

(2005) 09 AHC CK 0275

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 54072 of 2002 Connected with Writ Petition No"s. 55223, 55227, 55228 and 55229 of 2002 and 174, 856, 12106, 12107, 12109, 26017, 12506 and 13382 of 2003

Shri Surendra Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 28, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2005) 6 AWC 5842

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: U.N. Sharma, Aditya Kumar Singh, V.M. Zaidi, Ashok Srivastava and N.K. Rajwanshi, for the Appellant; Saumitra Singh, A.C. Misra and Pradeep Kumar and S.C., for the Respondent

Final Decision: Allowed

Judgement

Tarun Agarwala, J.

On 29.01.1991, the State Government created Greater Noida Industrial Development Authority. In furtherance of its objects, the Authority appointed a large number of persons on a contract basis on account of fact that the State Government did not create or sanctioned the post. Subsequently, Greater Noida Industrial Development Authority Service Regulation 1993- were framed which gave the Authority the power to appoint employees on a contract basis. Based on this, a large number of persons were appointed on a contract basis for 89 days. The petitioner was also appointed as an Assistant Manager on 23.11.1994 on a contract basis. The appointment letter stipulated that the appointment is only for 89 days on a fixed pay which would come to an end on the expiry of the period and that, the appointment- could be extended from time to time if there was a requirement of work and that the appointment was purely temporary in nature and that no claim of

security or for the regularisation in the authority could be claimed by the employee.

2. It transpires that after the creation of Greater Noida Authority, the State Government sanctioned 154 posts. On 11.4.2001, the State Government sanctioned another 126 posts which was to be filled up by way of promotion or on a contract basis from those persons who were surplus in other departments of Greater Noida Authority and, if there were no surplus employees, in that event, by direct recruitment on a contract basis.

3. Based on the aforesaid, a note was put up by the Incharge Officer (Personal) proposing to give a contract for 3 years instead of 89 days. By a letter dated 4.7.2002, the Deputy Chief Executive Officer wrote to the State Government intimating that 27 persons on contract basis remained in the Authority and sought permission to regularise their services in view of the vacancies existing in the Authority. While this matter was pending before the State Government, the Authority issued an advertisement, inviting applications for various posts, including 5 posts of Assistant Manager. Consequently, the petitioner filed the present writ petition for the quashing of the advertisement dated 20.11.2002 in so far as it related to the recruitment on the post of Assistant Manager and further prayed that the authority be directed to regularise his services on the post of an Assistant Manager.

4. Similarly situated employees have also filed several writ petition praying for the same relief. These employees were also working on a contract basis on the same post or on some other post and are also aggrieved by the" advertisement and their non regularisation of their services. Since the issue raised in all the writ petitions is common, the same is being decided together. For facility, the writ petition of Sarvendra Kumar is being taken as the leading case.

5. The petitioner in paragraph Nos. 3 to 6 of the writ petition has submitted that he was initially appointed as an Assistant Manager for 89 days and, since then he had been working continuously, except for the artificial break of 1 or 2 days, when fresh appointment letters were issued. In paragraph No. 7 and 9 of the writ petition, the petitioner had contended that out of 44 employees appointed on a contract basis on various posts, 17 employees have been regularised by the authority on various dates between the period 1991 to 1999. In paragraph Nos. 8 and 17, it has been stated that 28 posts of Assistant Manager had been sanctioned and that 18 persons are working as Assistant Manager and that 10 posts are still vacant. In paragraph No. 15 of the writ petition, the petitioner submitted that U.P. Regularisation of Ad-hoc Appointment (on posts outside the purview of the Public Service Commission) Rules 1979, as amended from time to time, was applicable to the petitioner and that, under these rules, the petitioner was liable to be regularised since vacancies are existing and that the petitioner was working continuously since 1994. The petitioner submitted that when the vacancies are existing and the respondents, in the past had also regularised the services of the employees working

on a contract basis, there was no reason why the petitioner's services could not be regularised. The petitioner further submitted that in the light of the aforesaid, the action of the respondent in advertising the post for appointment by direct recruitment was arbitrary as well as discriminatory.

