be reheard.

4. The Courts show leniency because the interest of the client cannot be put to stake because of the attitude of the counsel and his conduct but all the times, this would not be a factor for excusing the client for the irresponsible action/ attitude of the counsel.

5. In case, the counsel who was appearing in the writ petition was of the view that some arguments or points could not be brought to the notice of the Court, because of absence of the counsel for the appellants, he would have been well advised to file review petition and not to file the special appeal.

6. The learned Single Judge has taken note of the fact that there were several applications moved for earlylisting of the case and time and again orders were passed on these applications moved by the appellants that the writ petition be listed and should be disposed of expeditiously, but despite such anxiety being shown by the appellants, the learned counsel took it very casually and did not attend the case when the case was taken up. That being so, we do not find any ground for setting aside the order passed by the learned Single Judge and remand the matter to him on the aforesaid plea.

7. Even otherwise on the pleadings, as have been put in the writ petition and the prayer clause, the plea that the appellants have claimed for quashing the termination order, which was orally passed, is not borne out. As a matter of fact no relief was claimed in the writ petition for quashing the termination order, though orally passed. The case set up was that the appellants were working from a particular date and from November and December 1992, they have not been paid their wages. They have thus been discontinued and their services were orally terminated. Despite the aforesaid averment made in the writ petition, no relief was claimed for declaring the oral termination invalid or for quashing the termination order. In the absence of termination order being declared invalid or quashed, no order for regularization of their services could have been passed.

8. Admittedly, the appellants are not working since December 1992, therefore at this belated stage, no direction can be issued in their favour either for continuance of the appellants or for quashing the oral termination order.

9. We, therefore, find that the direction issued by the learned Single Judge for considering regularization of the appellants cannot be carried out. We, thus, set aside the order dated 6.7.2005 passed by the learned Single Judge and dismiss the writ petition filed by the appellants. The special appeal is also dismissed.

(Special Appeal and Writ Petition dismissed)