
(2005) 02 UK CK 0020
In the Uttarakhand High Court
Case No : Special Appeal No. 27 of 2001

Tara Singh

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Uttar Pradesh Regularisation of Daily Wages Appointment on Group C Posts (Outside the Purview of Uttar Pradesh Public Service Commission) Rules, 1998 — Rule 4

Citation : (2005) 105 FLR 883 : (2005) 3 LLJ 209 : (2005) 2 UC 1121 : (2005) 1 UD 484 : (2005) 2 UPLBEC 54

Hon'ble Judges : V.S. Sirpurkar, C.J.; P.C. Pant, J

Bench : Division Bench

Advocate : S.S. Yadav, for the Appellant; J.P. Joshi, Addl. C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, C.J.—Heard Mr. S.S. Yadav, advocate appearing for the appellant and Mr. J.P. Joshi, Addl. Chief Standing Counsel appearing for the State.

2. This writ appeal is directed against the dismissal in limine of the writ petition filed by the petitioner i.e. the appellant herein. By that writ petition, the petitioner, i.e., the appellant herein, very strangely, had sought quashing of the order dated 19.11.2001, whereby as many as about 9 instructors came to be appointed for their regularisation.

3. In support of his writ petition, the petitioner i.e. the appellant herein suggested before the learned single Judge that he was appointed as an Instructor in Industrial Training Institute (I.T.I.), Tanakpur, somewhere on 1.2.1991 and that he continued till the year 1994 and more particularly, till 31.8.1994. His termination was effected because he was not a regularly selected candidate and one other regularly selected candidate was appointed in his place on 6.8.1993. It was pointed out by him, further, that because of his termination, he had filed a writ petition before the Allahabad High Court, which writ petition

was not entertained by the Allahabad High Court and the same was dismissed. The petitioner, i.e., the appellant herein, then, kept quiet right from 1994 and has, now, chosen to file a writ petition in the year 2001 suggesting that the appointment or as the case may be, regularisation of the Instructors mentioned in the order dated 19.11.2001 was bad and that in fact, he was supposed to have been appointed in their place or in place of one of them.

4. The learned single Judge has dismissed the writ petition in limine and hence, this appeal. In support of his argument, Mr. S.S. Yadav, advocate for the appellant points out that the order of the learned single Judge is completely without any reasons. He secondly contends that he was appointed before 29.6.1991, which is a cut-off date as per the U. P. Regularisation of Daily Wages Appointment on Group "C" Posts (Outside the Purview of U. P. Public Service Commission) Rules, 1998 (hereinafter referred to as the Rules). He points out that, therein, those employees, who were appointed prior to 29.6.1991 directly as daily wagers and who were continuously in service thereafter and were having the necessary qualifications as contemplated in the Rules, would be entitled to the regularisation and the appointment. Mr. S.S. Yadav, learned counsel, very forcefully, suggests that he was a person, who was appointed prior to 29.6.1991 and as such, he was entitled to be appointed and that by not appointing him, but by appointing some others by the impugned order dated 19.11.2001 ; injustice has been done to him. In the prayer, the writ petitioner, i.e., the appellant herein has sought the quashing of the order dated 19.11.2001 and further, has sought a writ of mandamus for his being appointed and/or regularised.

5. As against this, Mr. J.P. Joshi, Addl. Chief Standing Counsel points out that only a glance at Rule 4 of the Rules would show that for being appointed and regularised in the post, it is necessary for a person to be appointed prior to 29.6.1991 and thereafter, such person should have continued to serve continuously. This is apart from the fact that such person should have the necessary qualifications. Mr. J.P. Joshi points out that all the persons, who were appointed by the impugned order dated 19.11.2001, were appointed prior to 29.6.1991 and then, continued to serve as such till the impugned order of their appointment/ regularisation was passed. He points out that after the petitioner, i.e., the appellant herein was removed from the service on account of a regularly appointed and selected candidate having been appointed in his place, the petitioner had, in fact, gone to the Allahabad High Court, however, the High Court did not entertain that writ petition and found no fault with the termination order. As pointed out by Mr. J.P. Joshi, the Allahabad High Court merely observed that, in case, there is an occasion for appointment of daily wagers, then, the petitioner, i.e., the appellant herein would be entitled to be considered preferentially. From this, Mr. J.P. Joshi points out that beyond this observation, the petitioner, i.e., the appellant herein did not obtain anything by the order of the Allahabad High Court and his writ petition was dismissed.

6. From this, the learned Government pleader suggests that the petitioner, i.e.,

the appellant herein, who had kept quiet after 1994 and was not in service, could clearly not be included in view of the clear language of Rule 4 of the Rules and therefore, there is no question of petitioner, i.e., the appellant herein having any entitlement for appointment/regularisation. He points out that all the others in the impugned order were appointed prior to 29.6.1991 and continued to serve as such and therefore, they were appointed regularly.

7. Since, there appear no reasons in the order of the learned single Judge, we propose to discuss the issues involved.

8. Considering the rival contentions, it is obvious that in the first round of litigation before the Allahabad High Court, the petitioner, i.e., the appellant herein got no relief. The writ petition was dismissed as the High Court found no fault with the termination order, which was occasioned on account of a regularly selected candidate being appointed in place of the petitioner, i.e., the appellant herein. We also do not find anything wrong in this, though feebly Mr. S. S. Yadav says that at the time, when he was terminated, there were number of juniors, who were retained in service. We do not find anything in the judgment of the Allahabad High Court nor do we find anything on the record of the writ petition that there were some junior persons, who were retained, while the services of the petitioner i.e. the appellant herein were terminated. It is also not displayed before us that any of the appointees in the impugned order is junior to the petitioner. We will, therefore, not take into account the contention regarding the juniors having been retained and the senior like the petitioner, i.e.. the appellant herein having been ousted from the service in the year 1994.

9. Be that as it may, thereafter, the petitioner, i.e., the appellant herein has also kept quiet. It is only when the impugned order was passed somewhere after about 7 years, i.e., on 19.11.2001 that the petitioner, i.e., the appellant herein suddenly realised that some of the persons in the said order, who were regularly appointed, were juniors to him. We find that even in the present writ petition, there is no reference to the seniority aspect of the petitioner, i.e., the appellant herein nor are those appointed persons even impleaded as respondents. The petitioner was content by impleading only one person Basant Ballabh Joshi as a party respondent. The petitioner, i.e., the appellant herein does not anywhere claim that Mr. Basant Ballabh Joshi was, in any manner, junior to him in service as an Instructor.

10. Therefore, the position that emerges out is that the petitioner, i.e., the appellant herein was ousted from service in the year 1994. He kept mum after the dismissal of his writ petition and he is, now, making the grudge against the order dated 19.11.2001 by which some persons came to be appointed, whom he did not even bother to join as party respondents. The petition is sadly silent as regards the inter se seniority between the petitioner, i.e., the appellant herein and those appointees. Mr. S.S. Yadav, advocate also feebly argued that one of the appointees did not have any proper qualification. We are afraid, we cannot consider that plea because that person is not even joined as a party respondent.

11. Mr. S.S. Yadav, advocate, then, relies on a judgment in the case of Kerala Financial Corporation and Anr. v. O.K. Muraleedharan and Anr., (2001) 9 SCC 244 . We do not see any parity on facts or law in this reported decision. The question involved here turns more on the petitioner not stating the facts regarding seniority and also not joining necessary parties. The reported decision is, therefore, of no use to. Mr. S.S. Yadav.

12. The writ petition had absolutely no merits and the learned single Judge was, therefore, right in dismissing the writ petition. The appeal has no merits and it is dismissed.