
(2013) 10 AHC CK 0113
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 3483 and 55234 of 2003

Tubewell Operator Welfare Association	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 05-10-2013

Acts Referred:

Citation : (2013) 10 ADJ 229

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : R.B. Tripathi and R.R. Pandey, for the Appellant; A.C. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Arvind Kumar Tripathi, J.—Heard learned counsel for the petitioner, learned Standing Counsel and perused the record.

Since the controversy involved in the present case and in writ petition No. 55234 of 2003 are same hence both petitions are hereby decided by a common order.

The writ petition No. 3483 of 2003 has been preferred with the prayer to issue writ of certiorari quashing the impugned order dated 17.12.2002 passed by respondent No. 4, Annexure 4 to the writ petition and to issue writ of mandamus commanding the respondents to pay the salary in the same manner as it is being paid to the permanently appointed tubewell operator and subsequently the writ petition was amended after counter-affidavit was filed on behalf of State and prayer was added to issue writ of mandamus commanding the respondents to give benefit of pay fixation, selection grade, promotional grade and other consequential benefits declaring the Government order dated 28.5.2003 as illegal and arbitrary.

The writ petition No. 55234 of 2003 has been preferred with the prayer to issue writ of certiorari quashing the impugned Government order dated 28.5.2003 and further prayer is to issue writ of mandamus commanding the respondents to

continue to pay the salary and emoluments like general provident fund, general insurance security and leave encashment which was being made available to the petitioners, vide Government order dated 3.3.1998 and further prayer is to issue writ of mandamus commanding the respondents to regularise the petitioners on their respective posts.

2. Learned counsel for the petitioners submitted that initially the members of petitioners association were appointed as part time operator on payment of fix honorarium. Subsequently, nomenclature was changed as Tubewell Assistant and a fix honorarium was being paid for a sum of Rs. 550/- per month. Then the writ petition No. 3558 of 1992, Suresh Chandra Tiwari v. State of U.P., was filed, which was allowed by the Lucknow Bench of this Court, against that SLP was filed by the State Government, which was dismissed. During pendency of the writ petition the services of members of petitioner's association have already been regularised. He also submitted that on 17.12.1996 the Government order was issued by which the post known as part time operator/assistant tubewell operator was abolished and further direction was to consider the regularisation of those, who were working as part time operator/assistant tubewell operator under U.P. Irrigation Tubewell Operator Regularisation Rules 1996. The petitioners were entitled for regularisation in view of Rule, 1996 issued in December, 1996. However, the tubewell operators were not regularised and during pendency of the writ petition in view of the decision of this Court in case of Sichai Mazdoor Sangh and Another Vs. State of U.P. and Others, , the members of petitioner's association are entitled for payment of same scale as regular assistant tubewell operators were getting. Though after the Government order issued in the year 1996 the members of petitioner's association and other petitioners were entitled for regularisation. Not only payment of salary for regular tubewell operator and they were also entitled for other benefits, which was being given to the regular tubewell operators including the selection grade, promotional grade after completing 10 and 20 years of service though the services of petitioners should be calculated from the date of initial appointment and as such the direction be issued to the respondents for payment of selection and promotional grade also and also to deduct the provident fund.

3. Learned Standing Counsel opposed the aforesaid prayer and submitted that members of petitioner's association were entitled for regularisation in view of Regularisation Rule 1996 and they will be entitled for payment of other benefits from the date of regularisation after deducting G.P.F. and CEGS and not from the date of initial appointment when employees were only part time operator. Considered the submission of learned counsel for the parties. This controversies has already been considered and decided in case of Suresh Chandra Tiwari (supra) that even those, who were working as part time operator/assistant tubewell operator were entitled for payment of equal salary of equal pay scale, which was being given to the regular tubewell operator. Now the petitioners have already been regularised. Hence they are not only entitled for salary of the regular tubewell operator but they will also be entitled for other benefits for

which regular tubewell operator are entitled including the benefit of G.P.F. and grant of promotional and selection grade after completing the 10 years and 20 years of service as the case may be from the date when Part time Operators Regularisation Rules, 1996 came into effect. Hence the respondents are directed to consider the claim of the members of petitioner's association and petitioners, as expeditiously as possible, preferably, within two months after furnishing certified copy of this order in terms of judgment of Suresh Chandra Tiwari (supra) and Sichai Majdoor Sangh (supra). The impugned order refusing claim of the petitioners is hereby quashed.

Accordingly, both the writ petitions are hereby allowed. No order as to costs.