

(2007) 12 AHC CK 0036
In the Allahabad High Court

Yadvendra Singh, Gajendra Singh, Har Charan Tiwari and
Vishnu Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 117 FLR 842

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri D.S. Srivastava, learned Counsel for the petitioner.

2. Aggrieved by the order dated 12.4.2006 (Annexure-16 to the writ petition) passed by Divisional Director, Social Forestry Division, Lalitpur (respondent No. 4) rejecting the claim of the petitioner for regularization on the post of Forest Guard under "U.P. Regularization of Daily Wages Appointment on Group "D" Posts Rules, 2001" (hereinafter referred to as 2001 Rules), the petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing the same. The claim of the petitioner for regularization under 2001 Rules has been rejected on the ground that there was no vacancy available on the date of commencement of the said Rules, i.e, 21.12.2001 whereagainst the petitioner could have been considered for regularization.

3. Learned Counsel for the petitioner submitted that a number of vacancies fell subsequently were available and, therefore, the petitioner was entitled to be considered for regularization against those vacancies. In my view, the submission is thoroughly misconceived and runs contrary to the Rules.

4. 2001 Rules clearly provides that the incumbent would be considered for regularization thereunder only against such permanent or temporary vacancies, as available in Group "D" Posts on the date of commencement of those rules. It

is, thus, evident that the aforesaid rules for regularization are only one time arrangement and applicable against only those vacancies as were available on the date of commencement of Rules, namely, 21.12.2001 and the subsequent vacancies are not within the purview of 2001 Rules and could not have been allowed to be occupied by adopting the process of regularization under 2001 Rules. If this contention is accepted, that would amount to reading certain words in the Rules not written there, which is not permissible in law.

5. The same view has been considered by this Court in Civil Misc. Writ Petition No. 36584 of 2004 Rakesh Chandra Srivastava v. State of U.P. and Ors. decided on 25.10.2007 wherein it has been held as under:

...the vacancy against which right of consideration for regularization is available are only those which were available on the date of commencement of the rules, namely, 2001 Rules.... There is no provision under 2001 Rules which permits right of regularization to a daily wage employee against any vacancy which may occur in future or subsequent to 21st December 2001. The rules of regularization being in the nature of exceptional provisions having overriding effect over other provisions of normal procedure of selection in accordance with rules, can be allowed and permitted to apply strictly in accordance with the rules and not otherwise.

6. It is not the case of the petitioner that the finding of respondent No. 4 that no vacancy was available on 21.12.2001 against which the petitioner could not have been considered for regularization is incorrect. He further submits that some persons having been regularized, the petitioner, therefore, is also entitled for the same treatment. This submission cannot be accepted for the reason that once it is found that 2001 Rules are not applicable and the petitioner could not have claimed regularization thereunder, merely for the reason that the respondents have erred in regularizing some persons or have acted contrary to the Rules, the relief on the basis of parity cannot be claimed. Articles 14 and 16 are not applicable for claiming parity in respect of an action, which is illegal. It is well settled that two wrongs will not make one right. (See State of Haryana and Others Vs. Ram Kumar Mann, , Anand Buttons Ltd. Vs. State of Haryana and Others, and Kastha Niwarak Grahnaman Sahakari Sanstha Maryadit, Indore Vs. President, Indore Development Authority, . In view of the aforesaid discussion, the writ petition lacks merit and is dismissed.