

(2001) 05 AHC CK 0133

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19905 of 2001

Sushil Chandra Dubey

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 05 AHC CK 0133

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A.K. Yog, J.—Heard Shri A.S. Diwakar, learned counsel for the Petitioner and Shri J.C. Misra, learned standing Counsel on behalf of all the Respondents.

2. This petition is being finally heard and decided on merits at admission stage as contemplated under Rules of the Court.

3. In the present petition under Article 226, Constitution of India, Petitioner has raised grievance on the score that he was not considered for regularisation even though his juniors were regularised. Petitioner was appointed as Koop Chaukidar/ Koop Chalak by the concerned Executive Engineer in the Irrigation Department, State Government, U.P. Admittedly, Petitioner worked till 31st August, 2000 and on attaining age of sixty years he has been superannuated and discharged on 27th July, 2000 (Annexure 8 to the Writ Petition). From the averments contained in Paras 9 to 14 of the petition it transpired that Petitioner placed his claim of regularisation on the basis of Government Order issued in the year 1983 and that in spite of application being made for seeking regularisation, he was not considered. It is alleged that Petitioner worked for more than 17 years; Government cannot issue regularisation order of 1989, but question of regularisation of the petitioner remained undecided, which compelled the petitioner to file Writ Petition No. 23797 of 1995, wherein two orders were passed by this Court; copies of which have been annexed as Annexures VI and VII to the petition.

4. Judgment and order dated 30th October, 1996 passed by learned single Judge in Civil Misc. Writ Petition No. 23797 of 1995 (AnnexureVII to the Writ Petition) shows passed at this Court disposed of said petition with a direction to the Respondents to prepare a scheme in respect of workcharge employee, if not already prepared and until absorption of the Petitioner takes place according to the scheme for regularisation, the concerned authorities (Respondents in the said petition) were directed to pay Petitioner's salary at the same rate as other employee working in the U.P. Public Works Department on the same post wherein the Petitioner was working.

5. A perusal of the said judgment of the Court clearly inheres in it that concerned authorities should have prepared a scheme and regularise the Petitioner and in case petitioner was not found fit/eligible, it was open to the concerned authorities to treat the Petitioner as workcharge/temporary employee. If the concerned authority did not choose to frame relevant scheme and ignored to consider the petitioner's suitability and eligibility for being considered for regularisation, and on the other hand the petitioner under said judgment of the Court received salary as regular employee in the Department then it clearly implies that petitioner was conferred benefit of a regular employee. The concerned authorities/Respondents cannot take advantage of their own laches/negligence. An employee having worked for about two decades cannot be said to be temporary or workcharge. Such an employee had acquired all incidence of a permanent employee. It is now well settled and has been held in catena of decisions of this Court as well as of Apex Court. Keeping in mind the above proposition of law and judgment and order dated 30th October, 1996, referred to above, I find force in the contention of the Petitioner. Lac does not dispute the facts as are borne out from the judgment dated 30th October, 1996 AnnexureVII.

6. Accordingly, the petition deserves to be allowed.

7. A writ of mandamus is hereby issued commanding the Respondents to treat the Petitioner as regular employee from the date his juniors were regularised and confer all such benefits/privilege including arrears of salary etc., if any, within three months. The concerned authority shall also ensure payment of post retiral benefits treating the petitioner as regular employees.

8. The Writ Petition succeeds and is allowed.

9. There shall be no order as to cost.