

(2015) 02 AHC CK 0060

In the Allahabad High Court

Case No : Special Appeal Defective No. 153 of 2015

Ram Nath Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 ADJ 781 : (2015) 4 ALJ 453 : (2015) 110 ALR 308 : (2015) 2 AWC 2111 : (2015) 2 ESC 1081 : (2015) 2 UPLBEC 1232

Hon'ble Judges : Vijay Lakshmi, J.; Rakesh Tiwari, J.

Bench : Division Bench

Advocate : Jagdev Singh, for the Appellant

Judgement

Vijay Lakshmi, J.—This intra Court appeal arises out of the judgment and order dated 8.5.2014 passed in Civil Misc. Writ Petition No. 36398 of 2007 (Ram Nath Singh and another v. State of U.P. and others) whereby the learned Single Judge has dismissed the writ petition. We have heard learned counsel for the appellant and learned Standing Counsel representing the respondents and have perused the records.

2. The appellants are retired employees of Irrigation Department. The appellant No. 1 was retired in the year 2007 and appellant No. 2 was retired on 31.1.2009. Both of them have alleged that they have been denied the pensionary benefits as payable to a regular employee because their services were not regularized within time. The petitioners/appellants are claiming their regularization since after expiry of 3 years from their initial appointments. The petitioners/appellants have further alleged that some employees of the department were benefited whereas they have been discriminated without any reason. The grievance of the petitioner is that despite the fact that a letter was issued by the Chief Engineer, Irrigation Department, U.P. to the effect that "Work Charged" employees who have completed their continuous service as on 30.9.1998 shall be regularized as directed by the Apex Court in the case of State of Haryana and others Vs. Piara

Singh and others etc. etc., and Raj Narain Prasad and Others Vs. State of U.P. and Others, , nothing has been done by the respondents till date.

3. Aggrieved by the inaction of their employers, the appellants moved this Court by means of a writ petition praying for the following reliefs:

"(i) to issue a writ, order or direction in the nature of mandamus commanding the respondents to regularize the services of the petitioners to their respective post in pursuance of the various Government Orders and Judgments of the Apex Court of India decided on 18.1.1996 (Raj Narain Prasad and others v. State of U.P. and others).

(ii) issue a writ, order or direction in the nature of mandamus directing the respondents to treat the petitioners as a regular employee and pay the salary to the petitioners w.e.f. immediately after three years of their initial appointment in the department till date.

(iii) issue any other writ, order or direction as this Hon Tale Court may deem fit and proper in the facts and circumstances of the present case.

(iv) to award the cost in favour of the petitioners."

4. The learned writ Court denied to grant any relief to the appellants and dismissed their writ petition by the following order:

"Learned counsel for the petitioner while arguing the case has informed that the petitioners have attained the age of superannuation. Now looking to the relief sought in the writ petition, it is undisputed that at the time when the petitioners attained the age of superannuation both of them were regularized in service and stood confirmed in service as per the stand taken in the counter-affidavit. Therefore, relief No. (i) set out in the writ petition was granted during pendency of the writ petition.

The second relief sought in the writ petition is to the effect that the petitioners may be treated as regular employees w.e.f. immediately after three years of their initial appointment in the department. In this regard attention of this Court was drawn to Annexure 1, wherein, the names of the petitioners appear at the bottom i.e. above last but one person namely Bishan Singh.

Learned counsel for the petitioner has not been able to show as to when Shri Bishan Singh was regularized in service so that a claim of parity could be considered in favour of the petitioner. The premise for such a claim has not been set out in the writ petition on the basis of any factual averments. The relief prayed for cannot be granted on the basis of random references of junior persons named in the writ petition who may or may not be junior to the petitioner.

The relief sought in the writ petition is unfounded and misconceived.

The writ petition is hereby dismissed. However, it is open to the petitioners to demonstrate their grievance for the purposes of pensionary benefits on any

ground as may be permissible within the scope of law."

5. The aforesaid order has been challenged in this special appeal by the appellants on the grounds that the learned Single Judge did not consider the judgements and orders passed by this Court and the judgment passed by Hon"ble Apex Court annexed by the petitioners with the writ petition. The writ Court did not consider the fact that the appellants had put in more than 30 years of regular and continuous service and had excellent record. Their services were regularized only in the year 2005 whereas they were claiming to be regularized from 1980 and 1982 respectively. The learned writ Court also failed to consider various Government orders and did not consider the fact that the respondents-department has taken services of the appellants regularly and continuously for about 30 years but their services were regularized at the fag end of their career.

