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Neutral Citation No. - 2023:AHC-LKO:42179

1. Case :- WRIT - A No. - 3546 of 2021

Petitioner :- Brijesh Kumar Gupta And Ors.

Respondent :- U.P. Vidhan Parishad Thru.Prin.Secy. And Ors.

Counsel for Petitioner :- Mohammad Tauseef Siddiqui

Counsel for Respondent :- Lalit Shukla,Akansha Dubey,Gaurav

Mehrotra

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2. Case :- WRIT - A No. - 2696 of 2021

Petitioner :- Brijesh Kumar Gupta And Ors.

Respondent :- U.P. Vidhan Parishad Thru.Prin.Secy. Lko. And Ors.

Counsel for Petitioner :- Mohammad Tauseef Siddiqui

Counsel for Respondent :- Lalit Shukla,Akansha Dubey,Gaurav

Mehrotra,Lalit Shukla

Hon'ble Dinesh Kumar Singh,J.

1. These two writ petitions under Article 226 of the Constitution of India have been filed for quashing of the order No.65 (Adhithan)/V.P.-78/2020 and 65 (Adhithan)/V.P.-78/2020 dated 08.01.2021 passed by Principal Secretary, U.P. Legislative Council, U.P. whereby petitioners' representation in pursuance of the orders passed in Writ Petition No.19551(SS) of 2020 dated 23.11.2020 and Writ Petition No.(SS) No.6004(SS) of 2020 dated 08.01.2021, have been decided and the petitioners' prayers for regularization on Class III and Class IV posts was rejected.

The petitioners have also challenged the selection held by the respondents in pursuance to the advertisement dated 17/27.09.2020 for Class III and Class IV posts.

The petitioners have also sought a writ of mandamus commanding the respondents to retain the petitioners in council on their respective posts till their services are regularized or they are absorbed on regular basis.

2. Earlier, the petitioners in the Writ Petition No.6004(SS) of 2020 had sought following prayers:-

- "(1) Issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to retain the petitioners in the session vacancies on their respective posts till their service are regularized or they absorbed in the department on,regular basis.
- (2) Issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to permit the petitioners to work in the session vacancies and pay them their wages regularly.
- (3) Issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to frame a scheme for absorption of the petitioners in the department and regularized their services on their respective posts.
- (4) issue a writ, order or direction in the nature of mandamus, commanding the opposite parties not to engage any new incumbent before giving the appointment to the petitioners on their respective posts."

3. Prayers sought in the Writ Petition No.19551(SS) of 2020 would read as under:-

- "(1) issue a writ, order or direction in the nature of certiorari, for the quashing the advertisement dated 17/27.09.2020 issued by opposite parties for five posts of class III cadre and three posts of class IV cadre held by the petitioners contained as Annexure no.5.
- (2) issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to consider the regularization/absorption before further proceeding in the selection held in pursuance of advertisement dated 17/27.09.2020.
- (3) issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to permit the petitioners on the post held by the petitioners till their services or regularized and paid their salary."

4. Both of these writ petitions were disposed of vide orders dated 23.11.2020, as noted above, with liberty to the petitioners to make fresh representations raising all their grievances along with copy of the petitions to the Principal Secretary of U.P. Vidhan Sabha Parishad, Lucknow and respondent No.1 was directed to decide and dispose of the aforesaid representations of the petitioners in accordance with law by

passing a reasoned and speaking orders within a period of 45 days from the date of receiving copy of said order.

5. The petitioners were initially engaged on Class III/Class IV post in the years 1992, 1995, 2005, 2006, 2009, 2010 etc., for sessions of the Council. They used to perform duties since their initial engagement as and when the Council was in session. The petitioners approached this Court by filing Writ Petition No.6004(SS) of 2020, as mentioned above, which was disposed of vide order dated 23.11.2020.

6. While the Writ Petition No.6004(SS) of 2020 was pending the respondents issued advertisement for filling up the post on Class III & Class IV in the Legislative Council on 17/27.09.2020. The petitioners, therefore, filed Writ Petition No.15991(SS) of 2020 with a prayer for quashing the said advertisement in relation to 5 posts of Class III and 3 posts of Class IV cadre. As noted above, both these writ petitions were disposed of vide order dated 23.11.2020.

