

Court No. - 34

Case :- WRIT - A No. - 817 of 2020

Petitioner :- Pramod Kumar Sen

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shashi Kumar Dwivedi, Hanuman Kinkar

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - A No. - 4130 of 2020

Petitioner :- Pramod Kumar Sen

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shashi Kumar Dwivedi, Hanuman
Kinkar, Rang Nath Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard learned counsel for the parties.
2. Petitioner claims to have been employed by the respondent-Forest Department in September 2001 for the first time as Computer Operator to be paid Rs.1000/- per month. In support of this claim he has taken the Court to Annexure-6 to the writ petition which is the payment receipt got signed by the petitioner before the Divisional Forest Officer, Hamirpur.
3. It is claimed that he continued as such until the Rules came to be framed namely, Uttar Pradesh Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in Government Departments on Group 'C' & Group 'D' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2016 (hereinafter referred to as '2016 Rules') and the question arose, therefore, to consider regularization of such Group-C and Group-D employees working in the forest department. The Principal Conservator of Forest, U.P. Lucknow prior to the above had already issued a circular letter on 22.08.2008 that those who have been working as Computer Operator since the last ten years would be considered for regularization and certain queries were made from the different authorities regarding details of working

employees, sanctioned strength with the department and reservations as may be applicable.

4. It appears that the respondents considered all the Computer Operators to be daily wager since 29.06.1991 and then since prior to 21.02.2002 the cut off date given in the Uttar Pradesh Regularization of Daily Wages Appointments on Group D Post Rules, 2001 and and then 2016 was prepared by a Committee headed by Divisional Forest Officer, Hamirpur. The 2002 list had the name of petitioner at Serial No.22 with following details:

"ऐसे श्रमिकों का विवरण जो दिनांक 24 फरवरी 2002 के पूर्व से कार्यरत थे वर्तमान में भी कार्यरत है , और जिन्हें न्यूनतम वेतन नहीं प्राप्त हो रहा है।

क्र० सं०	प्रभाग का नाम	श्रमिक का नाम व पिता का नाम	विभाग में कार्य प्रारम्भ करने का दिनांक	शासन द्वारा सृजित पद का नाम जिसके समकक्ष दैनिक श्रमिक कार्य कर रहा है (यदि कोई हो)	स्तम्भ 5 में वर्णित पद का न्यूनतम वेतन	सूचना श्रेणीवार	वर्तमान में श्रमिक कार्यरत है अथवा नहीं	योजना जिसके तहत श्रमिक कार्यरत है। (मनरेगा/ अन्य)	अभ्युक्ति
22.	हमीरपुर	श्री प्रमोद कुमार सेन पुत्र श्री राजकिसोर	01.07.2001	कोई नहीं	-	समूह 'घ'	है	अन्य	7/2001 से जुलाई 2008 तक संविदा/दैनिक वेतन के आधार पर कम्प्यूटर आपरेटर का कार्य किया। जुलाई 2008 के पश्चात वर्तमान में भी संविदा/दैनिक वेतन के साथ वर्तमान में भी कार्यरत है।

5. Petitioner approached this Court vide Writ A No.13441 of 2018 which was disposed of with the direction that petitioner's claim for regularization may be considered under 2016 Rules and appropriate orders may be passed. After the order was passed by this Court on 31.05.2018 in the said writ petition nothing further transpired, and so petitioner filed a contempt application being no.3082 of 2019. The Court though *prima facie* held there to be a

case of contempt but gave another opportunity to the competent authority to take decision in the matter.

6. It is thereafter that the respondent-Conservator of Forest, Chitrakoot Dham, Circle Banda passed an order on 03.12.2019 communicating the decision of a Committee constituted for the purposes of regularisation on 18.12.2019 that it had rejected the claim for regularization on the ground that he had been not working either on Group C post or Group D post in the establishment. It was further held that the petitioner did not discharge any duty under any project of Government or the Forest Department either so as to justify his claim for regularization.

