

(2000) 10 AHC CK 0019
In the Allahabad High Court
Case No : Special Appeal No. 705 of 1996

Saudan Singh (Decd.) through L.Rs. and others	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Citation : (2000) 4 AWC 3259 : (2001) 1 LLJ 796 : (2000) 3 UPLBEC 2513

Hon'ble Judges : Shitla Pd. Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Y.D. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Shitla Pd. Srivastava, J.—This special appeal has been filed by Saudan Singh and others against the judgment dated 11.9.1996 delivered in Civil Misc Writ Petition No. 29391 of 1996. Saudan Singh and others v. State of Uttar Pradesh and others.

2. The brief facts of the case are that the appellants who were petitioners in the writ petition, filed writ petition for a writ of certiorari quashing the order dated 17.8.1996 passed by Sri W. Rahman, Superintending Engineer Aligarh/ Mathura Circle Public Works Department, Aligarh and for a writ of mandamus directing the respondents to regularise the services of the petitioners and to pay them regular salary with other consequential benefits which are admissible according to law.

3. The case taken by the petitioners in the writ petition is that they were appointed in Public Works Department as daily rated employees initially. They were appointed in the Construction Division II, Public Works Department under the subordination of Executive Engineer, Construction Division II, Public Works Department, Aligarh. Petitioner Nos. 1 to 5 were appointed as beldar in the month of December, 1983 and petitioner Nos. 6 to 8 were appointed as mate in the month of November, 1983. It is stated that no appointment letter was issued to the petitioners. It is alleged that they were working continuously from the

date of their appointment, therefore, the Engineer-in-Chief wrote a letter dated 21.6.1980 to the Superintending Engineer for all the circles of Uttar Pradesh giving guidelines for daily rated employees of the department, who had completed three years of service to the effect that they would be entitled for monthly salary. The petitioner's contention is that the respondent No. 4 (Executive Engineer) has regularised the services of the petitioners in compliance of the letter dated 21.6.1980 since the petitioners had completed more than three years of service on 31.12.1987 and had worked for 240 days in every calendar year. The respondent No. 4 passed orders dated 30.1.1988, 11.1.1988 and 25.1.1988 for regularisation of the services of the petitioners. It is further stated that the petitioners got monthly salary till September, 1988, but thereafter, the respondent No. 4 passed reversion order against the petitioners without giving any opportunity of hearing to them reverting the petitioners as daily wagers. It is stated that the petitioners challenged this order in Civil Misc. Writ Petition Nos. 25140 of 1988, 22031 of 1989 and 36643 of 1994 and this Court quashed the reversion order and allowed the writ petitions and issued direction to the respondents to regularise the services of the petitioners and pay them regular salary. Petitioners have stated that when this direction was not followed by the respondents, they filed Contempt Petition No. 814 of 1996 against the respondent Nos. 3 and 4 and the respondents were directed to appear in the Court. It is stated that the State of U. P. filed Special Appeal Nos. 515, 516 and 517 of 1996 which were heard by the Division Bench presided over by Hon'ble the Chief Justice and Hon'ble R. R.K. Trivedi, J, and the special appeals were dismissed.

4. It is stated that the respondent Nos. 3 and 5 again passed order reverting the petitioners on the daily rated salary misinterpreting the order of the High Court and without considering the order of the learned single Judge. The grievance of the petitioners is that once the order of regularisation was passed, it could not have been recalled or cancelled by the impugned order. Further, the grievance of the petitioners is that the petitioners have completed more than 12 years of services in Public Works Department and they have worked for more than 240 days in every calendar year, and they possess the same qualification which is possessed by a regular employee and they are rendering the same duty as is rendered by the regular employees but they are not being given their salary and facilities as are given to the regular employees and as such, they are suffering loss.

5. Learned single Judge dismissed the writ petition with the observations vide order dated 2.8.1995 in Writ Petition No. 36643 of 1994, the High Court directed the respondents to consider the case of the petitioners for regularisation according to law against which the respondents had filed Special Appeal Nos. 515, 516 and 517 of 1996, which were dismissed as time-barred as well as on merits by the Division Bench of this Court. It has been further held by the learned single Judge that in the seniority list issued in the year 1992, the petitioners are below the serial No. 41 and as the respondents have passed the

order of regularisation upto serial No. 41 only, therefore, the petitioners will have to wait for their turn.

