

(2009) 08 AHC CK 0203

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41117 of 2009

Rashmi Awasthi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Citation : (2009) 08 AHC CK 0203

Hon'ble Judges : Amitava Lala, J and Shishir Kumar, J

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—This writ petition has been made by the petitioner by saying that the grievance of such writ petitioners are fully covered by the order of this Court passed on 7.7.2009 in Civil Misc. Writ Petition No. 33048 of 2009 (Valentina Priya and others v. State of U. P. and others). The order of this Court is as follows :

"The petitioner who is in contract service as Lecturer.

Learned counsel for the petitioners contended that service tenure should not be replaced by any contractual lecturer.

Having heard learned Counsel for the parties, we are of the considered opinion that the actual controversy involved in this case is fully covered by the principle, which has been well settled by this Court as well as the Supreme Court in catena of decisions, that the ad hoc appointee will not be replaced by another ad hoc, consequently, we are of the view that the petitioner will continue till the regularly selected candidate joins the post. Accordingly, the writ petition is disposed of."

2. The aforesaid order is passed on the background that advertisement was made to appoint an ad hoc or contractual appointee to replace the existing ad hoc or contractual appointee. However, so far as contractual employees are concerned, we have clarified the position in view of the Division Bench judgments of this High Court which are as follows:

"Several orders were passed by this Court in Civil Misc. Writ Petition No. 63304 of 2008 (Dr. Ramesh Yadav and others v. State of U.P. and others) on 18.12.2008, in Civil Misc. Writ Petition No. 25812 of 2009 (Naveen Kumar and others v. State of U.P. and others) on 18.5.2009 and in Civil Misc. Writ Petition No. 56571 of 2008 (Shyam Mishra and another v. State of U.P. and others) on 5.11.2008. All the orders have been annexed with this writ petition to show that by such orders how the contractual appointments therein were directed to continue. Contents of one of such orders is as follows:

"In view of the decision in that case this writ petition is disposed of with the direction to the respondents that they will not replace the petitioners by another teacher on contract basis and the petitioners shall be allowed to continue without any right of regularization and subject to the suitability and conduct until regularly selected candidates replace them. The petitioners shall not raise any dispute or challenge the regular appointment or the replacement as and when the Public Service Commission selects and the State Government appoints regular teacher in their college."

According to us, since the several Division Benches passed the orders similarly, it will not be proper for us to deviate from such orders, therefore, the same will have binding effect upon the parties even in this writ petition subject to condition that the petitioners are continuing on the post till date. If they are not continuing in service, this order will not be given effect to such candidates.

The writ petition is, accordingly, disposed of.

No order is passed as to costs."

3. But, learned Standing Counsel has opposed the prayer by saying that there is no advertisement for filling up the post by any contractual or ad hoc employee in place and instead of the petitioner. The petitioner's contention cannot be existed on the strength of any of the orders, which have been passed by a Division Bench of this Court.

4. Learned counsel appearing for the petitioner has contended before this Court that immediately after entering into such service, the petitioner has been handed over with a model copy of the contract, which required to be signed within 15 days from the date of joining in the service. Such contract also says that the service tenure is only for one year.

5. We find that such type of contract might be hit by the principle laid down in Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another, AIR 1986 SC 1571. In any event, when the learned Standing Counsel has contended before us that no advertisement is published, the petitioner cannot be said to be affected now. Therefore, we are of the view that the writ petition can be disposed of with the direction upon the petitioner to make the same within a period of one week from the date of communication of this order and if it is made, the same will be considered after passing appropriate

order within a further period of one month from the date of such communication upon giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purpose of effective adjudication a copy of the writ petition along with its annexures can also be treated as part and parcel of the representation.

6. However, since the petitioner's tenure has not yet expired but may expire on any forthcoming date, the services of the petitioner shall continue till the communication of the order passed by the authority concerned.

7. The writ petition is disposed of, however, without imposing any cost.

Hon"ble Shishir Kumar, J.I agree.