7. Learned counsel for the petitioner submitted that soon after the claim for regularization was rejected, the services of the petitioner were also dispensed with vide order dated 27.02.2020 with an advance payment of one month's salary in view of Rule 10 of the Regularization Rules, 2016. This order has been impugned in the connected matter being Writ A No.4130 of 2020.

8. Learned Standing Counsel has sought to justify the order passed by the Committee rejecting the claim set out in the representation of the petitioner, by annexing certain documents as Annexure- 1 to the counter affidavit filed in Writ A No.4130 of 2020. He submits that details have been given regarding working of the petitioner in the establishment as Computer Operator in different years and therefore, the document that has been appended by the petitioner regarding working as Annexure-10 to the writ petition would not carry weight. This Annexure-10 of Writ A No.817 of 2020 has also been filed as Annexure 8 to the writ petition being Writ A No.4130 of 2022.

9. Having heard learned counsel for the respective parties and having perused the documents brought on record, the fact position that emerges out is that as per the own documents filed in the counter affidavit, the petitioner was admittedly engaged for the first time in the month of July, 2001.

10. The two points require consideration by this Court: **firstly**, as to whether the petitioner could be treated as Group C or Group D employee so as to fall within the scope and ambit of the Regularisation Rules, 2016; and **secondly**, petitioner fell as per service period rendered by him within the zone of consideration as he was required to have continued service/engagement since

before cut off date 2004 till 2016 when Rules came into force in order to seek benefit of regularisation.

11. As far as first point is concerned, petitioner has been treated by the respondent themselves in the document appended with the counter affidavit (as CA-1) that petitioner was engaged on a fixed pay of Rs.1000/- by giving him charge of cashbook item since November, 2001 though shown on role since July, 2001. The petitioner had been attached with the office of the Regional Forest Officer, Hamirpur as Computer Operator in the OBC category. Thus it is clear that petitioner was duly appointed in a particular quota even though he was engaged only as a daily wager/contract employee. The duty chart that has been appended as CA-1 to the counter affidavit shows that ever since his engagement in July 2001, petitioner continuously discharged duties of treasury, cashbooks, overhead cashbooks continuously until the regularization rules came into force on 12.09.2016. Petitioner did continue thereafter as such until his services came to be dispensed with under the order dated 27.02.2020, impugned in Writ A No.4130 of 2020. In dispensing with the services of the petitioner, aid is taken to the provisions as contained under Rule 10 of the Regularization Rules, 2016.

12. In the writ petition a document has been annexed as Annexure 8 which is also a chart prepared by the respondents themselves under the signatures of Members of the Committee to consider the claim for regularization under 2016 Rules. This chart that has been reproduced hereinabove shows that petitioner was continued since 01.07.2001 on contract/daily wage basis as a Computer Operator and the chart dated 19.04.2016 shows that the petitioner has been continuing as such. This chart which has been referred to in paragraph 10, was prepared in response to following letter:

कार्यालय, मुख्य वन संरक्षक/नोडल अधिकारी, उत्तर प्रदेश, लखनऊ।

पत्रांक-1475/11-सी-बैठक

दिनांक, लखनऊ, फरवरी 12/2015

सेवा में,

प्रभागीय वनाधिकारी,

झाँसी, हमीरपुर दक्षिण खीरी, शाहजहाँपुर,

सम्भल एवं अमरोहा।

विषय विश्व बैंक सहायतित परियोजनाओं के प्रस्तावों के भाग-2 का सम्प्रेषण।

महोदय,

आपको इस कार्यालय द्वारा लोक निर्माण विभाग की विश्व बैंक पोषित सड़क परियोजनाओं का भाग-2 पूर्ण करके आन-लाइन भेजने हेतु सहमति पूर्व में प्रेषित किया जा चुका है, परन्तु अभी तक किसी भी प्रभाग से पूर्ण रूप से भरे हुये भाग-2 के प्रस्ताव प्राप्त नहीं हुये हैं।

