

(2005) 04 AHC CK 0089

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28172 of 2004

Umesh Kumar and Others

APPELLANT

Vs

Nagar Palika Parishad, Chairman, Nagar Palika Parishad,
Executive Officer, Nagar Palika Parishad and State of U.P.

RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 5 AWC 5024

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Murlidhar and R.P. Singh, for the Appellant; V.K. Dwivedi and P.K. Dwivedi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the petitioners and the Standing Counsel.

2. This petition has been filed for the relief, inter alia, to issue a writ, order or direction in the nature of mandamus requiring the respondents to continue paying the regular pay scale to the petitioners in the same way as they were being paid since 1998 till 31.12.2003 along with arrears and to issue any other writ, order or direction which this Court may deem fit and proper in the circumstances of the case.

3. The case of the petitioners, in brief, is that they are daily wage employees in Nagar Palika Parishad, Noorpur, District Bijnor. They claim that they have been appointed on Class III and Class IV posts on different dates prior to 11.10.1989 but their services have not been regularized. It is alleged that out of the seventeen petitioners the Nagar Palika Parishad has allowed regular pay scale of Rs. 2550-3200 to fifteen petitioners and the pay scale of Rs. 2650-4000 to the remaining two petitioners with effect from November 1998.

4. The petitioners had earlier filed Writ Petition No. 43642 of 2002 for

regularization of their services in which an interim order was passed directing the respondents to make payment of the wages of the petitioners till further orders. While deciding the aforesaid writ petition the Court has observed "any appointment in excess of the sanctioned posts is illegal and cannot be justified even if the work is available as it creates preliminary liability on the local bodies, which is ultimately liable to pay the salary and pension".

5. It appears from the record that there was a ban imposed on the appointments but the successive Chairmen of the Nagar Palika Parishad had appointed the petitioners in spite of the ban. The Nagar Palika Parishad made thereafter requisitions to the State Government for sanctioning the posts. The District Magistrate did not take any action against the illegal appointments even though some complaints were made with regard to such appointments on 20 posts.

6. The matter came to the notice of the State Government and an order was passed directing the District Magistrate that the 20 appointments made in excess of the sanctioned strength be immediately cancelled. The Writ Petition No. 43642 of 2002 was ultimately decided vide judgment and order dated 15.12.2003 as under:-

"In the facts and circumstances all these writ petitions are disposed of with the directions that the Nagar Palika Parishad shall make a reassessment of the statutory functions to be performed by it and the requirement of number of employees for performing these functions and duties under the Act. They shall make a fresh requisition for sanction of posts from the State Government within a month and that the State Government shall consider the representations in accordance with the norms laid down by the State Government for sanction of the posts within next two weeks.

All the petitioners shall be considered for regularization under the U.P. Regularization of Appointment on Daily Wage on Group "D" Post Rules, 2001 which may be carried out by a selection committee for appointment under the rules, after the State Government has sanctioned these posts.

Until then it will be open to the Nagar Palika Parishad to engage the services of the petitioners according to need of their work on daily wages. It is made clear that the services of the employees in excess of the sanctioned strength may be disposed with strictly by following the principle of "Last Come First Go". In case there are any arrears of salary to be paid to the petitioners, they will be entitled for the same provided they have worked at the rate of daily wages applicable to the employees in Nagar Palika Parishad.

Sd/- Sunil Ambwani, J.

15.12.2003"

7. Pursuant to the aforesaid judgment and order the Nagar Palika Parishad discontinued paying the regular pay scale to the writ petitioners from January 2004 and started paying daily wages to them. The petition has been filed on the

ground that the petitioners are being paid daily wages without any orders from the Government or from the Nagar Palika Parishad authorities which is not justified in view of the rules framed by the State of U.P. under the U.P. Regularization of Appointments on Daily Wages on Group "D" Posts Rule, 2001.

8. Admittedly the Nagar Palika Parishad engaged the petitioners as daily wage employees in excess of sanctioned strength in defiance of the ban imposed by the State Government. It is also admitted fact that the Nagar Palika Parishad had on its own given them regular pay scale though the State Government neither sanctioned the post nor accorded financial sanction for regular payment to these employees and in spite of the fact that the petitioners were neither entitled for the regular pay scale nor they were appointed against sanctioned posts. When the State Government did not grant financial sanction to Nagar Palika Parishad for payment of regular pay scale to the excess employees engaged by it, the employees approached the High Court by means of Writ Petition No. 43642 of 2002 for regularization of their services. As stated earlier the writ petition was disposed of vide judgment dated 15.12.2003 quoted above in the body of this judgment with certain directions. It appears that the State Government did not take any action for regularizing the services of the petitioners for payment of regular pay scale, which had been withdrawn by the Nagar Palika Parishad, hence the daily wagers have again come up in this writ petition with a prayer to issue a mandamus directing the respondents to continue paying regular pay scale to the petitioners in the same way as they were paying since 1998 till 31.12.2003.

9. The prayer in this writ petition is substantially the same as in the earlier writ petition. This Court cannot direct for regularization of the petitioners who are daily wagers as admittedly there are no sanctioned posts in the Nagar Palika Parishad. The Nagar Palika Parishad has appointed the petitioners on daily wages and has been paying them at present at daily rate of wages. For some time the petitioners have also been paid regular pay scale by the Nagar Palika Parishad on its own though they were not entitled for the same as their appointment is neither against a sanctioned post nor legal or justified. After the decision it was open for the Nagar Palika Parishad to take work from the petitioners on daily wages or terminate their services in accordance with law. If the Nagar Palika Parishad has chosen to continue the writ petitioners in excess of the sanctioned strength it is its liability to pay them. The liability of illegal appointments in excess of the sanctioned strength cannot be saddled on the State Government.

10. Pay scale connotes appointment against a sanctioned post. The petitioners were never appointed against a permanent sanctioned post as stated earlier. If the prayer of the petitioners for payment of regular pay scale is granted, the Court would be indirectly granting the relief of regularization of the services of the petitioners for which earlier writ petition had been filed by them. Regular pay scale implies that the appointment has been made against a sanctioned post. It appears that the employees were given regular pay scale for some times and then it was withdrawn by the Nagar Palika Parishad in collusion with these daily

rated employees with ulterior motive to provide them cause of action for filing the writ petition. It appears that the petitioners want a direction from this Court for getting back-door entry in the Government service by procuring the seal of this Court on their illegal appointments made by the successive Chairmen of the Nagar Palika arishad in excess of the sanctioned strength and in face of ban imposed by the State Government in the garb of an order by this Court for regularization of their services. The apex court in the case of State of Punjab v. Sardara Singh (1998) 9 S.C.C. 709, has held that the Court cannot direct regularization in the absence of any sanctioned post by the State Government or for payment of regular pay scale to the petitioners.

11. For these reasons, it is not a case for exercise of discretion under Article 226 of the Constitution.

12. The petition is, therefore, liable to be dismissed and is accordingly dismissed. No order as to costs.