

Ram Prasad Vs Nagar Palika Chunar and Others

Court: Allahabad High Court

Date of Decision: May 9, 2007

Acts Referred: Constitution of India, 1950 " Article 215, 226

Citation: (2008) 116 FLR 52

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Common questions of law and facts are involved in these connected writ petitions, therefore, they are being decided together treating Civil Misc. Writ No. 16577 of 1999 as the leading case.

2. Heard counsels for the parties and perused the record.

3. The case of the petitioner is that he was appointed on daily wage basis as Junior Engineer (Civil) vide order dated 1.9.1990. His salary from

January 1992 was not paid to him compelling him to file the connected Civil Misc. Writ No. 10667 of 1992, in which the following interim order

was passed on 30.3.1992:

Hon. S.R. Singh, J.

Issue notice.

Meanwhile, if the petitioner's services have not already been terminated by giving a month's notice as wages in lieu thereof besides retrenchment

compensation as required by Section 6-N of the U.P. Industrial Disputes Act, he would be allowed to continue in service and paid his wages until

and order of termination/retrenchment is passed in the manner indicated in the aforesaid instructions.

Dated 30.3.91

Sd/- S.R. Singh, J

4. The aforesaid interim order was made absolute vide order dated 22.10.1992 but by following order dated 25.3.1998, the aforesaid order

dated 22.10.1992 was recalled:

Hon. S.R. Alam, J.

Sri Rakesh Bahadur, learned Counsel for the respondents states that vakalatnama on behalf of respondents No. 1 to 3 was filed by him on

10.7.92 and therefore, counter affidavit was also filed in the office on 1.10.1992. The above facts also borne out from the record of the writ

petition.

In this view of the matter, the order dated 22.10.92 is hereby recalled.

Dated 25.3.98

Sd/- S.R. Alam, J

5. Meanwhile, the petitioner filed contempt petition under Article 215 of the Constitution of India in Civil Misc. Writ No. 10677 of 1992, which

was dismissed on 25.3.1998 as having become infructuous.

6. It appears that after dismissal of the aforesaid contempt petition and recall of the order dated 22.10.1992, the Deputy Collector Chunar sent

report to the District Magistrate Mirzapur, appended as Annexure 5 to the writ petition. District Government Counsel also sent his legal opinion

enclosed as Annexure 6 to the writ petition. However, neither report of Deputy Collector Chunar nor legal opinion of District Government Counsel

contained the fact that ad-interim order dated 22.10.1992 passed by this Court had already been recalled vide order dated 25.3. 1998.

7. It appears that acting on the aforesaid report of Deputy Collector, Chunar and legal opinion of District Government Counsel dated 21.1.1999,

the District Magistrate Mirzapur vide letter dated 10.2.1999 asked the Chairman, Nagar Palika Parishad, Chunar to comply with the order of High

Court dated 30.3.1992 which, in fact, already stood merged with the order dated 22.10.1992 which was ultimately recalled on 35.3.1998.

8. In pursuance of the aforesaid letter of District Magistrate, Mirzapur, the then Chairman. Nagar Palika Parishad, Chunar. district Mirzapur sent a

detailed reply to the District Magistrate Mirzapur on 6.3.1999 bringing all the relevant facts on record including the fact that order dated 22.10.92

had already been recalled vide order dated 25.3.1998.

9. Accordingly, the services of the petitioner were terminated vide order dated 15.6.1998 by the Executive Officer, Nagar Palika Parishad,

Chunar, District Mirzapur.

10. The petitioner claims that in compliance of letter of appointment dated 5.6.1995, he submitted his joining report on 15.6.1995. He continued

to work till 4.5.1998 but from October 1997 onwards, his salary was not paid to him. He made representations to the District Magistrate, who

initiated an enquiry in the matter and Sub Divisional Magistrate Chunar called for a report from Executive Officer, Nagar Palika who, in his report

categorically stated that the petitioner had been working since 1990 and was wrongly restrained from working. Accordingly, vide order dated

10.2.1999, the District Magistrate directed the Chairman of the Nagar Palika Parishad, Chunar to allow the petitioner to work.

11. Counsel for the petitioner vehemently contended that the Executive Officer of the Nagar Palika Parishad Chunar did not have any authority of

law to terminate the services of the petitioner and order dated 15.6.1998 was never served upon the petitioner. He submitted that despite specific

direction of the District Magistrate vide orders dated 30.3.92 and 10.2.99, the petitioner was not allowed to join the post. In the meantime, State

Government vide notification dated 7.3.95 directed for appointment/regularization of daily wagers/contractual Junior Engineers in various Nagar

Palikas but the petitioner has not been given the benefit of the said Government notification. He vehemently urged that the petitioner shall be

deemed to be continuing on the post of Junior Engineer in view of interim order dated 30.3.1992 passed by this Court and is entitled for

regularization, of his services on the strength of G.O. Dated 3.7.1995.

12. Per contra, counsel for the respondents contended that the engagement of the petitioner was a fixed term appointment and after his term came

to an end, no fresh order of appointment was issued, as such, the petitioner is not entitled to any relief.

13. From the record, it appears that the appointment of the petitioner on the post of Junior Engineer under the "Jawahar Rozgar Yojna" was a

fixed term appointment. The petitioner was engaged in 1991 for different periods only for two months on each occasion. After expiry of the

aforesaid period, there is no fresh appointment letter available on record. This Court in *Dinesh Prasad v. Inspector General Registration, U.P.*

Allahabad and Anr. (2004) 1 UPLBEC 43 as well as in *Anant Ram Sharma v. State of U.P. And Ors. (1999) 1 ESC 494* has held that if a

person is appointed for a first term on contractual basis and his tenure comes to an end automatically by efflux of time then he is not entitled to

continue thereafter. Hence in these circumstances the question of regularization of the employee does not arise.

