
(2004) 04 AHC CK 0083
In the Allahabad High Court
Case No : Special Appeal No. 334 of 2004

State of U.P.

APPELLANT

Vs

Brijendra Malviya and Others

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Uttar Pradesh Regularization of Daily Wages Appointments on Group D Posts Rules, 2001 — Rule 3, 5

Citation : (2004) 3 AWC 2661 : (2004) 102 FLR 446 : (2004) 3 LLJ 903

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : S.C, for the Appellant; A.P. Sahi and Girish Malviya, for the Respondent

Judgement

M. Katju, J.—Heard learned standing counsel for the appellant and Sri A.P. Sahi and Girish Malviya for the respondents.

2. The appellant has challenged the judgment of the learned single Judge dated 21.5.2003. We have carefully perused the said judgment. We agree with the direction of the learned single Judge that the petitioners (respondent Nos. 1 to 10 in this appeal) should be considered for regularisation in accordance with the U. P. Regularisation of Daily Wages Appointment (on Group D Posts) Rules, 2001. However, we do not agree with certain other directions given in the said judgment. For instance the learned single Judge after giving the direction that the petitioners should be considered for regularisation has thereafter in the same sentence given a direction that the petitioners are also entitled to regular wages in the regular pay scale from 17.2.2001. Thus, we find that there is a contradiction in the same sentence of the learned single Judge. In our opinion, the learned single Judge could not validly direct that the petitioners be regularised. He could only direct that the petitioners should be considered for regularisation. Having directed that the petitioners should be considered for regularisation, we fail to understand how he can in the same sentence say that

the petitioners are entitled to regular pay scale. This direction for payment of regular wages and regular pay scale in the impugned judgment cannot be sustained and is hereby set aside.

3. We are further of the opinion that direction Nos. 4 and 5 at the end of the Judgment of the learned single Judge also cannot be sustained. The learned single Judge has directed in direction No. 4 in the impugned judgment that the petitioners whose services are not regularised shall be allowed to continue in minimum of the pay scale. This direction is clearly illegal as has been held by the Supreme Court and this Court in a series of decisions which have been referred to in the Division Bench decision of this Court in *State of U.P. and Others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Others*, . That decision was followed in *State of U.P. and Another Vs. Rajendra Prasad and Others*, . etc. The aforesaid decisions have relied on several Supreme Court decisions which have held that an employee who is not a regular employee cannot be given the minimum of the pay scale. . The minimum of pay scale can only be given to the employees who have been regularised. For the same reason the direction No. 5 contained in the impugned judgment of the learned single Judge that the petitioners should be given minimum of pay scale is also illegal. In fact, none of the petitioners can be given minimum of the pay scale, and only those who are subsequently regularised can be given the minimum of the pay scale as and when they are regularised. Those who are not regularised will not be given the minimum of pay scale at all in view of the aforesaid decisions.

4. For the reasons given above, this special appeal is partly allowed. No order as to costs.