

Court No. - 8

Case :- WRIT - A No. - 7369 of 2012

Petitioner :- Moharram Ali

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Forest Lko. And Or

Counsel for Petitioner :- Pawan Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard learned counsel appearing for the accused-petitioner and Sri Yogendra Nath Verma, learned Standing Counsel appearing for the State.
2. Present petition under Article 226 of the Constitution of India has been filed seeking quashing of the order dated 04.05.2012 passed on a representation of the petitioner in compliance of the order dated 06.05.2011 passed in Writ Petition No.2628(SS) of 2004 instituted by the petitioner. Said writ petition was disposed of vide order dated 06.05.2021, which reads as under:-

"Heard learned counsel for the petitioner as well as the learned Standing Counsel and perused the record.

It is submitted by the learned counsel for the petitioner that the petitioner is working on daily wage basis on the post of Watcher. The State Government by Government Order dated 9.5.2005, had provided that all the daily wages employees working prior to cut off date 29.6.1991, shall be given minimum of the regular pay scale. By an interim order dated 24.5.2004, the opposite parties were also directed to pay minimum of the regular pay scale, but the petitioner has not been granted minimum of the regular pay scale.

It is also submitted by the learned counsel for the petitioner that the State Government by Government Order dated 8.9.2010 had taken a policy decision that all those daily wages employees who have been working in various departments/public undertakings/corporations on or prior to 29.6.1991 shall be considered for regularization and in that regard in case the posts are not available necessary information shall be sent for creation of the posts.

It is further submitted that several persons similarly situated to the petitioner and appointed subsequent to the appointment of the petitioner have been given minimum of the regular pay scale on the basis of the relevant Government Order, however, the petitioner has not been considered for payment of minimum of

the regular pay scale so far. The petitioner has also moved several representations in this regard, which are pending consideration.

Liberty is given to the petitioner to make a fresh representation before the opposite party no.3.

In view of the above, without entering into the merits of the case and with the consent of parties' counsel, the writ petition is disposed of finally with the direction to the opposite party no. 3, to consider and decide the claim of the petitioner and decide the representation in accordance with law, rules and regulations and the Government Orders, expeditiously, say within a period of three months from the date a certified copy of this order along with copy of representation is produced before him"

3. Representation of the petitioner for regularization has been rejected on the ground that the petitioner does not come within the purview of Uttar Pradesh Regularization of Daily Wages (Appointment on Group D Posts) Rules, 2001 inasmuch as the petitioner was not in continuous service from 29.06.1991 to 21.12.2001. As per the records, the petitioner did not work for 10 months between 29.06.1991 and 1992; 3 months in 1992-93; 11 months in 1993-94; 4 months in 1994-95, 6 months in 1999-2000 and 9 months in 2000-01. The petitioner did not work in 1995-96, 1996-97, 1997-98 and 1998-99.

4. It has also been found that the petitioner was involved in a criminal case being Range Case No.21/98-99.

5. Rule 4 of the Regularization Rules, 2001 reads as under:-

"4. Regularization 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 (b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment n permanent or temporary vacancy, as may be available in Group 'D post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders."

6. It appears that the petitioner used to be engaged as and when there was requirement for the work, which is evident from the facts as narrated in the

impugned order itself. As the petitioner does not come within the purview of regularization rules, this Court cannot issue any writ of mandamus for his regularization in Class IV post under 2001 Rules. In view thereof, I find no substance in the writ petition, which is hereby ***dismissed***.

(Dinesh Kumar Singh, J.)

Order Date :- 4.7.2023

prateek