

Ram Kumar Rai Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: March 30, 1993

Citation: (1993) AWC 1461 : (1993) 2 LLJ 1064

Hon'ble Judges: M.P. Singh, J

Bench: Single Bench

Advocate: R.K. Ojha and D. Dwivedi, for the Appellant;

Final Decision: Allowed

Judgement

M.P. Singh, J.

There is hardly any justification for not regularising the services of the petitioner who was appointed on January 1, 1980 as

Class IV employee on daily wages. He has worked for about thirteen years with some artificial breaks.

2. The petitioner's initial appointment was made in District Pratapgrah in the Department of Social Forestry. He worked there till April 30, 1981.

From August, 1981 he has been working as a Tracer-cum-Record Clerk (Abhilekh Lipik) at Allahabad at the rate of Rs. 10/- per day. He

possessed the minimum requisite qualification for appointment as Forest Guard.

3. After appearing in the written examination and facing the interview the petitioner was appointed as Van Prasar Karta (Forest Guard) in the pay

scales of Rs.330-7-365-8-381 EB-8-405-EB-9-495. It was a temporary appointment. His services were terminated on May 5, 1986. After

giving a break of one day he was again appointed on May 6, 1986 as Daily Wages Works Supervisor.

4. The petitioner made a representation for his regularisation as Forest Guard. In the meantime he was reverted back to the post of Cattle Guard

which entailed a financial loss. As a Forest Guard he was getting Rs. 678.20/- per month. Now, he would be getting Rs. 450/- per month as Cattle

Guard. It has been stated that several posts of Forest Guard are still lying vacant. The petitioner who is otherwise eligible to be appointed, is not

being considered for regular appointment.

5. Further, it has been stated that one Satyendra Kumar who was appointed as Forest Guard in the year, 1984 is still continuing whereas the

petitioner, who was senior and appointed much before him, has been denied his right to continue. Against the reversion order also the petitioner

has filed representation which is still pending.

6. Undue delay was being caused in the disposal of his representations, so he filed a writ petition. It came up for admission before me on February

1, 1991. The writ petition was dismissed with a direction to the opposite party No. 1 to decide the representation within a limited period. In

compliance of the order, the representations were rejected on May 13, 1991. The said order is under challenge.

7. In the present writ petition the petitioner has prayed for quashing the order dated May 13, 1991 and also for issue of a writ in the nature of

mandamus commanding the respondents to regularise his services as Forest Guard.

8. The law relating to regularisation of adhoc appointees, has been considered by the Supreme Court in the case reported in JT 1992 (5) 179,

State of Haryana and Ors. v. Piara Singh and Ors.

9. After giving guidelines, it was observed that if for any reason an ad hoc or temporary employee has continued for fairly a long spell, the authority

must consider his case for regularisation provided he is eligible and qualified according to the rules and his previous record is satisfactory.

10. Since the petitioner has been working as daily wager for the last 13 years I am of the view that he is entitled for regularisation.

11. The practice of giving artificial break has been disapproved by the Supreme Court in the case of Sri Rabinarayan Mohapatra Vs. State of

Orissa and others, . It was held that it was arbitrary and discriminatory. In that case the appointment of a teacher was made on 89 days basis with

one day's break. It deprived the teacher of his salary for the period of summer vacation and other service benefits. The practice was held to be

wholly arbitrary and suffered from the vice of discrimination.

12. The impugned order does not say that there is no work left or there is no sanctioned post of a Forest Guard vacant. Even it has not been

mentioned that the petitioner was not otherwise eligible to be appointed. The only objection made by the State is that since the petitioner was daily

wager he is not entitled for regularisation which in my opinion is untenable.

13. For the reasons given in the preceding paragraphs the writ petition succeeds and is allowed. The order dated May 13, 1991 is hereby

quashed. The respondents are directed to pass orders for regularisation of the petitioner within a period of three months from the date of filing of a

certified copy of this order before the opposite party No. 2 in case the petitioner is not otherwise disqualified for giving appointment as Forest

Guard. If it is so, the petitioner will be informed about the same in writing so that he may pursue the remedy if he is entitled for it.