
(1991) 11 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22561 of 1990

Sher Ali and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:

Constitution of India, 1950 — Article 41

Citation : (1991) 2 AWC 292

Hon'ble Judges : B. Dikshit, J

Bench : Single Bench

Advocate : Ravi Kant, for the Appellant;

Final Decision : Allowed

Judgement

B. Dikshit, J.—By this writ petition the Petitioners have sought a Writ of Mandamus for regularising the service of Petitioners by commanding the Respondents to treat the Petitioners as in service and pay them the wages and other allowances as and when they fall due as employee of Nagar Palika Gopiganj, District Varanasi (hereinafter referred as Nagar Palika) besides quashing of the order dated 3rd August 1990.

2. Counter-affidavit and Rejoinder affidavit having been exchanged between Petitioners and Nagar Palika Gopiganj, which is the main party against whom relief is sought, this writ petition is being disposed of at the admission stage under, the Rules of the Court.

3. The essential facts are that Petitioners have been working with Nagar Palika on daily wages from different dates of the year 1984 and 1985. On 25th October 1989 the Government issued an order for Nagar Palikas that all the se persons who have completed 240 days working in each of the preceding three years, will be regularised as per decision taken by the Government. The Government asked Nagar Palika to send necessary information in respect of such employees. The Nagar Palika by letter dated 24/27-2-1990 submitted the list of its employees

who worked for more than 240 days in a year. The name of all the Petitioners appeared in that list. The list was submitted to the Government sometime in March 1990 for regularisation of employees working on daily wages. A communication was also sent by President of Nagar Palika to the State Government for regularising the services of Petitioners. The President Nagar Palika subsequently went out of office while the two Vice-Presidents were restrained from functioning in place of President by this Court when the elected President went out of office. As the two Vice-Presidents were also restrained from exercising power of President, therefore, the affairs of Nagar Palika were being looked after by the Sub-Divisional Magistrate, Gopiganj, Varanasi on behalf of the District Magistrate. The Sub-Divisional Magistrate Discharged functions of President on behalf of District Magistrate. On 3rd August, 1990 the Executive Officer of Nagar Palika issued an Office-Order directing all the daily wage employees to hand over charge which they held. This was done as the Octroi was abolished and all the surplus regular employees of Nagar Palika who were working with Octroi Department were to be accommodated. On 4th August, 1990 the Board of Nagar Palika resolved that as the Octroi stands abolished, therefore, the Nagar Palika was under financial crisis. On account of this financial crisis the Board also resolved that all the daily wage "employees" services were being terminated and the regular employees of Octroi were asked to do the work which was being done by daily wage employees. As soon as the Petitioners learnt about such resolution a representation was made by Petitioner Sher Ali to the President, Nagar Palika on 20th August, 1990. After said representation, on 28th August 1990 office submitted a report to the Executive Officer of Nagar Palika that Petitioner was rendering service since 1985. In the report it was also mentioned that the Government was willing to accommodate all the Petitioners and, therefore, Petitioners be retained in service. The Respondents did not yield to the request of the Petitioners and the services of the Petitioners were terminated. The Petitioners then filed this petition challenging the termination of their services by Nagar Palika.

4. The question which arise for consideration on the basis of admissions made by learned Counsel for Petitioners is that whether the Petitioners are entitled for regularisation of their service in view of the Government Order dated 25th October 1989. The said order is to the effect that Government took decision that the services of all those employees of Nagar Palika, who worked for more than 240 days by 11th October 1989 in each of the three preceding years, will be regularised. It is admitted to the panics that the Government took such decision. However, the Nagar Palika has stated in Counter-affidavit that final decision in respect of regularisation was to be taken by Government. According to averments made in writ petition when considered in the light of reply submitted by Nagar Palika, it is apparent that the Government had already decided that all those daily wage employees who worked for more than 240 days in a year in three preceding years will be regularised. It was after taking such a decision that State Government asked Nagar Palika to send names of such persons who were

entitled to be regularised in view of such decision. The obtaining of names of such persons was only a ministerial act and every person working as daily wage employee with Nagar Palika who was entitled for regularisation under said criterion became entitled to be regularised by Nagar Palika in view of said decision of the Government. The only thing State Government did was that it asked for list of such persons which was duly supplied by the Nagar Palika vide letter dated 24/27-11-1990. All the Petitioners worked for more than 240 days in each preceding year for three years and, therefore, the name of each of them was included in the said list. Once the Nagar Palika included the name of Petitioners in the list prepared by it then, in absence of any averment in counter-affidavit against any of the Petitioners that he did not fulfill necessary condition, it is to be taken that every Petitioner fulfils the said condition and therefore I am of the opinion that each of the Petitioners fulfilled the condition for regularisation set out in the Government Order dated 25th October 1989 and is entitled for regularisation by Nagar Palika.

