

(2007) 01 AHC CK 0180

Allahabad High Court

Case No: None

Dukhi Singh

APPELLANT

Vs

State of U.P., Executive Engineer,
Public Works Department
(Construction Division) and
Assistant Engineer (Construction
Division), Public Works
Department

RESPONDENT

Date of Decision: Jan. 8, 2007

Citation: (2007) 4 ADJ 186 : (2008) 5 AWC 4394 : (2007) 113 FLR 1072 : (2007) 3 UPLBEC 2874

Hon'ble Judges: Sudhir Agarwal, J; S. Rafat Alam, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.

This intra court appeal, under the Rules of the Court, is preferred against the judgment dated 11.11.2003 dismissing the appellant's Civil Misc. Writ Petition No. 16366 of 2001 claiming regularisation and quashing the order dated 12.7.2000 refusing to deploy him on the ground that he was retrenched on 1.9.1992.

2. We have heard Shri Anil Kumar Singh, learned Counsel for the appellant and perused the judgment under appeal.

3. It is an admitted position that the petitioner-appellant was engaged as daily wager on 1.11.1990 in the Public Works Department and continued till 31.8.1992. The petitioner thereafter neither approached the concerned authorities for his further engagement as daily wager nor raised his grievance before any other appropriate Court and for the first time, as it appears from the record, requested the Executive Engineer, Public Works Department on 24.8.2000 for giving him employment. However, when his request was not accepted, he approached this

Court by filing the aforesaid writ petition, which has been dismissed by the order under appeal.

4. Learned Counsel for the appellant vehemently contended that in view of U.P. Regularization of Daily Wagers on Group - D Posts Rules, 2001 (hereinafter referred to as the Rules) the appellant having worked from 1.11.1990 to 31.8.1992 was entitled to be regularised and thus, the Hon"ble Single Judge erred in dismissing the writ petition. We do not find any substance in the submission for the reason that from a perusal of the aforesaid rule it appears that three contingencies are provided for being regularised viz:

(1) Any person who

(a) was directly appointed on daily wage basis on a Group "D" post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group "D" post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 as amended from time to time and the orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of Sub-rule (1) the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of the service rules.

5. Admittedly, since the appellant did not work or continue in service in 2001-02, he could not have been considered under the aforesaid Rules. That apart, in the case in hand, the appellant's engagement was discontinued on 31.8.1992 thus, the benefit cannot be extended to him.

6. Learned Counsel for the appellant at this stage contended that the cut of date provided under the rules, in so far as it requires continuance of the incumbent on the date of commencement of the Rules, is arbitrary and discriminatory and placed reliance on Narayan Singh and 23 Ors. v. State of U.P. and Anr. 2006 (3) UPLBEC 2668 where the Hon"ble Single Judge has held the cut of date 29.6.1991, fixed under

the Rules, as arbitrary, and has struck down the same. We have given our serious thought to the submission and find ourselves unable to agree with the same. The validity of cut of date provided under the other rules, which are *pari materia* to the Rule in question, came up for consideration before this Court on various occasions. In *Subedar Singh and Ors. v. District Judge, Mirzapur and Anr.* 2001 (1) AWC 287 the Hon'ble Apex Court confirmed the judgment of a Division Bench of this Court upholding the cut of date as 1.10.1986 fixed under the U.P. Regularization of Ad hoc Appointment (On Posts outside the Purview of U.P. Public Service Commission) Rules, 1979, as amended by Second (Amendment) Rules, 1989 where this Court held as under:

...One of the relevant considerations for regularisation is the length of the service rendered by the ad hoc employee... but we see no rationale behind the view that all the employees even if they had put in only one day of service as ad hoc should have been made eligible to be considered and, therefore, the cut off date specified in Rule 10 is irrational.... What should be the length of service is a matter of policy to be decided by the Rule making authority. Further, length of service is not the only criterion to be taken into consideration while making such decision. There can be no rule of thumb in such matters. It is not beyond the competence of the Rule making authority to limit eligibility to the employees who joined service as ad hoc employees upto a specified date....

