
(2004) 01 AHC CK 0171
In the Allahabad High Court
Case No : Writ Petition No.8109 (S/S) of 2003

Ramesh Singh Panwar

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 01 AHC CK 0171

Hon'ble Judges : N.K.Mehrotra, J

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is a writ petition under Article 226 of Constitution of India for issuing a writ of certiorari quashing the impugned order dated 20.8.2001 as contained in Annexure1 issued by the opposite party No.5 Deputy Director, Construction, Rajya Krishi Utpadan Mandi Parishad, Meerut and for issuing a writ of mandamus commanding the respondents to allow the petitioner to allow to work and also pay him salary upto date alongwith arrears with effect from 25.6.2001. It is further prayed that mandamus be issued to the petitioner to regularize the service as per the prevailing regularization scheme framed by the opposite parties.

2. According to the petitioner, he was a Class IV employee in the service of the Mandi Parishad. His services were terminated by oral order with effect from 1.6.1999 on the basis of the Government order dated 12.2.1999. The Government Order dated 12.2.1999 was quashed by this Hon"ble Court in bunch of petitions on 11.8.2000 in which leading writ petition was writ petition No. 1346/ 1999 Mukesh Kumar v. U.P. Rajya Krishi Utpadan Mandi Parishad and others. Government Order dated 12.2.1999 is Annexure2 which is said to have been quashed by this Court in the aforesaid writ petition. The writ petition No.7620 (S/S) of 2000 was filed by the petitioner challenging the oral termination order in bunch of the writ petitions alongwith the writ petition No. 1346 (S/S) of 1999. A copy of the judgment dated 11.5.2001 in writ petition

No.7620 (S/S) of 2000 is Annexure No.3.

3. This Court disposed of the writ petition with this direction to the petitioner to make separate representation to the respondents 1 and 4 for being decided within a period of four weeks from the date of receipt of the copy of the order.

4. The petitioner was appointed on 1.11.1993 as work charged/daily wage muster roll Class IV employee and he continued to work upto 31.5.1999. According to the petitioner, after the judgment in his writ petition No.7620 (S/S) of 2000 on 11.5.2001, he submitted his joining report and he was allowed to work but in spite of several representations salary was not paid to him. In paragraph 10 of the petition, it is averred that the petitioner is eligible and entitled to be allowed to work on his post, ignoring the impugned order dated 20.8.2001 and he is also entitled to get salary with effect from 25.6.2001.

5. Petitioner has also filed a copy of the scheme framed by the opposite parties for regularization of the daily wagers and on the basis of this regularization scheme, he claims his regularization. After hearing the learned counsel for the petitioner and Shri N.C. Mehrotra, Standing Counsel for the opposite parties, I find that in the impugned order, it has been stated that the petitioner was appointed in a project against which the budget of 2% contingency for a fixed period from 1.11.1993 to 31.5.1999. He was a muster roll employee and he has not worked after 31.5.1999. The Deputy Director, Construction at the time of passing the impugned order, has referred a judgment of the Hon'ble Supreme Court in State of U.P. and other v. Ajay Kumar. JT 1997 (3) SC 219. I do not find anything on record to substantiate the contentions of the petitioner that he was permitted to work after the judgment dated 11.5.2001 in writ petition No.7620 (S/S) of 2000, Kaushlendra Sharma and another v. Director. Mandi Parishad and others, as contained in Annexure No.3 in which the present petitioner was also one of the petitioners. There is nothing on record to establish the fact that petitioner has worked after 31.5.1999. There is nothing on record to show that the services of the petitioner were terminated on the basis of the Government Order dated 12.2.1999 Annexure2 which is alleged to have been quashed by this Court in writ petition No.1346/99, Mukesh Kumar v. U.P. Rajya Krishi Mandi Parishad. This fact is admitted that the petitioner was initially appointed as muster roll Class IV employee on 1.11.1993. According to the impugned order, the petitioner worked upto 31.5.1999 and there is nothing to rebut this fact stated in the impugned order. The impugned order was passed on 20.8.2001 and the writ petition has been filed after the period of two years four months. Therefore this writ petition is liable to be dismissed on the ground of laches alone. Petitioner is not entitled to take the advantage of the judgment dated 11.8.2000 passed in writ petition No. 1346 (S/S) of 1999, Mukesh Kumar v. Mandi Parishad. At the time of deciding writ petition No.7620 (S/S) of 2000, this Court has not recorded any finding by holding that the service of the petitioner were terminated on the basis of the Government Order dated 12.2.1999 Annexure2. Only these employees whose services were terminated on the basis

of the Government Order dated 12.2.1999 Annexure2 can be considered for giving the advantage of the judgment by this Court dated 11.8.2000 in writ petition No. 1346 (S/S) of 1999. Since the case of the petitioner is different and his services were not terminated on the basis of the Government Order dated 12.2.1999 Annexure No.2, he cannot claim the benefit of the judgment of this Court in writ petition No.1346 (S/S) of 1999 the matter of regularization of the muster roll employees was considered by the Hon''ble Supreme Court in Delhi Development Horticulture Employees Union v. Delhi Administration. (1992) 4 SCC 99 and it was held by the Hon''ble Supreme Court that muster roll employees have no right to continue and claim the regularization after the period of project expires. The same view was taken by the Hon''ble Supreme Court in Jawaharlal Nehru Krishi Vishwavidyalaya v. Bal Krishna Soni. (1997) 5 SCC 86.

6. The Deputy Director (Construction), Mandi Parishad has rightly referred the decision of the Hon''ble Supreme Court in State of P.P. v. Ajay Kumar. (1997) 4 SCC 88 in which it was held that "there must exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench of the High Court was clearly in error in directing the appellant to regularize the service of the respondent, who was working as Nursing Orderly on daily wages, to the post as and when the vacancy arises and to continue him until then."

7. Learned counsel for the petitioner has next contended that the petitioner should be given benefit of the regularization scheme as contained in Annexure6. I find that the petitioner is not entitled to claim any benefit of regularization under this scheme for the reasons that the petitioner is not in employment after 31.5.1999 and secondly, this scheme was framed for the employees who were appointed prior to 1.10.1991 while admittedly, the petitioner was appointed on 1.11.1993 and is not working after 31.5.1999.

8. In view of the facts and circumstances as stated above, the writ petition is dismissed at the admission stage.

(Petition dismissed)