14. Regard may also be made to the own admission of the petitioner in paragraph 2 of Civil Misc. Writ No. 16577 of 1999 that he was

discharging duties of Junior Engineer (Civil) under the "Nehru Rozgar Yojna" and that he had not been given any appointment letter, which is

quoted below-

2. That the petitioner was appointed as Junior Engineer (Civil) on daily wage basis for discharging the duties of Junior Engineer (Civil) under Nehru

Rozgar Yojana at Nagar Palika, Chunar district Mirzapur at the rate of Rs. 25.00 per day w.e.f. 1.9.90 but subsequently on representation being

made by the petitioner he was paid at the rate of Rs. 35.00 per day w.e.f. June 1991. The petitioner was not given any appointment letter but he

was offered the appointment verbally and w.e.f. 1.9.90 the petitioner joined his duties and started working as Junior Engineer (Civil).

15. Nehru Rozgar Yojna came to an end in 1996. In Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and

others, Hon"ble the Apex Court in clear terms held that persons employed under Jawaharlal Nehru Rozgar Yojna cannot claim regularization

merely because they have put in more than 240 days service.

16. From the record, it is also evident that the engagement of the petitioner was made by the then Chairman, Nagar Palika Parishad, Chuna,

district Mirzapur whereas appointment of Junior Engineers in the Nagar Palika Parishads" is made by the State Government as the service

conditions of Junior Engineers are governed by U.P. Palika (Centralized) Services Rules, 1966. Thus, the alleged verbal appointment of the

petitioner was not only illegal but also void ab initio. This view is supported by the decision in Himanshu Kumar Vidyarthi and Others Vs. State of

Bihar and Others, wherein it has been held that persons, who are not appointed in accordance with recruitment rules but are engaged on basis of

exigency of work, are temporary employees working on daily wage basis, as such, their disengagement from service cannot be construed to be

retrenchment under the provisions of Industrial Disputes Act.

17. In so far as prayers of the petitioner in Civil Misc. Writ No. 16577 of 1999 that the respondents be directed to comply with the order of

District Magistrate dated 10.2.99 and for sending his name for regularization is concerned, they cannot be granted because of the fact that the

order of District Magistrate dated 10.2.99 is an internal communication and the petitioner does not have any legal right on the basis thereof and

that the order of District Magistrate dated 10.2.99 does not take note of the fact that the interim order dated 30.3.92 was merged with the order

dated 22.10.92 which was recalled by order dated 25.3.98.

18. The Chairman Nagar Palika Parishad Chunar vide letter dated 6.3.99 had brought this fact to the notice of the District Magistrate and after

receipt of reply from the Chairman Nagar Palika Parishad, District Magistrate did not issue any further direction obviously because he was satisfied

with the reply.

19. Moreover This Court cannot direct for regularization of services of the petitioners in view of the decision of Hon"ble the Apex court in State of

Punjab and Ors. v. Sardara Singh (1998) 9 SCC-709.

20. Engagement of petitioners was on contract basis and the High Court cannot issue any mandamus for personal service and change the nature of

appointment from contractual into permanent/regular one.

21. It is relevant to note that the Chairman Nagar Palika Parishad has no jurisdiction or authority to appoint the petitioner by verbal order or

otherwise as the post of Junior engineer is of Centralized Service and its appointing authority is the State Government and not Chairman, Nagar

Palika Parishad. Hence the appointment/engagement of the petitioner is void ab initio. It is not feasible in the writ jurisdiction to take evidence and

decide the matter merely on the basis of exchange of affidavits. It is for the concerned authority to consider claim of the petitioners and pass

appropriate orders in accordance with law if they are found eligible.

22. Moreover, if the petitioner is aggrieved by the impugned order, he has alternate remedy to raise industrial dispute it is not feasible for the High

Court to take oral and documentary evidence under Article 226 of the Constitution and adjudicate by stepping into the shoes of Labour Court

which forum is created with a specific object to deal with such matters requiring findings of facts. The question as to whether the petitioner is

entitled to the benefits, as claimed by him is mixed question of facts and law which can be decided only after consideration of oral and

documentary evidence which may be led by the parties before the Labour Court.

23. In U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, Hon"ble the Apex Court has held that:

...Doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that a litigant is not prejudiced by the action

of the Court since the objection is one in the nature of a demurer. Nevertheless, even when there has been such a delay where the issue raised

requires the resolution of factual controversies, the High Court should not, even when there is a delay, short-circuit the process for effectively

determining the facts. Indeed, the factual controversies which have arisen in the case remain unresolved. They must be resolved in a manner which

is just and fair to both the parties. The High Court was not the appropriate forum for the enforcement of the right and the learned Single Judge in

Anand Prakash case had correctly refused to entertain the writ petition for such relief.

24. It is, the consistent view of Hon"ble the Supreme Court in Hindustan Steel Works Construction Ltd., and Anr. v. Hindustan Steel Works

Construction Ltd., Employees Union (2005) SCC 725 and U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, that in case alternate and

efficacious remedy is available it should not be by-passed and writ petition should not be normally entertained by the High Court under Article

226 of the Constitution of India and the petitioner has to approach this Court after availing alternate remedy.

25. The petitioner has an alternate and efficacious remedy before the appropriate forum/Court as held in Chandrama Singh v. Managing Director

U.P. Co-operative Union Lucknow and Ors. (1991) (2) IUPLBEC 898.

26. For the reasons stated above, the writ petitions are dismissed. No order as to costs.