
(2001) 09 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 7759 of 1992

Shubh Narain Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2001) 4 AWC 2878 : (2001) 91 FLR 571

Hon'ble Judges : D.R. Chaudhary, J

Bench : Single Bench

Advocate : Krishna Mohan Singh, for the Appellant; S.K. Srivastava and S.C., for the Respondent

Final Decision : Allowed

Judgement

D.R. Chaudhary, J.—The petitioner herein was appointed on 1.12.1988 as class IV employee of the Gramin Abhiyantran Seva of the State Government. He continued to serve as such with some artificial breaks. His prayer is that the respondents be directed to pay the salary and other emoluments admissible to class IV regular employees of the department of Rural Engineering Services. In counter-affidavit filed by the respondents, the facts, aforesaid, have not been disputed except that there are breaks in service which, according to the petitioner, are artificial in nature. The similar question came for consideration before this Court in Writ Petition No, 8148 of 1990 and several other connected petitions, and this Court, after having considered the entire law on the subject laid down by the Hon'ble Supreme Court as well as the High Court, allowed the writ petitions by means of the judgment dated 21.7.1993 with the following directions :

"In view of the aforesaid, it does not lie in the mouth of the opposite parties to contend that as the petitioners were engaged as work charge engineers, they are not entitled for the same salary, which are being paid to the regular engineers/employees working in the department of Rural Engineering Services. Such a

stand is violative of Articles 14 and 16 of the Constitution and the Directive Principle of State Policy contained in the Constitution. The engineers who were engaged as work charge engineer are entitled to Rs. 1,750 + 750 as Dearness Allowance per month, in accordance with the recent direction of Hon'ble Supreme Court. Similarly those work charge employees who were engaged as clerks or class IV employees are entitled to be paid the minimum scale of pay, which is being given to class III and IV employees working in Rural Engineering Service department.

I further, clarify that those petitioners whose posts come within the purview of State Public Service Commission deserve for regularisation of their services by recruitment through Public Service Commission for vacancies other than the employment under the project and as and when such vacancies arise and are duly notified, the claim of the petitioners will be considered for appointment subject to their satisfying the requisite qualifications, prescribed thereunder by the Rules, and the opposite parties would not stand in the way of regularisation of their services. It would be open to the State Public Service Commission to consider, if any weightage would be available to them for their past services for which no direction is warranted. The continuity of service of the petitioners would be taken into account for over-coming the age bar. It is further provided that all vacancies which would occur henceforth, shall ordinarily be filled up by regularising the employees like the petitioners who were engaged by the department of respondents and as and when that would not be possible for some reason, on temporary basis, deputationist may be accepted from the other department, but it would be ensured that no deputationist would function for not more than six months.

As far as those employees whose posts do not come within the purview of State Public Service Commission opposite parties are directed to consider their cases for regularisation in accordance with the law laid down by Hon'ble Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc.,

In view of what has been indicated hereinabove, the writ petitions succeed. A writ in the nature of mandamus is issued commanding the opposite parties to allow the petitioners to work on the same posts held by them in the establishment of Rural Engineering Service ignoring the oral order of discharge/termination passed against them. The petitioners would be deemed to be in service during the period they were not allowed to work in pursuance of the oral order of discharge/termination passed against them. But they would not be entitled for back wages. This order has been passed only for the reason that it would put the department of Rural Engineering Services to a great financial strain. The Engineers who were engaged as work charge Engineers would be paid the minimum scale of pay, which is being given, to class III and IV employees working in the respondents department. The opposite parties are directed to consider the cases of the petitioners for regularisation of the services in the light

of the observation made above."

2. The judgment and order dated 21.7.1993 passed in W.P. No. 8148 of 1990 (supra) has also been affirmed by the Apex Court vide its judgment dated 24.4.1995 passed in SLP No. 20139 of 1994 in the matter of State of U. P. v. Haider Mehdi Rizvi. Following the aforesaid decision dated 21.7.1993, another bunch of writ petitions connected with leading W.P. No. 1999 (SS) of 1992, Mahendra Tiwari v. State of U. P. and Ors., involving similar controversy, were allowed by means of the judgment dated 22.11.1995 in the same terms and directions contained in the decision rendered in 1990 WP 8148 (supra).

3. A number of decisions adjudicating the similar controversy have been placed on record in support of petitioner's claim in the present writ petition, however, the same are not being referred to herein for brevity.

4. The petitioner, herein, undisputedly entered into employment of respondents on 1.12.1988, is continuing in service and is being paid his wages on daily wage basis. Thus, the petitioner, being similarly circumstanced to those of petitioners of bunch of writ petitions allowed by this Court is also entitled to the similar relief of appropriate direction to the respondents to pay the salary and other emoluments admissible to class-IV regular employees of the department of the Rural Engineering Service.

5. In view of the above, this writ petition succeeds and is allowed in terms and directions contained in the judgments dated 21.7.1993 rendered in Writ Petition No. 8148 of 1990 but with no order as to cost.