
(1991) 02 AHC CK 0090

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12309 of 1990

Tej Bal and Others

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 06-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 41

Citation : (1991) 1 AWC 378

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Sakha Ram Singh, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—The affidavit has been exchanged between the parties. The writ petition is disposed of finally.

2. The Petitioners who are working as daily wage earners in the office of the Respondents No. 1 and 2 claim to have been employed during period ranging from 1972 to 1981. This averment has been made in para 2 of the writ petition and that has not been replied at all by the Respondents in the counter affidavit. Therefore, this remains uncontroverted that all the Petitioners were employed as daily wage earners during the aforesaid period by the Respondents No. 1 and 2.

3. The Petitioners approached the Service Tribunal, Respondent No. 4 for regularisation of their services but their prayer was turned down by the Respondent No. 4 by the order dated 30-3-1990 Annexure 2 to the writ petition observing:

The jurisdiction of the Tribunal is a narrow one and it cannot interfere or take those cases in which the violation of Article 14 of the constitution of India has been made.

This is how the Petitioners have come up to this Court under Article 226 of the

constitution of India.

4. The short question for consideration is whether the Petitioners who were, admittedly, employed as daily wage earners in the office of the Respondents Nos. 1 and 2 during the period from 1972 to 1982, are entitled to be regularised.

5. The preamble of the constitution of India promises socio-economic justice to the people of India fundamental rights in Part III of the constitution guarantee socio economic rights to the citizens and the Directive principles enshrined in the constitution, set out certain goals, which the state must strive to attain. These three together constitute the core and conscience of the constitution. The constitution guarantees equality abhors discrimination, prohibits and penalises forced labour in any form whatsoever and extends protection against exploitation of labour including child labour. There are certain other provisions which enjoin on the State certain duties, for example, securing to all workers work, a living wage, just and human conditions of work, a decent standard of life, participation in management etc which are aimed at improving the lot of the working classes.

6. The matter of regularisation of the services, particularly of those employees who have been working in the department uninterruptedly for a longtime, has to be seen in view of the aforesaid constitutional philosophy right to work and job security are the important goals to be attained. It is possible only when the employees who are working for a long spells do not feel insecure in the matter of service tenure.

7. Upon perusal of the counter affidavit, it appears that the only plea set up by the Respondents is that there are no rules for regularisation and, therefore, the prayer for regularisation made by the Petitioners cannot be accepted. It is stated in the counter affidavit that if the Petitioners were ad-hoc employees then their prayer for regularisation would have been considered. The rules for regularisation may or may not be there but the regularisation is imperative under the constitutional philosophy.

8. There is increasing tendency now days among the employers to resort to contract labour or to employ daily wage earners. Why so? A peep into post independence era shows that the people have grown over the years right over conscious and duty under conscious. When right consciousness acquire; primacy and the duty consciousness vanishes it leads to a confrontation between the employer and the employees. Undue emphasis on the rights and little emphasis on the duty has the telling effect on the output of the workers and to keep the system going on which is essential for the progress of a developing country, the employers to overcome the difficulty resort to contract labour or the employing the daily wage earners. Balance between the right consciousness and the duty consciousness leads to the progress of the country but undue emphasis on the former retards the development. Discipline among the workers and dedication to the nation play the key role and if the workers possess these qualities then there would be no need to resort to the device of employing daily wage earners.

9. Very often it is said that the bargaining power of the needy persons seeking employment against the mighty employer, particularly the Government is absolutely unequal and, therefore, the needy employees are exploited. True it is but at the same time, it is equally true that due to lack of discipline and dutifulness, the workers are shirking. Having regard to the constitutional policy, the employment of daily wage earners is not the answer to the problem but the solution lies with the workers in being more and more disciplined and duty conscious.

10. In Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, , the Supreme Court enunciated that the employees serving for a long spells and have requisite qualification for the job should be regularised as far as possible and termination of their service would be affront to the concept of the job security and would run counter to the Article 41 of the constitution of India. Guided by this rule, I see no force in the contention of the Respondents that the services of the Petitioners cannot be regularised in the absence of the rules.

11. Similar view was taken by this Court in Bhullar Nath Yadav v. Mayo Hall Sports Complex 1990 ACJ 429.

12. It is stated by the Petitioners in para 18 of the writ petition that 19 posts of peons and one post of Mali had been advertised by the Respondents by the advertisement dated 10-10-1986 published in the local daily Amrit Prabhat issue dated 19-10-1986 Annexure 1 to the writ petition, and that these vacancies have not been filled in so far as the Services Tribunal, Respondent No. 4 passed the stay order dated 25-6-1987 Annexure 5 to the writ petition saying:

In the mean time if the posts have not been filled up, they may not be filled till compliance of the above directions are completed.

It is not necessary to set out the directions given by the Service Tribunal but it will suffice to say that the contention of the Petitioners is that by virtue of this stay order no vacancy has been filled in pursuant to the advertisement by the Respondents. It is canvassed for the Petitioners that they may be appointed against the vacancies advertised on 10th October, 1986.

13. The Petitioners have put in service for several years under the Respondents with a fond hope that their services would be regularised as and when the vacancies arise, it is therefore nothing but appropriate to direct the Respondent to regularise their services as Class IV employees.

14. With these observations, the writ petition is allowed, the impugned order dated 30-3-1990, Annexure 2 to the writ petition passed by the Service Tribunal, Respondent No. 4 to the extent it relates to refusing regularisation is quashed and the Respondents are directed to appoint the Petitioners against 19 vacancies of Class IV being advertised on 10th October, 1986 without affecting the claim of reserved category, if any, and in case these vacancies do not exist then against the vacancies as and when they arise in future subject to the above condition,

provided they are otherwise eligible to Class IV post, except the requirement of age. The Petitioners shall be entitled to get salary as admissible to Class IV employees from the date of their appointment in Class IV cadre.