ज्ञातव्य हो कि यह उ०प्र० सरकार की प्राथमिकता का कार्यक्रम है, जिसमें देरी मान्य नहीं है। विश्व बैंक वित्त पोषित परियोजनाओं के प्रस्तावों के आन-लाइन सम्प्रेषण हेतु, इस कार्यालय में दिनांक 16.2.2015 को 12 बजे एक बैठक आहूत की गयी है।

अतः इस बैठक में स्वयं तथा अपने कार्यालय के किसी कम्प्यूटर भिन्न कर्मचारी (जो इस योजनाओं का कार्य करता हो) को साथ लेकर बैठक में भाग लेना सुनिश्चित करें।

भवदीय

(ए०के०द्विवेदी)

मुख्य वन संरक्षक/नोडल अधिकारी

उ०प्र०, लखनऊ।

संख्या-

दिनांकित।

प्रतिलिपि- श्री जे०पी०जैन, मुख्य अभियन्ता, विश्व बैंक सहायतित परियोजना, लखनऊ को सूचनार्थ एवं इस अनुरोध से प्रेषित कि आप भी बैठक में भाग लेने का कष्ट करें।

(ए०के०द्विवेदी)

मुख्य वन संरक्षक/नोडल अधिकारी

उ०प्र०, लखनऊ।

13. In the affidavit sworn by one Mahesh Kumar Tiwari, the Range Forest Officer on behalf of the respondents on 02.11.2020 simply denies vide paragraph 17 with statement that petitioner was never engaged against any post sanctioned by the Government. Paragraph 17 of the affidavit sworn by Sri Tiwari runs as under:

“That the contents of para-10 of the writ petition are not admitted as stated. The petitioner was engaged in the office of Divisional Forest Officer, Hamirpur Forest Division, Hamirpur on consolidated pay/fixed honorarium under Social Forestry Schemes of the State Government or Central Government. The petitioner was never engaged against any post sanctioned by the Government and he would have been participated in the meeting proposed by the World Bank for proposal of the road projects of the State Government or Central Government sponsored schemes funded by the World Bank for data feeding. The petitioner can't claim for his regularization on behalf of the participation in the said meeting.”

14. Thus it is sought to be alleged that petitioner since was not appointed on any post, his claim for regularization could not be

considered. The document appended as Annexure 8 to the writ petition has neither been alleged to be false, fabricated or forged, nor claimed to be manipulated one. As a matter of fact, the CA-1 of Writ A No.4130 of 2020 virtually corresponds to the document appended as Annexure-8 to this writ petition and also to the one filed in the connected writ petition.

15. Thus, it is clear that petitioner has been working with the respondents-Forest Department in the capacity of Computer Operator.

16. Now the nature of work which petitioner according to the document filed as CA-1 is concerned, I find that it was dealing with the cashbooks, headbooks and the stocks. It clearly therefore transpires that the petitioner was discharging duties which could not be assigned to a Group D employee. But if Computer Operator is not taken by the respondents as a Group C employee then the petitioner would automatically fall in the category of daily wage Group D employees.

17. It is well settled law that whether a person is working as a casual labor or a daily wager or working on a temporary basis on a fixed pay they would all stand covered under the Regularization Rules. The definition is given under Clause 4(d) of the 2016 Rules would include such category of persons who are working on a fixed pay to discharge duties on day to day basis as naturally such persons are not paid regular pay scale or minimum of basic pay.

18. The definition as given under Rule 4(d) of the Rules is reproduced hereunder:

“ Daily wages means a person who is engaged or employed or deployed on casual work on day to day basis and whose wages/remuneration is calculated on the basis of the days he has worked”

19. In view of the above, therefore the findings returned by the Departmental Committee constituted for the purpose of examining the eligibility of petitioner like persons working in the department for regularization, cannot be sustained. The petitioner was liable to be held as a Group C employee considering the nature of work and if at all he was not to be considered as Group C employee and the department treated him only as a daily wager though on a fixed pay to be paid at the end of the month, petitioner was liable to be considered as a Group D employee. The manner in which petitioner had been appointed in OBC category and then his

services have been later on dispensed with by paying one month salary in advance, would sufficiently demonstrate that the petitioner was working on a regular basis since July, 2001 until the order dispensing with the services was passed on 27.02.2020.

