
(2015) 03 AHC CK 0079
In the Allahabad High Court
Case No : Special Appeal No. 1551 of 2013

Vishunu Kumar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) 3 ADJ 392 : (2015) 3 ESC 1287

Hon'ble Judges : Rakesh Tiwari, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : S.N. Dubey, Jai Singh and K.K. Shukla, for the Appellant; Manish Goyal and Rajiv Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vijay Lakshmi, J.—This intra Court appeal arises out of the judgment and order dated 3.9.2013 passed in Civil Misc. Writ Petition No. 49560 of 2008 (Vishnu Kumar v. State of U.P. and others) whereby the writ petition filed by the appellant was dismissed. We have heard Sri S.N. Dubey, counsel for the appellant, learned Standing Counsel appearing on behalf of the State (respondent No. 1) as well as Sri Manish Goyal appearing for the respondent Nos. 2 to 4.

2. The appellant was appointed as a driver on ad hoc basis in the judgeship of Hathras on 15.6.1998 and thereafter he was given temporary appointment on 1.5.2000 on the same post of driver in the pay-scale of Rs. 3000-4590. Since then the petitioner-appellant worked continuously as driver. However, his services were terminated by the District Judge, Hathras vide order dated 6.9.2008.

3. By way of a supplementary-affidavit, the petitioner-appellant had filed the copies of log book and pay register of the judgeship before the writ Court, in proof of the fact that he had worked since 15.6.1998 and had received salary since then.

Counter-affidavit was filed by the respondents. In para 2 of the counter-affidavit filed by respondent No. 4 i.e. District Judge, Hathras, it was admitted that the petitioner-appellant was appointed as a driver on ad hoc basis on 15.6.1998. It has also been stated in the counter-affidavit that the petitioner had worked till 30.4.2000 with some breaks in between and on 1.5.2000 he was appointed as a driver on temporary basis.

4. Thus, from the facts stated in counter-affidavit there remains no doubt that the petitioner was appointed on 15.6.1998 on the post of driver on ad hoc basis and has continuously worked as ad hoc driver till 30.4.2000 and as a temporary driver from 1.5.2000 till 6.9.2008 when he was terminated.

5. The grievance of the appellant is that he had applied for his regularisation claiming the benefits of Uttar Pradesh Regularization of Ad hoc Appointments (on post out side purview of the Public Service Commission)(Third Amendment), Rules 2001 (hereinafter referred to as "Regularization Rules, 2001") which have been adopted by the High Court, but he was not regularised instead his services were terminated by the order dated 6.9.2008 of District Judge, Hathras whereas the services of other similarly situated ad hoc employees were regularised. The petitioner challenged the order of his termination by means of a writ petition which was also dismissed by the impugned order dated 3.9.2013.

6. The legality and correctness of the aforesaid order of writ Court has been assailed in this appeal on the grounds that the writ Court has wrongly dismissed his petition on the basis of incorrect interpretation of legal position provided in Regularisation Rules, 2001.

7. Learned counsel for the appellant has contended that the appellant has continuously worked as an ad hoc employee with some artificial breaks. Placing reliance on the case of Janardan Prasad Yadav Vs. State of U.P. and Others, (2009) 2 ACR 1326 , he has contended that continuous service is not even necessary if it is established that the appointment had been made before the cut off date as provided in the regularisation Rules, 2001, which is 30.6.1998. Hence the services of the petitioner/appellant deserved to be regularised. However, when his services instead of being regularised, were terminated, he preferred Civil Misc. Writ Petition No. 49560 of 2008 challenging the order of his termination and seeking mandamus for such purpose but the learned Single Judge wrongly dismissed his writ petition by holding that the Regularization Rules, 2001 was not applicable to the case of the appellant because he had accepted a fresh temporary appointment on 1.5.2000 i.e. beyond the cut off date provided in the Rules, 2001.

8. The petitioner-appellant is aggrieved due to the reason that despite the fact that the notification dated 20.12.2001 was fully applicable to him and accordingly he was legally entitled for regularisation, he was denied of such benefit only on the ground that he did not continue in the ad hoc capacity upto the cut off date i.e. 20.12.2001 as required by the amended rule 4 of

Regularisation Rules, 1979, due to his accepting fresh temporary appointment on 1.5.2000. Learned counsel has further submitted that similarly placed ad hoc employees have been regularised whereas the petitioner/appellant has been deprived of the benefit only due to the reason that he had accepted a temporary appointment on 1.5.2000.

9. It has been vehemently contended by learned counsel for the petitioner-appellant that only due to the reason that the appellant had accepted a fresh temporary appointment in the scale of Rs. 3050-4590 in the year 2000, his status of an ad hoc employee could not have been changed and he would remain an ad hoc employee working since prior to 30.6.1998 (cut off date). Learned counsel for the appellant has argued that it can never be assumed that an ad hoc employee may be made a permanent employee by offering him a temporary appointment and by acceptance by him of such temporary appointment on the same post.

10. Having heard learned counsel for the parties and on perusal of the relevant rules, it appears that admittedly the petitioner-appellant was appointed on ad hoc basis on 15.6.1998 and admittedly he continued to work as driver till 9.6.2008 i.e. the date on which his services were terminated.

11. A perusal of the service record of the appellant also shows that the two then district judges have given him "excellent" entries and his work has been found to be upto the mark. It appears that the then District Judge being pleased with his satisfactory work, in order to promote him, gave him a temporary appointment on the post of driver, which the petitioner accepted without even imagining its remote consequence that he may be deprived of the benefit of Rules, 2001 after accepting such temporary appointment. The record shows that the services of other similarly placed employees appointed on ad hoc basis alongwith the petitioner-appellant have been regularised whereas the petitioner-appellant was discriminated only due to the reason that he accepted fresh appointment as temporary driver on 1.5.2000.

12. The writ Court has dismissed the writ petition mainly on the ground that the petitioner/appellant cannot be held to be an ad hoc employee appointed prior to 30.6.1998. According to learned single judge:

"It is settled law that regularization cannot be granted unless the Rules provide for it. The Regularization Rules, 1979, even after the amendment, do not provide for the regularization of an appointee of the year 2000."

13. Keeping in view the facts and circumstances and the legal position, it is our considered opinion that the learned Single Judge has erred in law by holding that after accepting the temporary appointment on the post of driver in the year 2000,, the petitioner-appellant did not remain an ad hoc employee and therefore he became disentitled for the benefit of Regularisation Rules, 2001.

14. If a person, who has been appointed on ad hoc basis, accepts a temporary

appointment offered to him by his appointing authority without adopting due procedure of selection like publication of advertisement against the sanctioned and vacant posts etc., this does not mean that he loses his ad hoc character and becomes a regularly appointed (though temporary) employee. Hence, the appellant being an ad hoc employee, appointed prior to cut off date provided in Regularisation Rules, 2001 i.e. 30.6.1998 and continuously working till 2008, is entitled to be regularised.

15. For the aforesaid reasons, the impugned judgment and order passed by the learned Single Judge is liable to be set aside and the appeal deserves to be allowed. Accordingly, the appeal is allowed. The impugned judgment and order dated 13.9.2013 is set aside. The respondents are directed to give benefit of Regularisation Rules, 2001 to the petitioner/appellant.