6. The respondent Irrigation Department in the counter-affidavit filed in the writ petition has taken the stand that petitioner No. 1 was appointed on 1.8.1977 as "Work Charged" employee in the temporary establishment and he was taken into permanent establishment on 15.4.2002, therefore, he was entitled for benefit of regularization only after expiry of 3 years from the date he was taken into permanent establishment. It has further been averred in the counter-affidavit that the petitioners being "work charged" employees in temporary establishment were not entitled for all the benefits available to a regular employee and their services cannot be compared with that of a regular employee.

7. Admittedly, the petitioners were initially appointed as "work charged" employee. Service of a "work charged" employee is required when immediate urgency of the work occurs. The work charged employee is not entitled to all the benefits of a regular employee. The petitioners were taken into permanent establishment in the year 2002 and after 3 years of working in permanent establishment, their services were regularized by the department.

8. The prayer No. 1 of the petitioners is to the effect to issue a direction in the nature of mandamus commanding the respondents to regularize their services, which relief has already been granted to them in the year 2005.

9. The second relief sought for by the petitioner is that a mandamus be issued to respondents to treat them as regular employee since immediately after 3 years of their initial appointment in the department and pay the salary to them accordingly. This relief also cannot be granted to them in view of the fact that the petitioners were appointed as "work charged" employees who have no such right in view of the landmark judgment Secretary, State of Karnataka and Others Vs. Umadevi and Others, , decided by seven Judges Bench of Hon"ble Supreme Court, in which the Apex Court, overruling all its previous judgment having contrary view and has laid down the law as under:

"It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.....

We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in Government service with effect from the dates from which they were respectively engaged or appointed.....

...a temporary, contractual, casual, ad-hoc or daily-wage employee have no right to regular or permanent public employment. The absorption, regularization or permanent continuance of temporary, contractual, casual, ad-hoc or daily-wage employees appointed/recruited dehors the constitutional scheme of public employment on issuance of directions by Court will amount to create another mode of public appointment which is not permissible"

10. So far as the claim of parity raised by the petitioners is concerned, the Irrigation Department in the counter-affidavit has denied the fact that any person junior to them has been regularized and has clearly stated in paragraph 10 of the counter-affidavit that no junior employee has been regularized in violation of law.

11. The learned writ Court in the impugned judgment has also observed that the petitioners have not been able to show that when Shri Bishan Singh was regularized in service so that a claim of parity could be considered in favour of the petitioners and the relief prayed for cannot be granted on the basis of random references of junior persons named in the writ petition who may or may not be junior to the petitioner.

12. Learned counsel for the appellant has mainly relied on the judgment of the Apex Court rendered in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., and Raj Narain Prasad (supra). The aforesaid judgments of the Apex Court have been over-ruled by the 7 Judges Bench of the Apex Court in Uma Devi's case (supra).

13. The law laid down in Uma Devi's case (supra) has been reiterated in several other subsequent cases by Hon"ble Apex Court.

14. In State of U.P. and Others Vs. Rekha Rani, , it has observed as under:

"The respondent is only a temporary employee. High Court in exercise of power under Article 226 of Constitution cannot regularize an employee merely because some others had been regularized does not give any right to respondent. An illegality cannot be perpetuated." 15. The Apex Court recently in Secretary to Government, School Education Department, Chennai Vs. Thiru R. Govindaswamy and Others, , has reiterated the law as under:

"Temporary, ad-hoc or daily wage employee, if not working against a sanctioned post, are not entitled for regularization even when they had put in long service because they were not duly appointed.

Sympathy and sentiment cannot be valid grounds for regularization of service in absence of legal right."

16. In wake of the law laid down by Hon''ble Apex Court in Uma Devi's case (supra) and the petitioners/appellants being work charged'' employees have no right to claim their ex post facto regularization immediately after expiry of three years from the date of their initial appointment. Both the appellants have retired far back in the year 2007 and 2009 and the writ Court has already given them liberty to raise their grievance for pensionary benefits on the grounds permissible under law.

17. Learned counsel for the appellants could not point out any illegality in the aforesaid finding arrived at by the learned writ Court.

18. The appeal lacks merit. It is liable to be dismissed, is accordingly dismissed.

Re: Civil Misc. Delay Condonation Application No. 48864 of 2015

19. Heard learned counsel for the appellant and the learned A.G.A.

20. The ground shown for delay in filing the special appeal is sufficient. The delay condonation application is allowed. The delay in filing the appeal is condoned.