20. Coming to the second point regarding petitioner's continuous service in the establishment for the purposes of regularization, the relevant rule has come to be interpreted recently by this Court in Writ A No.19200 of 2019 (Mahaveer Singh and 5 others v. State of U.P. and 3 others) relying upon the earlier judgment of Janardan Yadav vs. State of U.P: 2008 (1) UPLBEC 498 vide paragraph nos.13, 14, 15, 16, 17 and 18, the Court has held thus:

“13. Learned counsel for the petitioner has raised an argument that in view of the language of sub-rule (i) of Rule 6(1) it is clear that person who is to be considered for regularisation must have been employed initially prior to the cut off date and then for the purposes of regularisation he must be working on the date of enforcement of the rules. He has placed reliance upon a judgment of this Court in the case of Janardan Yadav v. State of U.P.: (2008) 1 UPLBEC 498, wherein the Court was considering the interpretation of Rule 4(1) of the Regularization Rules, 2001. The regularisation Rule 4(1) (a) of Regularization Rules, 2001 was almost in a similar language as framed and quoted hereinabove under the rules framed in the year 2016. For better appreciation Rule 4(1)(a) is reproduced hereunder:

"4. Regularisation of daily wages appointments on Group 'D' posts.- (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"

14. Upon reading of the aforesaid provision, it is clearly born out that rule contemplated to a person to be appointed on a group D post in the government service on daily wage basis before 29th June, 1991 and then is continuing in service as such on the date of commencement of the rules. Thus both the rules are in pari materia.

15. A similar argument was advanced in that case on behalf of the State that not only a person was required to be appointed prior to cut off date on daily wage basis but also was required to be continuing in service as such on the date of commencement of rules. Quoting paragraph 20 of the counter affidavit the Court vide paragraph 7 & 8 rejected the argument raised on behalf of the State and the writ petition was allowed vide paragraph 9 of the said judgment. Paragraphs 7, 8 and 9 of the said judgment is quoted hereinabove:

"7. Respondents have not disputed the existence of all the said three conditions but their further presumption is that the Rules also contemplate continuous service throughout from the date of initial engagement till the date of commencement of the Rules and only then a person appointed on daily

wage basis would be entitled for regularization. It is also the stand of the respondents, which is evident from para-20 of the counter affidavit, which reads as under:

"20. That the contents of para 23 of the writ petition is not correct and denied. As stated the petitioner is continuously working relates to, the working of a daily wager without any break as there is no break mentioned in the regularization rules. The petitioner or a daily wager has to work through out year except on the national holiday."

8. The said stand is contrary to the Rules and it amounts to reading certain words in Rule 4(1) which is not provided therein by the Rule framing authority. The rule framing authority has not framed the aforesaid Rules in manner as are being read by the respondents. Since the Rules are applicable only to daily wage employees, the Rules framing authority was aware that such employee could not have worked continuously throughout and, therefore, has clearly provided that the engagement must be before 29.6.1991 and he is continuing as such on the date of commencement of the Rules. **If a daily wage engagement has been made before 29.6.2001 and was continuing on 21.12.2001, meaning thereby the daily wage engagement remained necessity of the department or the requirement thereof for more than 10 years, for such a person only, the benefit of regularization under 2001 Rules has been provided, and it nowhere requires further that the incumbent must have worked continuously from the date of initial engagement till the commencement of these Rules and to read these words would amount to legislation, which is not permissible in law.** While interpreting the statute, it is well settled that neither any word shall be added nor be subtracted but if a plain reading of the statute is clear and unambiguous, the same has to be followed as such. This Court does not find any ambiguity in Rule-4(1) providing as to which kind of persons would be entitled for regularization and it nowhere requires that the incumbent must have worked throughout from the date of initial engagement till the date of commencement of the Rules.