(Emphasis Added)

7. The judgment of this Court was confirmed by the Hon'ble Apex Court on merit, agreeing with the reasoning and the conclusion given in the judgment, as is apparent from para 3 of the judgment, in *Subedar Singh (supra)* wherein the Hon'ble Apex Court held as under:

...The High Court has examined all the contentions by a detailed discussion of the relevant provisions of the Rules and we do not find infirmities with the reasoning and conclusions of the High Court in the impugned judgment. No rule, law or regulation, nor even any administrative order had been shown to us on the basis of which the appellants could claim the right of regularisation, in the aforesaid premises, we do not find any merit in any of these appeals which accordingly stands dismissed but in the circumstances, there will be no order as to costs.

8. Again the cut off date of 30.6.1998 provided in U.P. Regularization of Ad hoc Appointment (on posts outside the Purview of U.P. Public Service Commission) Rules, 1979, as amended in 2001 came up for consideration before a Hon'ble Single Judge in *Shivaji Singh and Ors. v. High Court of Judicature at Allahabad and Ors.* Civil Misc. Writ Petition No. 52755 of 2002 decided on 8.8.2003 and the Hon'ble Single Judge upheld the aforesaid cut of date. The matter went in Special Appeal No. 705 of 2003 and upholding the cut of date a Division Bench held as under:

It further observed that the proposed amendment substituting the cut off date did not create two classes of persons. It created only one class of persons who possessed requisite qualification for regular appointment at the time of ah hoc appointment and had been directly appointed on ah hoc basis on or before 30.6.1998 and was continuing on service as such on 20.12.2001 and had further completed 3 years of service. From the scheme underlying the amendment only one class of person had been taken up for consideration for regularisation i.e. a person who filled all the 3 conditions given in Rule 4 of the Rules 2001.

9. Following the aforesaid two judgments another Division Bench of this Court in [Vinita Singh and Others Vs. State of U.P. and Others](#), has upheld the cut of) date 30.6.1998 provide in U.P. Regularization of Ad hoc Appointment (on posts within the Purview of U.P. Co-operative Institutional Service Board) Regulation 1985, as amended vide notification dated 24.3.1993. We find that the Hon"ble Single Judge in Narayan Singh and 23 Ors. (supra) has not noticed the aforesaid binding precedents and, therefore, the judgment is ex facie per incurium. Even otherwise, from a perusal of the judgment in Narayan Singh and 23 Ors. (supra) it appears that there was no challenge in writ petition to the cut of date fixed in regularisation rules and no relief was sought seeking declaration of the aforesaid cut of date to be arbitrary and illegal, yet the Hon"ble Single Judge has struck down the same. It is true that the Hon"ble Single Judge in Narayan Singh and 23 Ors. (supra) has sought to rely on a Division Bench judgment in Jai Kishan and Ors. v. U.P. Co-operative Bank Ltd., Lucknow and Ors. (1989) 2 UPLBEC 144 but it would be relevant to notice that in Jai Kishan (supra) there was no effort on the part of the State to provide any justification despite challenge to the cut ofj date 1.5.1983 provided in U.P. Regularization of Ad hoc Appointment (on posts within the Purview of U.P. Co-operative Institutional Service Board) Regulation, 1985 and in these circumstances the Court struck down the same. However, the aforesaid dictum has been noticed subsequently by the Division Bench in Vinita Singh (supra) but it has not been followed for the apparent distinction, as pointed out above. In Narayan Singh and 23 Ors. (supra), however, in the absence of any challenge to the cut of date provided in the rules the respondent-State had no occasion or opportunity to provide any justification therefore and in the absence thereof, the Hon"ble Single Judge ought not to have consider the validity of the same provision. We, therefore, are of the view that the judgment in Narayan Singh and 23 Ors. (supra) does not lay down a correct law and, no benefit can be extended to the appellant on the basis thereof.

10. The next contention raised on behalf of the appellant is that the Public Works Department is an Industry and, therefore, the A. provisions contained u/s 6N of the Industrial Disputes Act, 1947 ought to have been complied with before retrenchment. We are of the view that if an order of retrenchment was passed in year 1992, as the learned Counsel for the appellant has informed us, the appellant ought to have approached the concerned authorities immediately thereafter and

this point cannot now be raised after more than a decade. In view of the above, we do not find any fault in the judgment of the Hon"ble Single Judge.

11. In the result, the special appeal, being without merit, is dismissed summarily. No order as to costs.