7. Petitioners' representations for regularization have been considered and rejected vide impugned order dated 08.01.2021 taking note of the fact that services of the petitioners were requisitioned on daily wage basis to assist the regular employees because of the increased work load during the sessions of the Council. The petitioners were paid wages during session @ Rs.295/- per day for Class IV and @ Rs.366/- per day for Class III. Their appointment for session was without any advertisement, and it was a kind of casual employment as daily wager. As soon as session used to come to an end, their services would get terminated. It has been further said that if there was no requirement in a particular session, then such an employee would not be engaged as daily wager to assist the regular employee. It has also been said that services of the employees working in the Legislative Council are governed under Uttar Pradesh Legislative Council Secretariat (Recruitment and Conditions of Service) Rules, 1976, and there is no such provision under the Rules for regularization of daily wage employees engaged for the Session.

8. There is no dispute that the petitioners used to be engaged as Daily Wage employee for the session only on fixed remuneration as mentioned above. The petitioners were not paid any allowances except for fixed

remuneration. No appointment letter used to be issued for engaging daily wager for Legislative Council Session.

9. Reliance placed on Rule 33 of the Uttar Pradesh Legislative Council Secretariat (Recruitment and Conditions of Service) Rules, 1976 is misplaced. Rule 33 of the Rules, 1976 would read as under:-

"33. Probation -(1) Every person on substantive appointment to any post in the Secretariat shall be placed on probation for a period of two years.

(2) The period of probation shall be counted from the date of taking over charge of the office.

(3) Continuous service rendered in a temporary or officiating capacity on any post in the cadre or on any higher post may, at the discretion of the appointing authority, be taken into account in computing the period of probation.

(4) The period of probation may for sufficient reasons to be recorded in writing, be extended ordinarily up to one year. In every order extending the period of probation the exact date up to which it is extended shall be specified. In special circumstances, the period of probation may be extended for more than a year subject to the condition that the period of probation shall not be extended for more than two years."

10. From reading of the aforesaid Rule, it is evident that the same is in respect of the probation of an employee after he/she is regularly selected in accordance with the Rules. A person working during session as a daily wager cannot be said to be on probation, and there is no service rule which provides regularization of such an employee.

11. I also find no substance in the submission of learned counsel appearing for the petitioners that under Rule 49 of the Regularization Rules, 1976 read with notification dated 12.09.2016, the petitioners are entitled to be regularized.

12. It would be apt to extract Rule 49 of the Rules, 1976, which is as under:-

"49. Other conditions of service -(1) In regard to such matters as are not specifically covered by these rules, or orders or special orders made or issued thereunder, persons appointed in the Secretariat shall be governed by those rules, regulations and orders (with necessary modifications) which are applicable generally to Government servants

serving on equivalent posts in connection with the affairs of the State of Uttar Pradesh.

(2) In case of doubt, the Chairman shall decide, in accordance with rule

(a) the posts under Government which are equivalent to posts in the Secretariat,

(b) the rules, regulations and orders, applicable to servants under the Government and the modifications therein, which shall apply to equivalent in the Secretariat."

13. Regularization Rules are in respect of the employees working against Class III and Class IV posts on daily wage basis or work charge or contract basis. The petitioners have never been working continuously as daily wager or on work charge or contract basis. The petitioners were working during the Sessions only. Even if U.P. Regularization of Persons Working on daily wages or on work charge or on contract in government department on group 'C' and group 'D' posts (outside the purview of the UP Public Service Commission) Rules, 2016 can be considered to be applicable to the U.P. Legislative Council, the petitioners do not come within the purview of the regularization rules. So far as selection in respect of the impugned advertisement dated 17/27.09.2020 is concerned, this Court vide detailed judgment and order dated 12.04.2023 passed in Writ A No.36 of 2021 has upheld the said selection.

14. In view thereof, I find no substance in these writ petitions, which are hereby **dismissed**. However, it is provided that if during session there is any requirement of engaging daily wage employees of Class III or Class IV on fixed honorarium, the petitioners should be given preference as and when such requirement arises during Legislative Council Sessions.

(Dinesh Kumar Singh, J.)

Order Date:-03.07.2023/prateek