

Court No. - 8

Case :- WRIT - A No. - 15429 of 2018

Petitioner :- Ayodhya Prasad Yadav

Respondent :- State Of Up Thru. Prin. Secy. Forest And Ors.

Counsel for Petitioner :- Mohd. Tabrez Iqbal, Faiz Ali Khan

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Mr. Mohd. Tabrez Iqbal, learned counsel for the petitioner, as well as Mr. Pankaj Srivastava, learned Additional Chief Standing Counsel for the respondents-State Authorities.

2. This petition under Article 226 of the Constitution of India seeks issuance of a writ of Mandamus commanding the respondents to consider the claim of the petitioner for regularization on Group-C post in accordance with The Uttar Pradesh Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in Government Departments on Group 'C' and Group 'D' Posts (Outside the Purview of Uttar Pradesh Public Service Commission) Rules, 2016 (hereinafter referred to as "Regularization Rules, 2016").

3. The petitioner was initially appointed as daily-wager on Group-D post in the year 1991; vide order dated 17.05.2003 issued by the Divisional Forest Officer, Forest Division, Shravasti, the petitioner was granted minimum of pay of Rs. 2550-18000 of Class-IV post. As of today, the petitioner is getting around Rs.7000/-. The petitioner's service was terminated by the Divisional Forest Officer vide order dated 08.03.2010 issued in compliance of the order issued by the State Government dated 03.03.2010 on the ground that the petitioner was *prima facie* responsible for delay in filing SLP before the Supreme Court against the order dated 22.03.1989 of this Court passed in Writ Petition No.3209 (M/S) of 1980.

4. Against the order of termination, the petitioner preferred Claim Petition No.1812 of 2010. The State Public Services Tribunal, Lucknow (for short "Tribunal") vide judgment and order dated 07.11.2003 set-aside the termination order on the ground that the same was by way of punishment, but no inquiry was held and, therefore, it was illegal.

5. Against the order passed by the Tribunal, the State Government preferred Writ Petition No.78 (S/B) of 2015, however, the said writ petition came to be dismissed vide order dated 07.09.2017.

6. In compliance of the order passed by the Tribunal and during the pendency of the writ petition, the petitioner was reinstated in service

on 19.11.2015. On 12.09.2016, the State Government promulgated the Rules, 2016, and now the petitioner is claiming regularization under the Rules, 2016. Rule-6 of the Rules, 2016, which being relevant, reads as under:-

(1) Any person who-

(i) was directly engaged or employed or deployed or working on daily wages or on work charge or on contract in a Government Department on Group 'C' or Group 'D' post (outside the purview of the Uttar Pradesh Public Service Commission) on or before December 31, 2001 and is still engaged or employed or deployed or working as such on the date of the commencement of these rules; and

(ii) possessed requisite qualifications prescribed for regular appointment for that post at the time of such engagement or employment or deployment on daily wages or on work charge or on contract, under the relevant service rules and, subject to the provisions of above mentioned rules 2 and 5,

shall be considered for regular appointment on Group 'C' or Group 'D' post (outside the purview of the Uttar Pradesh Public Service Commission) in permanent or temporary vacancy as may be available on the date of the 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.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and other categories, shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, as amended from time to time, and the orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of sub-rule (1), the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of service rules.

(4) The appointing authority shall, having regard to the provisions of sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of engagement or employment or deployment on daily wages, on work charge or on contract and, if two or more persons are engaged or employed or deployed together, from the order in which their names are arranged in the said engagement or employment or deployment order. The list shall be placed before the Selection Committee alongwith their character rolls and such other relevant records, pertaining to them, as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records, referred to in sub-rule (4), and if it considers necessary, it may interview the candidates also to assess their suitability.

(6) The Selection Committee shall prepare a list of selected candidates arranging their names in order of seniority and forward the same to the appointing authority."

7. Admittedly, the petitioner's appointment was on Class-IV post; he has been paid the minimum of the pay of Class-IV post; he was neither engaged on Class-III post nor he was ever paid minimum wage of Class-III post; therefore, the claim of the petitioner for regularization on Class-III post does not have any basis. Mere working on Class-III post would not entitle the petitioner to get regularized on Class-III post, though his initial appointment was on Class-IV post, and he was paid the minimum of salary of Class-IV post. However, expect for the period, during which the petitioner remained terminated, and his termination order was set-aside by the Tribunal, which was upheld by this Court, the petitioner remained out of employment on Class-IV post. For the period, the petitioner remained in employment because of termination order dated 03.03.2010, which was set-aside by the Tribunal, the petitioner should be treated to be in continuous service, and the period, for which he remained out of employment because of termination order, which came to be set-aside by the Tribunal against which the writ petition got dismissed, cannot be treated the petitioner to be out of service. Therefor, I find no substance in the submission advanced by Mr. Pankaj Srivastava, learned Additional Chief Standing Counsel, that since the petitioner remained out of employment since 03.03.2010 to 19.11.2015, he cannot be treated to be working continuously on Class-IV post.

8. Lastly, learned counsel for the petitioner submits that if this Court finds that the case of the petitioner for regularization on Class-C post is not covered under the Rules, 2016, this Court may direct the respondents to regularize service of the petitioner on Class-D post. Considering this submission of by the learned counsel for the petitioner, the respondents are directed to regularize service of the petitioner on Class-D post, if his case is otherwise covered under the Rules, 2016, treating his absence from 03.03.2010 to 19.11.2015 as continuity in service, within a period of two months from the date certified copy of this order is submitted/served.

9. ALLOWED.

[D.K. SINGH, J.]

Order Date :- 13.7.2023

MVS/-