

**(2009) 07 AHC CK 0259**  
**In the Allahabad High Court**

State of U.P. and Others

APPELLANT

Vs

Lal Bahadur and Others

RESPONDENT

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**Date of Decision :** 30-07-2009

**Acts Referred:**

**Citation :** (2009) 07 AHC CK 0259

**Hon'ble Judges :** Ritu Raj Awasthi, J;Pradeep Kant, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. This special appeal has been filed by the State against the judgment and order dated 7.1.2009 passed by the learned Single Judge who has allowed the writ petition preferred by the respondents, by means of which the impugned order dated 21.8.2001 terminating the services of the respondents has been quashed.
2. The respondents were engaged sometimes in the year 1999 in the Estate Department as daily wagers and were posted in Vidhayak Niwas-3, Old Councilors" Residence, Hussainganj, Lucknow at the rate of Rs. 42,50 per day. Their services have been terminated within a short span of two years on 21st August 2001.
3. The challenge to the termination order was made in the writ petition wherein it was urged that there were vacancies existing in the Department and there was no reasonable cause for terminating the services of the respondents, though they were engaged on substantive vacancies. Further submission was that they were also entitled for regularization having put in services for more than two years.
4. The learned Single Judge, in the judgment under challenge in the instant writ petition observed that the respondents are entitled to the benefit of regularisation, in view of the judgment of U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, which has distinguished the judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

5. The learned Counsel for the appellants places reliance upon the case of Official Liquidator Vs. Dayanand and Others, in support of his submission that the proposition of law as pronounced in the case of Uma Devi still holds good and the law as defined in the case of Pooran Chandra Pandey (Supra) cannot be made applicable.

6. Smt. Yogita Chandra making the things clear submitted that so far the plea of regularization of the services of the respondents are concerned that plea has been rejected by the learned Single Judge but termination orders have been quashed as the learned Single Judge found that the termination was bad in law.

7. We have gone through the judgment and order passed by the learned Single Judge, which says that the State cannot be permitted to do away with the services of similarly situated daily wagers and then to choose favoured few from those disengaged for fresh appointment on better pay without fair selection or criteria for such fresh engagement being followed. It has been further observed, that there is no intelligible reason as to why chosen employees were re-engaged leaving out the others who had approached this Court. Only after making this observation and relying upon the judgment of Pooran Chandra Pandey the termination orders have been quashed.

8. It is admitted case of the parties that 152 unskilled labourer were dis-engaged by the respondents who approached this Court and writ petition preferred by them was allowed. The special appeal preferred by the State was dismissed and the SLP before the Apex Court was also dismissed.

9. During pendency of the aforesaid proceedings the department felt some difficulty in managing the affairs, therefore, certain persons were engaged out of which the respondents were also engaged. After dismissal of the Special Leave Petition. It became imperative upon the appellants to re-employee or give employment to all 152 persons who were waiting for implementation of the order passed by the High Court and affirmed by the Supreme Court.

10. It is the case of the of the respondents counsel that because of the said fact, the services of daily wagers were terminated on the principle of "last come first go.

11. Even otherwise if 152 persons were to be accommodated and the respondents were engaged as daily wagers during pendency of the proceedings, before the Court, they cannot claim any enforceable right to continue in service on the strength of engagement during the aforesaid period. A daily wager does not have a right to hold the post and it is the exigency of work, on which, his continuance will depend. Unless by his continuance and constant discharge of duties, such a daily wager acquired any status under the relevant service rules or otherwise under the provisions of any other law, he cannot claim any right to hold the post.

12. We, thus, find ourselves unable to agree with the view expressed by the

learned Single Judge as the respondents have no right to continue in service, without adjusting all the 152 employees.

13. Smt Yogita Chandra also submitted that there are still vacancies in the department where the respondents can be accommodated but Sri Saurabh Lavania on the basis of instructions received says that there is actually no vacancy and there is great difficulty even in accommodating 152 persons who have been given re-employment because of the order of the Court.

14. We thus, find that the judgment and order passed by the learned Single Judge dated 7.1.2009 is liable to be set aside, which is hereby set aside. We may further observe that in case there are vacancies in future in the department, the respondents may also be considered for employment if eligible apply of the same.

15. The Special appeal is accordingly disposed of.