6. We have heard Sri Y.D. Sharma, learned counsel for the appellants and learned standing counsel.

7. Sri Y.D. Sharma, learned counsel for the appellants vehemently, urged that the learned single Judge has not appreciated the controversy involved in the present case. He has also not looked into the documents, which were in the shape of judgments of this Court in connection with the petitioner's grievances, therefore, the judgment of the learned single Judge is vitiated in law. His submission is that out of eight appellants who were petitioners before the learned single Judge, the petitioners, namely, Naresh and Vir Pal had filed Writ Petition No. 22031 of 1989, and petitioners Prakash Chand and Ram Bharose filed Writ Petition No. 28140 of 1988. By means of these two writ petitions, the above named petitioners challenged the order dated 26.9.1988 passed by the respondent and prayed for a writ of mandamus commanding the respondents to treat the petitioners as regular employees on the basis of the order dated 30.1.1988 and these petitions were allowed by Hon'ble R.H. Zaidi, J, on 27.7.1995 issuing a writ of mandamus to the respondents to treat the petitioners in regular service and to pay their salaries to which they were entitled in regular service since September 26. 1988 and go on paying their monthly salary as and when the same becomes due. The respondents were restrained from recovering any amount from the petitioners in pursuance of the order dated 6.9.1989. His further submission is that the petitioners Saudan Singh. Pappu. Harish Chandra and Mohan filed Writ Petition No. 36643 of 1994 praying for issuance of writ of mandamus commanding the respondents to regularise the services of the petitioners in the department and to pay them monthly salary according to admissible pay scale and also arrears of salary and this petition was allowed by this Court on 2.8.1995 and Hon'ble Mr. Justice B.K. Singh was pleased to issue a writ of mandamus commanding the respondents to consider the petitioners case for regularisation of their services in accordance with the regularisation order issued by the Government within one month from the date of production of a certified copy of order and it was also directed that after regularisation, the petitioners would be entitled to the same salary as is admissible under the rules to the similarly situated regular employees.

8. Sri Sharma has submitted that against these orders passed by the learned single Judge, time barred special appeals were filed and these special appeals were dismissed by the Division Bench on 17.7.1996 on the point of limitation with some observations. His contention is that the Judgment passed in the writ petitions aforesaid were confirmed in appeal (by the appellate court), therefore, the respondents had no authority to pass the orders on 17.8.1996, misinterpreting the orders passed by this Court.

9. Sri Sharma has further submitted that the learned single Judge has only considered the case of the petitioners for regularisation and has not considered

the effect of the order passed by Hon"ble R.H. Zaidi, J. and effect of the orders dismissing the special appeals filed by the State.

10. Learned standing counsel has urged that though the appeals filed by the State against the order passed by the learned single Judge in the earlier writ petitions were dismissed as time barred but the respondents were given liberty to pass fresh orders after giving opportunity of hearing to the petitioners and order dated 17.8.1996 which has been challenged in the present writ petition has been passed after giving opportunity of hearing to the petitioners, therefore, the writ petition has no force and the judgment of the learned single Judge is correct in law.

11. After hearing the learned counsel for the parties and going through the records, it is apparent that the learned single Judge has only considered the case of regularisation of the petitioners. It is also apparent from the perusal of the record that there were two judgments on record, one was passed in Writ Petition No. 23140 of 1998 connected with Writ Petition No. 22031 of 1989 decided on 27.7.1995 by Hon"ble R.H. Zaidi, J., and other judgment was by Hon"ble B.K. Singh, J., in Writ Petition No. 36643 of 1994 on 2.8.1995. Apart from these Judgments, there were judgments of the Divisional Bench passed in the Special Appeals against these Judgments but the learned single Judge has only considered the effect of the judgment passed by Hon"ble Mr. Justice B.K. Singh, J., on 2.8.1995 and has not considered the effect of the judgment passed by Hon"ble Mr. Justice R.H. Zaidi, J., on 27.7.1995. He has further not considered this aspect of the case that the special appeal as filed by the State against these two judgments were dismissed as time barred. As the judgment of Hon"ble R.H. Zaidi, J. was in favour of the petitioner, the learned single Judge should have considered the effect of this judgment also but it has not been done. We are of the view that judgment passed by the learned single Judge is liable to be quashed and the matter should be sent back to the learned single Judge to decide it afresh.

12. We accordingly allow the present special appeal and set aside the Judgment and order passed by learned single Judge dated 11.9.1996 and remand the case to the learned single Judge to decide it afresh keeping in view the effect of the judgment passed by Hon"ble R.H. Zaidi, J. and judgment passed by the Division Bench in special appeal against this judgment.