
(2017) 04 AHC CK 0063

In the Allahabad High Court

Case No : Special Appeal Defective No. 492 of 2016

State of U.P.

APPELLANT

Vs

Ram Chandra Dwivedi

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Citation : (2017) 4 ADJ 772

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Standing Counsel, for the Appellant; S.P. Singh Somvanshi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Rajawat, learned counsel for the appellants.
2. The State has preferred this appeal questioning the correctness of the judgment dated 01.02.2016 on the ground that the respondent-petitioners were not entitled to be considered for regularisation inasmuch as they had not been working during the period as required under The Uttar Pradesh Regularisation of Daily Wages Appointments on Group "D" Posts Rules, 2001.
3. Learned counsel has invited the attention of the Court that the respondent-petitioners were engaged on 8th of October, 2002 after their services had been dispensed with in September, 1992. Consequently, in terms of the aforesaid Rules since they were not continuing on the date of the commencement of the 2001 Rules, they cannot claim any regularization. The learned Single Judge, therefore, has committed an error in extending the benefit of regularization which otherwise was not permissible in law.
4. Learned counsel for the respondent-petitioners submits that so far as the continuance of the answering respondents is concerned, the appellants themselves have admitted that they were engaged up to September, 1992. It is at that stage when the answering respondents were not allowed to continue that

they filed writ petition no. 464 of 1993 (SS) and an interim order was passed on 13.01.1993. The answering respondents were therefore entitled to the benefit of the said interim order which was deliberately not given by the appellants and as such the inaction or disobedience of the appellants cannot be a ground to deny the right to the answering respondents to claim continuance in service. It is, further, submitted that the writ petition filed by the answering respondents was ultimately allowed on 31st of August, 1999, where after also the appellants instead of allowing the respondent-petitioners to continue, were contesting the said position and ultimately, allowed the respondent-petitioners to join in the year, 2002. Thus, there was an interim order and even after the final judgment, there was no occasion for the appellants to have resisted the continuance of the respondent-petitioners, hence, in the aforesaid background, there cannot be any denial of regularization benefits on the ground that the respondent-petitioners were not continuing as on the date of the promulgation of 2001 Rules.

5. We have considered the submissions raised and what we find is that the fact that there was an interim order dated 13.01.1993 is not denied. The fact that the respondent-petitioners had been engaged prior to September, 1992, therefore, establishes that their engagement in terms of the regularization Rules had already been made and remains undisputed. The only question remains about their continuance as on the date of the promulgation of the Regularization Rules. In this regard, suffice it to say that the respondent-petitioners had been granted an interim order and not only this, they had succeeded in the writ petition that was allowed on 31.08.1999. Thus, in law, they were all entitled to continue and function and any attempt on the part of the appellants to dispute their continuance, was therefore against law.

6. A forceful deliberate attempt to thwart functioning in defiance of the interim order dated 13.01.1993 and the final judgment dated 31.08.1999 would not be of any legal advantage to the appellants. Such action rather impels us to draw an adverse inference against the appellants that they deliberately tried to defeat the rights of the respondent-petitioners to continue working. Even otherwise, no lawful excuse existed after 31.08.1999 for the appellant to prevent the respondent-petitioners from functioning. The petitioners therefore prior to the enforcement of the 2001 Rules had rights accrued in their favour under the judgment dated 31.08.1999 that had attained finality.

7. In this background, the contention raised by the State that the respondent-petitioners were not continuing as on the date of the promulgation of the Rules, cannot be countenanced. Consequently, no case is made out for interference.

8. The appeal lacks merits and is accordingly rejected.