

(2009) 05 AHC CK 0614
In the Allahabad High Court

U.P.State Electricity Board and another	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal IV U.P.Agra & another	RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0614

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.

List revised.

No one appears for the contesting respondent no.2 the workmen through Union.

Heard learned counsel for the petitioner.

These writ petitions are directed against awards dated 29.6.1987 given by Presiding Officer Industrial Tribunal IV Agra U.P. in adjudication case no.77 of 1986 challenged through first writ petition and adjudication case no.78 of 1986 challenged through second writ petition. The matter which was referred to the labour Court was as to whether the employers(petitioner) should have regularised the employees(16 in adjudication case no.77of 1986 and 22 in adjudication case no.78 of 1986) given them the designation and corresponding pay scale as shown in Annexures and if so from which date and with what other details.

The case of the workmen was that even though they were designated as unskilled coolies engaged as daily wagers and muster role employees, however, they were performing the duties of welder, mechanic, skilled coolies, rigger, store keeper and fitter like regular employees.

The case of the petitioner employer was that the workmen were engaged for the purpose of construction of Thermal Power Station at Hardur Ganj, Aligarh in the

year 1974/75, they could not be equated with the regular employees, no vacancies were available for their absorption, and claims of muster role employees for regularisation are considered by Selection Committee on merit as and when vacancies arise. It was further pleaded that the claim was utterly belated.

The tribunal in para 15 of the award held that through order dated 12.10.1977 Electricity Board had directed that those work charge employees who had completed three years or more of continuous service on 01.04.1969 should be absorbed against regular/temporary/permanent posts and similar directions were again issued on 20.04.1983. In the impugned award Presiding Officer of the tribunal opined that it was unfair practice on the part of employer to pay lower wages to the employees when they were performing the work of skilled workmen. Ultimately, the tribunal gave the award in favour of the workmen and directed that they should be regularised and receive their pay in the scale shown in the annexed charge w.e.f 28.4.1986.

Copy of written statement filed by the petitioner before the tribunal is Annexure 4. In para 12 of the written statement it was stated that after completion of the project (construction of Power house) the workmen became surplus and their services were no longer required however on account of political and Union pressure the employers were compelled to continue them as daily wagers/muster role employees. In para 13 it has been stated that in view of office memorandum issued by the Board on 17.1.1979 services of the workmen were to be dispensed with, however, due to political and Union pressure they were allowed to remain in service on muster role as daily wages employees. It has also been stated in para 14 that on 01.01.1980 Board issued office memorandum directing that in future vacancies in any regular establishment, appointment should be made from amongst the workmen engaged on muster role and that muster role employees were being appointed as regular employees as and when vacancies occurred.

The tribunal did not record any finding regarding these allegations of the employers. Daily wagers or muster role employees do not deserve regularisation. Their status is inferior to the status of work charge employees. Regularisation scheme framed for work charged employees could not be applied to daily wagers/muster role employees. It was under compulsion and on humanitarian ground that even after completion of the power station the workmen whose services were no longer required were permitted to continue as daily wagers/muster role employees. It is utter misuse of the concession to demand regularisation.

Learned counsel for the petitioner has cited an authority of the Supreme Court reported in U.P. Power Corporation Vs. Bizli Mazdoor Sangh and Ors 2007(5)S.C.C. 755 holding that order of regularisation can not be passed by Industrial Tribunal or labour Court in violation of principles of Article 14 of the Constitution of India.

In the instant case policy of appointing muster role employees as regular

employees as and when vacancy arises has been framed by the petitioner. Over and above that policy no further direction for regularisation could be granted by the labour court. Unless there is a vacancy regular appointment can not be made. The allegation of the petitioner employer that even though there was no work still the workmen were being kept on muster role on humanitarian grounds and under pressure was not disbelieved by the Industrial Tribunal. In view of this further direction of regularisation and payment of salary like regular employees was unwarranted and understanding.

The tribunal has mentioned that some other similarly situate employees had been regularised. The petitioner itself had stated before the tribunal that a seniority list of muster role employees had been prepared and whenever vacancy arose, muster role employees were being regularised/appointed as regular employees strictly in accordance with seniority.

Petitioner is Government Corporation. While appointing the people it is bound to follow the principle of equality as enshrined in Article 14 and 16 of the Constitution of India. It is utmost essential that the post shall be advertised so that every eligible person may have an opportunity to apply. In case of several applicants against one post some criteria for selection shall be evolved. Petitioner has framed rules and regulations for making appointment. The workmen did not show that any procedure was followed before their appointment. Accordingly, there was no question of directing their regularisation.

The dispute had also been raised quite late.

Accordingly, writ petitions are allowed and impugned awards are set aside. However, it is directed that whatever additional amount has been paid as wages to the workmen under the impugned awards (only a restricted stay order was granted in this writ petition) shall not be refundable or adjustable in future wages of the workmen.