6. The respondents have filed a counter affidavit and submitted that under the Regulations of 1993, the authorities are empowered to appoint persons on a contract basis depending on the availability of work and that the appointments came to an end on the expiry of the period. The respondents admitted that the services of the petitioner had been extended from time to time and that he had been working continuously except for the artificial break of a few days. In para "D1 of the counter affidavit, it has been stated that the Chief Executive Officer had approved a policy for the regularisation of the 27 employees working on a contract basis which was yet to be sanctioned by the State Government. Under this policy, 60% of the vacancies was to be filled up by the employees working on contractual basis and that 40% of the posts was to be filled up by direct recruitment and that the regularisation process of these employees would be made in accordance with the seniority. In para 11 of the counter affidavit, the respondents" admitted that 8 persons were working as Assistant Manager. In para 9 of the counter affidavit, the respondents have admitted that the services of the contract employees in the past had also been regularised as per the Rules and Regulations. The respondents further submitted that there was no illegality in the issuance of the advertisement. If the petitioner was suitable and was capable, he could apply and that his candidature would be considered by the Selection Committee. The respondents, therefore, submitted that the petitioner was not entitled to any relief.

7. In the rejoinder, the petitioner has annexed a copy of the letter dated 28.6.2004 written by the Deputy Chief Executive Officer to the Special Secretary, Industrial Development Department Government of U.P. Lucknow intimating that out of 29 sanctioned posts of Assistant Manager, 13 posts are lying vacant and that permission had been sought earlier from the State Government to regularise the contract employees on the vacant posts.

8. Heard Sri U.N. Sharma, the learned Senior Counsel assisted by Sri Aditya Kumar Singh Advocate, for the petitioner in this writ petition, Sri V.M. Zaidi and Sri Ashok Srivastava, the learned counsels in the connected writ petitions, Sri Saumitra Singh, the learned counsel appearing for the Greater Noida Authority, namely, respondent Nos. 2 and 3 and Standing Counsel for respondent No. 1.

9. The learned counsel for the respondents in support of his submission has placed reliance on two judgements, namely in the matter of Mahendra L. Jain and Others Vs. Indore Development Authority and Others, wherein the Supreme -Gould held that where the initial appointment was not made in accordance with the rules, such appointments could not be regularised as it was violative not only of Article 14 and 16 of the Constitution of India but was also opposed to public policy and, in the

matter of Ashok Kumar Sharma v. State of U.P. and Ors. in writ petition No. 51838 of 2004 decided on 7.12.2004, in which a Division Bench of this Court held that since the appointment was made without following the procedure, the services of the petitioner could not be regularised through the back door method.

10. Before proceeding, it would be necessary to cull out the admitted facts as disclosed in the affidavits filed by the parties, namely,

- (i) The Regulations of 1993 permitted appointments on a contract basis.
- (ii) As and when the posts were sanctioned by the State Government, employees working on a contract basis had been regularised as regular employees of the Authority, as per the Rules and Regulations,
- (iii) At the moment 27 persons are still working on a contract basis.
- (iv) Various posts are still vacant.
- (v) 13 posts of Assistant Manager out of 28 sanctioned posts are still lying vacant.
- (vi) Letters have been written by the authorities to the State Government seeking permission to absorb/regularise the contract employees on the vacant post,
- (vii) Matter with regard to the regularisation of the contract employees is pending consideration before the State Government
- (viii) The scheme framed by the authority with regard to the regularisation of the contract employees is also pending consideration with the State Government.
- (ix) U.P. Regularisation of Ad-hoc appointment (on posts outside the purview of the Public Service Commission) Rules 1979, as amended from time to time, is applicable in the case of the petitioners.