5. There is another aspect due to which Petitioners are entitled for regularisation. The decision of the State Government to regularise the service of daily wage earners was taken subsequent to the abolition of Octroi but before the Petitioners could get any benefit under the said Government order, letter dated 3rd August 1990 of Executive Officer of Nagar Palika was circulated to employees of Nagar Palika wherein all the daily wage earners were asked to deposit their Records Even the Board by its Resolution dated 4-8-1990 resolved that as there did not remain any utility of daily wage earners after abolition of Octroi and there is financial crisis before the Nagar Palika, therefore, the services of daily wage earners except those of "Safai departments" be terminated and the work which was assigned to them be taken from the employees of Octroi Department. Such decision by the Board of Nagar Palika was against the decision of State Government as contained in Government Order dated 25th October 1989. Once the decision of Government/as before Nagar Palika that services of daily wage earners are to be regularised then it was not open for the Board of Nagar Palika to dispense with the services of such daily wage employees who were entitled to regularisation under said Government Order. It appears that even Board was conscious about this position as it stated in its resolution that the orders were awaited from the State Government and further proceedings in respect of daily wage earners will be in accordance with the directions of the State Government, if the resolution of the Board is read together with the Government Order dated 25th October, 1989 it makes the position clear in respect of daily wage earners. It clarifies that the services of the daily wage earners were to be regularised and the Board of Nagar Palika passed said resolution terminating the services of Petitioners against the decision of Government for regularising these employees.

6. From aforesaid discussion, I am of the opinion that the Petitioners are entitled for regularisation of service having served more than 240 days in each of three preceding years. As Petitioners were entitled for regularisation in view of decision of Government and incorporated in Government Order dated 25th October 1989,

the Board of Nagar Palika could not terminate the service of Petitioners as it has been done by it.

7. In the case of *Ashok Kumar Srivastava v. State of U.P.* (1991) 1 JP LB EC 40 which was in respect of regularisation of service with a Nagar Palika, it was observed that law requires that a person who has put more than 240 days has right to seek consideration on regular basis. It was also in case of termination of service where the Petitioners were found entitled to consideration for regularisation under a Government Order. While granting relief in respect of regularisation, this Court quashed the order of termination of service of writ Petitioners of fruit case and directed that the Petitioners shall be considered on regular basis against the post which they held immediately before issuance of the impugned order.

8. In the case of *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, , the Hon"ble Supreme Court of India observed:

It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its need to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted, in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behavior would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution.

The court held in the concluding part of its judgment that:

...employees who are serving on the establishment for long spells and have requisite qualifications for the job, should not be thrown out but their service should be regularised as far as possible.

The said principle of law is attracted to the facts of present case. Even the decision in Government Order dated 25th October, 1989 is in consonance with said principle of law enunciated by Supreme Court of India and Petitioners have every justification in claiming regularisation.

9. View, similar to the case of *Jacob M. Puthuparambil* (supra), was expressed by this Court in respect of regularisation of service in the case of *Bhuller Nath Yadav v. Mayo Hall Sports Complex* 1990 ACJ 429. The view expressed in the case of *Jacob M. Puthuparambil* (supra) and *Bhullar Nath Yadav* (supra), has been followed by this Court in the case of *Tejpal v. Director of Education* (1991) 1 UP LB EC 401.

10. The principle of law laid down in all these cases has been in favour of

regularisation of service of employees who have been more or less in situation similar to Petitioners In view of the legal position laid down in said decisions, I am of the opinion that Petitioners were entitled to have their services regularised and could not be thrown out of their jobs by resolution passed by the Board on 4-8-1991.

11. The next question which requires consideration is that the service of Petitioners stands terminated about a year back and we do not know at this stage whether any vacancy to the post held by the Petitioner exists or not. Under the circumstances the only appropriate order which can be passed in this case is that in case vacancies are in existence then the Petitioners are to be regularised on those vacancies and in case appropriate number of vacancies are not existing then only direction can be issued to Nagar Palika to appoint Petitioners on the vacancy as and when they arise.

21. For the reasons aforesaid, the Resolution No. 5 of the meeting of the Board of Nagar Palika, Gopiganj, Varanasi dated 4-8-1990 is quashed so far as the Petitioners are concerned and a writ of mandamus is issued directing Nagar Palika, Gopiganj, Varanasi to appoint the Petitioners on existing vacancies, if there is any, in respect of posts on which Petitioners were working. In case the Petitioners can not be accommodated for want of vacancies then the aforesaid Nagar Palika Gopiganj will regularise the service of the Petitioners against the vacancies as and when they arise in future and unless all the Petitioners stand absorbed no fresh appointment is to be made by the Nagar Palika, Gopiganj, Varanasi in respect of the post of those categories on which the Petitioners were working or which were held by the Petitioners.

13. With the aforesaid directions the writ petition is allowed with costs.