

(2000) 07 AHC CK 0147**Allahabad High Court****Case No:** C.M.W.P. No"s. 15505 and 18216 of 1993

Vinod Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 21, 2000**Citation:** (2001) 2 AWC 1005**Hon'ble Judges:** M.C. Jain, J**Bench:** Single Bench**Advocate:** Jokhan Prasad, for the Appellant;**Final Decision:** Dismissed**Judgement**

M.C. Jain, J.

Both these writ petitions raise similar controversy being based almost on identical facts and as such they are being decided together.

2. The Petitioners in Writ Petition No. 15505 of 1993 are eight in number and they have challenged their termination order dated 13.10.1992 passed by the respondents No. 4 and 5. They have sought a mandamus commanding the respondents not to discontinue their services as chowkidars at Panto Bridge, Balua Ghat, district Varanasi and to regularise their services as regular chowkidars. Their case is that they were appointed as regular chowkidars on daily wages by the order of respondent No. 3 against permanent and substantive vacancies on 1.5.1990. There is a Panto Bridge at Balua Ghat, district Varanasi constructed under the supervision and guidance of respondent No. 3. There is no permanent bridge at Balua Ghat and as such after the closure of rainy season, the Panto Bridge is constructed and supervised by the respondent No. 3 in order to facilitate the conveyance facilities to the residents of the neighboring villages. When the rainy season begins, the Panto Bridge is managed, supervised and protected by mallahs, chowkidars and beldars. Though the vacancies at the Panto Bridge are permanent and of substantive nature, but the Petitioners were appointed as chowkidars on ad hoc basis on daily wages since 1.5.1990 and they continuously

worked without any break or interruption for about two and a half years. Their work was also satisfactory. Each of them worked for over 240 days in one calendar year. Though vacancies were still existing, they were orally told by the respondent Nos. 4 and 5 on 13.10.1992 that their services stood terminated.

3. The Petitioners in connected petition No. 18216 of 1993 are eleven in number and their case is that they had been appointed as mallahs on daily wages at Panto Bridge, Balua Ghat, district Varanasi by order of respondent No. 3 against permanent and substantive vacancies on 1.5.1990. Rest of the contentions are similar to those raised in Writ Petition No. 155015 of 1993 and the relief sought is also the same.

4. Counter-affidavit has been filed by the respondents in Writ Petition No. 15505 of 1993 and the contention of the respondents in short is that the Petitioners had been employed as daily wage workers by the respondent in May, 1990 and their employment was terminated in September, 1992. They were employed on muster roll on the availability of extra work when the regular employees! were unable to complete the work. They were given fixed emoluments after deducting holidays and as such their employment was purely on daily fixed wages. They have no right to claim regularisation. There is no work available for them as the maintenance of Panto Bridge is being looked after properly by the employees available in the department employed earlier to 1.1.1990. There is no vacancy in the department to absorb the Petitioners.

5. I have heard the learned Counsel for the Petitioners and the learned standing counsel for the respondents.

6. The argument of the learned Counsel for the Petitioners Is that since they worked for more than 240 days in one calender year, they are entitled to be regularised. It is significant to point out that mere working for 240 days in a calendar year does not create any right in favour of the Petitioners for their absorption in the department of the respondents. This submission could have weight in case there were vacancies with the respondents to absorb them. There is unambiguous and emphatic assertion from the side of the respondents that the Petitioners were engaged purely on dally wage basis on the availability of extra work for them and their services were dispensed with when extra work ceased to be there. The existence of vacancies is necessary for the absorption of the Petitioners and in the absence of the same, their claim for regularisation and absorption is not at all tenable. They have not been able to make out any case for any direction to the respondents.

7. In view of the above, this Court finds that both the writ petitions are devoid of merit. They are liable to be dismissed and are, accordingly, dismissed. There will be no order as to costs.