11. In the light of the aforesaid admission, it is clear that the vacancies are existing and that in the past, contract employees have been regularised as and when the posts were sanctioned. I see no reason, why the same practice should not be adopted for the petitioners. Admittedly, the Rules relating to the regularisation are applicable and in the past, several contract employees have been regularised. One of the conditions in the Regularisation Rules is, that vacancies must be existing. In the present case, vacancies are existing in which the petitioner could be considered and regularised if found fit and qualified as per the Rules. On the other hand, if the vacancies are filled up through direct recruitment, the chances of being regularised under the rules would be lost to the petitioner. Consequently, the contention of the respondents that the contract employee could apply with the other candidates and that their case would be considered on merits, in my opinion, is unfair and discriminatory. In my view, the petitioner is entitled to be considered first for the regularisation of his services as per the rules and only thereafter, the respondents could fill the vacancies, if any, through direct recruitment.

12. There is another aspect. The respondents themselves have admitted that the matter relating to the regularisation of the petitioner and other similarly situated contract employees is pending consideration before the State Government. It has also come on record that a scheme with regard to the regularisation of the contract employees is also pending approval before the State Government. Consequently, the issuance of the advertisement, when the matter was pending consideration before the State Government, is wholly arbitrary. The respondents should have awaited the decision of the State Government before issuing the advertisement.

13. The submission of the learned counsel for the respondents that since the initial appointment of the petitioner was not made in accordance with the Rules, therefore the petitioner was not entitled to any relief as per the judgement of the Supreme Court in the case of Mahendra Jain(supra) and in case of Ashok Kumar Sharma (supra), as decided by a Division Bench of this Court, in my view, is wholly misconceived and devoid of any merit. The respondents have not laid any foundation in their counter affidavit in support of their submission. The judgement of the Supreme Court as well of this Court could not be made applicable merely on the strength of an argument being raised by the learned counsel for the respondents during the hearing of the petition. Something more is required to be done, namely, that the contention raised should be supported by documentary proof which should also come on the record of the case, which in the present case is lacking. Consequently, I do not find any force in the contention raised by the learned counsel for the respondents. In any case, I find that under the Regulations of 1993, the Authority had the power to appoint persons on a contract basis. Consequently, in the absence of any averment that the appointments was not made in accordance with Rules, the contention of the respondents that the regularisation is being sought through a back door method, is patently misconceived.

14. In State of U.P. and Ors. v. Ajay Kumar 1997(4) SCC 58 , Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others, and in Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, the Supreme Court held that the process of regularisation can only be done in accordance with the prescribed procedure and that a daily wager, in the absence of a statutory provision would not be entitled to regularisation.

15. In the present case, the rules relating to regularisation exist and is applicable on the petitioner. In the past, the respondents have enforced the Rules relating to the regularisation and had regularised several contract employees. Consequently, the petitioner is also entitled for the same treatment.

16. There is another aspect of the matter. The petitioner has been working since 1993 continuously except for the artificial break of a day or two. In view of the long period of service rendered by the petitioner, and in view of the fact, that there was a requirement of work, it has assumed a certain kind of permanency. .Further, in view of the fact that in the past, the authority had regularised the services of the contact

employees, the petitioner acquired a legitimate expectation for the regularisation of their services on the vacant post existing in the department.

17. In Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, Ashwani Kumar and Others Vs. State of Bihar and Others, Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, Narender Chadha and Others Vs. Union of India and Others, State of Haryana and another Vs. Ram Diya, State of U.P. and Others Vs. Dr. Deep Narain Tripathi and Others, and State of U.P. and Others Vs. Dr. Deep Narain Tripathi and Others, the Supreme Court held that where long period of service was rendered, the principles of legitimate expectation was squarely applicable.

18. In view of the aforesaid, the petitioner has made out a valid claim for the regularisation of his services as per the regularisation rules. Since similarly situated persons have been regularised, the same treatment is to be given to the petitioner. The respondents cannot adopt different standards for similarly situated persons, as that would not only be arbitrary, but also discriminatory.

19. Consequently, the writ petition succeeds and is allowed with costs. The respondents are directed to consider the claim of the petitioner for the regularisation of his services on the existing vacancy within three months from the date of the receipt of this judgement before the authority concerned. The existing vacancies would be filled up from the contract employees as per the regularisation rules and regulation and only thereafter, if any vacancy still exists, the same would be filled up through direct recruitment after inviting applications through a fresh advertisement. The advertisement dated 20.11.2002 is accordingly quashed.