
(2004) 05 AHC CK 0059
In the Allahabad High Court
Case No : Writ Petition No. 378 (S/S) of 2001

Salim Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Uttar Pradesh Regularisation of Daily Wages Appointment on Group C Posts (Outside the Purview of Uttar Pradesh Public Service Commission) Rules, 1998 — Rule 8

Citation : (2004) 4 AWC 3532

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : S.S.L. Srivastava, for the Appellant; C.S.C., for the Respondent

Judgement

I.M. Quddusi, J.—Heard learned counsel for the petitioner and the learned standing counsel.

2. By means of this writ petition, the petitioner has prayed for quashing of the impugned order dated 24.1.2000, passed by opposite party No. 3, i.e., the Principal, Government Industrial Training Institute, by which the services of the petitioner were terminated under Rule 8 of the U. P. Regularisation of Daily Wages Appointment on Group "C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998.

3. The brief facts of the case are that the petitioner was appointed as Instructor, Mechanical Draftsman in the Government Industrial Training Institute, Sewaar, district Rampur w.e.f. 12.12.1990 and he continued as such with some breaks till the date of coming into force of the U. P. Regularisation of Daily Wages Appointment on Group "C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998 (hereinafter referred to as "the Regularisation Rules of 1998", in which it was provided that the persons who were working on daily wage basis since 29th June, 1991, were liable to be regularised against the Group "C posts, but the petitioner's regularisation was not considered. As such, he filed W.P. No. 1481 (S/S) of 1995, in which a direction was issued to consider

his regularisation vide order dated 6.7.1999, in pursuance of which a selection committee was constituted, which after considering the regularisation of the petitioner found that there were breaks in service and the longest break is from 8.7.1992 to 23.3.1999. There is a Government order No. 3803-Ka/36-5-99-7 (281)/88, dated 21.10.1999. in paragraph 2 whereof it has been directed that the case of the persons appointed on daily wage basis shall not be covered by the Regularisation Rules of 1998, if there is no continuity of service. Therefore, considering that the case of the petitioner does not come within the scope of aforesaid Rules of 1998, it was decided that the petitioner cannot be regularised under those Rules but the selection committee recommended the termination of the petitioner under Rule 8 of the Regularisation Rules.

4. The question, therefore, has arisen that once it has been decided that the petitioner's case does not come within the scope of Regularisation Rules, and the Regularisation Rules would not be applicable in his case, how Rule 8 of the same Rules would be applicable for terminating the services of the petitioner.

5. Therefore, the impugned order of termination passed under Rule 8 of the Regularisation Rules, is bad in law and the same is liable to be quashed, as the petitioner's case is allegedly not covered by the aforesaid Regularisation Rules.

6. Learned counsel for the petitioner placed reliance on a decision of this Court given at Allahabad in the case of Jag Lal and Ors. v. Director, Horticulture and Ors. 2003 (2) LBESR 225, in paragraph 23 of which it has been provided as under :

"If any break in service does not cease employment and bring it to an end by severing relationship of master and servant, such break should be ignored. In cases where the employee suffers from any illness or is absent without leave, his service does not come to an end. Similarly, if an employee is not allowed to work for reasons not attributable to him and is subsequently allowed to resume duties, the continuous nature of his engagement does not cease."

7. In view of the above, the writ petition is allowed in part. The impugned order of termination dated 24.1.2000, passed by opposite party No. 3 under Rule 8 of the Regularisation Rules, is quashed. The opposite parties are directed to re-engage the petitioner on daily wage basis and his break in service from the date of termination till date of re-engagement, treated only as official break and shall be ignored while considering his regularisation under the law in case there is any provision existing for the same or is implemented in future.