
(2005) 02 AHC CK 0067
In the Allahabad High Court
Case No : C.M.W.P. No. 20264 of 2004

Ram Het Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Citation : (2005) 2 AWC 1718 : (2005) 2 ESC 903 : (2005) 105 FLR 8 : (2005) 2 UPLBEC 1536

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : G.K. Singh and V.K. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri G.K. Singh, learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

2. The petitioner was appointed on 20.2.1987 to officiate on the post of Consolidation Lekhpal. Subsequently, the post on which the petitioner was working became substantive in nature on 19.10.1989. The services of the petitioner was dispensed by an Order dated 9.11.1989. The petitioner made a representation on 11.12.1989, which was rejected and consequently, the petitioner filed Civil Misc. Writ Petition No. 288 of 1990 in which an interim Order was granted permitting the petitioner to continue to function on the post of Consolidation Lekhpal. This writ petition was disposed of by judgment dated 5.12.2003 directing that the petitioner's case for regularisation be considered under the relevant regularisation Rules and till such time, as the petitioner's case for regularisation remained pending, he was allowed to continue in service. Based on this direction given by this Court, the respondents by the impugned Order dated 15.5.2004 has rejected the claim of the regularisation of the petitioner and consequently by the same Order his services was also dispensed with.

3. Being aggrieved, the petitioner has now filed the present writ petition praying for the quashing of the Order dated 15.5.2004 passed by respondent No. 3, namely, the Settlement Officer Consolidation, Mirzapur and has also prayed for a writ of mandamus commanding the respondents to consider his case for regularisation on the post of Consolidation Lekhpal.

4. The sole ground for rejecting the claim of the petitioner is that the petitioner was appointed on an officiating basis and therefore, the Rules, namely the U.P. Regularisation of Ad-hoc Appointments (on posts outside the purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as the Rules of 1979) are not applicable to a case of an officiating employee, inasmuch as, the Rules of 1979, as amended from time to time only applies to an ad hoc appointee.

5. In Order of appreciate the submissions made at the Bar, Rule 4 of the Rules of 1979 is quoted here- under :

"4. Regularisation of ad hoc appointments.-(1) Any person who--

(i) was directly appointed on ad hoc basis on or before June 30, 1998 and is continuing in service as such on the date of commencement of the Uttar Pradesh Regularisation of Ad hoc Appointments (on posts outside the purview of the Public Service Commission) (Third Amendment) Rules, 2001.

(ii) possessed requisite qualifications prescribed for regular appointment" at the time of such a d h o c appointment, and

(iii) has completed or, as the case may be, after he has completed three years service shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant Rules or Orders."

6. The aforesaid Rules indicate that any person who was appointed on an ad hoc basis" on or before 30.6.1998, who possessed the requisite qualification for regular appointment and who had completed three years of continuous service, would be considered for a regular appointment in a permanent or temporary vacancy, as may be available. In the present case, there is no dispute with regard to the fact that the petitioner was working on a substantive vacancy, as is clear from the Order of appointment itself. The only question, which arises for consideration is whether the petitioner being appointed on an officiating basis could be included in the definition of the word "ad hoc". The Legal Glossary defines the word "officiating" as under :

"Acting in an official capacity, filling a position temporarily."

and the word "ad hoc" has been defined as "made, established, acting or concerned with a particular end or purpose".

7. Therefore, an ad hoc appointment is for a particular purpose or for a limited

purpose. The word "officiating" also means to fill up a position temporarily, which means to fill a post for a limited period.

8. Normally, when a person officiates on a post, he does only for a limited period in addition to the post which he holds, that is to say, that an incumbent retains his original post and in addition to it he officiates on another post. In the present case, the petitioner has been appointed afresh for the first time on the post of Consolidation Lekhpal. The petitioner was not officiating on this post in addition to another post. Therefore, the usage of the word--"Sthanapann" in the appointment letter has to be understood in the manner in which the appointment was made. In my view, the word "Sthanapann" should be read as if it was made for a limited period on an ad hoc basis.

9. In Arun Kumar Chatterjee Vs. South Eastern Railway and Others, the Supreme Court explained the meaning of the word "officiating" as generally used in service parlance.

"According to its ordinary connotation, the word "officiating" is generally used when a servant having held one post permanently or substantively, is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word "temporary" usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post."

10. The learned Counsel for the petitioner has invited my attention to Annexures-11 and 12 to the writ petition where, in similar situation, another employee was appointed on an officiating basis and thereafter, the respondents had regularised his services. This fact has not been controverted by the respondents. Consequently, in my view, it is not open to the respondents to take a contrary stand. A uniform policy has to be adopted and it is not open to the respondents to pick and choose at their own convenience.

11. In view of the aforesaid discussions, the writ petition is allowed and impugned Order dated 15.5.2004 is quashed. The petitioner is entitled to the claim of regularisation. Consequently, a mandamus is issued directing the respondent No. 3 to consider the petitioner on the post of Consolidation Lekhpal by issuing consequential Orders for the regularisation of his service within six weeks from the date a certified copy of this judgment is produced before him. It is made clear that if the petitioner was not found to be working between the period 15.5.2004 till the date of the Order of the regularisation, he shall not be paid the salary/wages, for that period but the said period would be included for calculating the length of service and other consequential benefits of service that may be available to the petitioner.