9. In the result, the writ petition succeeds and is allowed. The impugned order 10.9.2004, Annexure-5 to the writ petition, is quashed. The respondents are directed to re-consider the case of the petitioner for regularization in accordance with 2001 Rules and the observations made hereinabove, afresh, and pass appropriate order within three months from the date of production of certified copy of this order."

16. Learned counsel for the petitioner has also relied upon the judgment in the case of Mohd. Raza Khan v. State of U.P. and others decided on 22nd February, 2017 in writ petition being Service Single No.- 4175 of 2017. In the said case also the claim of the petitioner was rejected on the ground that the petitioner in that case was not in continuous service right from the date of his initial appointment i.e. prior to the cut off date till the enforcement of the regularisation rules. Relying upon the judgment in the case of Janardan Yadav (supra) the writ petition was allowed. The operative part of the judgment is reproduced hereunder:

“The petitioner is still working on daily wage basis as such it appears that the case of the petitioner is covered under 2016 Rules. Even the Government Order dated 24.02.2016 does not lay down any condition that only those daily wage employees will be considered for regularization who have worked uninterruptedly without any break. Even otherwise, the issue relating to continuance of service for the purpose of regularization is settled by this Court in the case of Janardan Yadav Vs. State of U.P. and others, reported in [(2008) 1 UPLBEC] where it has been held that there is no requirement that the incumbent must have worked throughout from the date of initial engagement.

For the aforesaid reasons, it is clear that the ground taken by the respondents in denying the benefit of regularizing the petitioner's services is not tenable.

Accordingly, the decision of the committee dated 23.06.2016 so far as it relates to the petitioner is hereby quashed and the writ petition is hereby allowed.

The respondents are directed to reconsider the case of the petitioner for regularizing his services in accordance with the provisions contained in 2016 Rules and also taking into account the observations made herein above.

For the aforesaid purpose, the petitioner shall make a representation within a fortnight from today taking therein all the pleas which may be available to him and annexing therewith all the documents on which he intends to rely including 2016 Rules to the competent authority. Upon receipt of the said representation along with certified copy of this order, the competent authority shall consider the case of the petitioner for regularizing his services and take appropriate decision expeditiously, say, within a period of next three months.”

17. In view of the above, I find merit in the submission advanced by learned counsel for the petitioner as the language in which Rule 6(1)(i) has been framed is more clear and specific than the language of Rule 4(1)(a) of Rules, 2001.

18. Here in this case the rule contemplates two conditions to be fulfilled: (a). A person must be appointed prior to cut off date; and (b). A person must be working/ employed/ deployed on the date of enforcement of the rules.”

(Emphasis added)

21. Thus applying the above discussed principle of law petitioner deserves regularization and respondents by means of absolutely misconceived notion regarding his working in the establishment as Group C or Group D employee, have rejected the claim of the petitioner wholly illegally.

22. In view of the above, both the writ petition succeed and are **allowed**. The order rejecting the regularization by the Committee dated 18.09.2019 referred to in the communication order dated

03.12.2019 is hereby quashed. Respondents are directed to accord benefit under the Regularization Rules 2016 treating the petitioner in service from 01.07.2001 which is prior to cut off date under the Rules being December, 2001 till the Rules came into force in the year September, 2016. Petitioner since has been wholly and illegally dismissed from the service by the order dated 27.02.2020 impugned in Writ A No.4130 of 2020 on a completely wrong premise invoking provisions of Rule 10 of 2016 Rules, the said order is also accordingly quashed. The petitioner shall be reinstated in service and shall be paid salary accordingly as he was getting until regularization orders are passed.

23. While passing the regularization order, the authority will accord due seniority to the petitioner from the date persons working alongwith him have been regularized and shall also be paying salary to the petitioner from the date of such regularization till order is actually passed in his favour.

24. The appropriate order as directed hereinabove shall be passed by the competent authority in the matter within a period of two months of production of certified copy of this order.

Order Date :- 20.11.2023

Deepika