

Court No. - 7

Case :- WRIT - A No. - 9578 of 2023

Petitioner :- Ritesh Mehrotra And Another

Respondent :- State Of U.P. Trhu. Prin. Secy. Deptt. Urban Development Lko. And 4 Others

Counsel for Petitioner :- Ghaus Beg

Counsel for Respondent :- C.S.C., Namit Sharma

Hon'ble Abdul Moin, J.

1. Vakalatnama filed today by Shri Shailendra Singh Chauhan, Advocate, on behalf of respondents no. 3 to 5 is taken on record.
2. Heard learned counsel for the petitioners, learned Standing Counsel for the respondents no. 1 & 2 and Shri Shailendra Singh Chauhan, learned counsel for the respondents no. 3 to 5.
3. With the consent of learned counsel appearing for the contesting parties, the writ petition is being finally decided.
4. The instant writ petition has been filed praying for following main relief(s):

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 23.8.2023 passed by the Chief Engineer in charge (opposite party No.4) on the basis of decision taken by the selection committee i.e. opposite party no.5 in its meeting held on 24.7.2023, 27.7.2023, 11.8.2023 and 19.8.2023, as contained in Annexure No.1 to the writ petition.

(ii) issue a writ, order or direction in the nature of certiorari quashing the impugned office order dated 26.8.2021 passed by the opposite party no.3, as contained in Annexure No.2 to this writ petition.

(iii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to consider case of the petitioners for regularization of their services on the post of Lighter/Porter (Class-IV) in the Street Light Department, Nagar Nigam, Lucknow in accordance to the provisions as contained under Rule-6 of the U.P. 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 the Uttar Pradesh Public Service Commission) Rules, 2016."

5. The contention of learned counsel for the petitioners is that both the petitioners were appointed prior to 31.12.2001 and were in service as on 12.09.2016 i.e. at the time of promulgation of Rules namely U.P. 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 the Uttar Pradesh Public Service Commission) Rules, 2016 (hereinafter referred to as the Rules, 2016). Subsequently their services were terminated on 08.12.2021.

6. It is contended that both the petitioners were appointed on contractual post, as such they are fully covered by the Rules, 2016. Earlier their cases for regularisation had been rejected.

7. It is contended that various contractual persons had approached this Court by filing writ petitions. Various judgements had been passed. Subsequent thereto various special appeals were filed which were decided of which the leading case was **Special Appeal No. 96 of 2018 in re: Umesh Chandra Yadav vs State of U.P. and others** decided on 23.09.2022, a copy of which is annexure 18 to the petition. While deciding the Special Appeal the Division Bench of this Court passed various directions of which one of the direction was that the case of all the appellants / petitioners shall be considered for regularisation in terms of provisions contained in the Rules 2016.

8. The petitioners also also filed Writ A No. 2071 of 2022 in re: Shiv Kumar and others vs State of U.P. and others which was clubbed with Writ A No. 1307 of 2022 in re: Rajesh Kumar

Chaube and others vs State of U.P. and others which was decided by means of a common judgement and order dated 05.01.2023, a copy of which is annexure 19 to the petition, whereby the writ court directed that the petitioners would also be entitled for the observations / directions contained in the judgement and order dated 23.09.2022 passed in the aforesaid special appeals leading case being **Special Appeal No. 96 of 2018 (supra)**.

9. For the sake of convenience the order dated 05.01.2023 is reproduced below:

"Heard.

Counsel for the parties are ad idem that the controversy involved in these petitions has been decided by a Division Bench of this Court in a bunch of appeals leading case being Special Appeal No. 96 of 2018 (Umesh Chandra Yadav vs. State of U.P. and Others) on 23.09.2022. The judgment is on record. These petitions be also decided in terms of the said judgment.

In view of the aforesaid, both these petitions are disposed of in terms of the aforesaid judgment dated 23.09.2022 passed in a bunch of appeals leading case being Special Appeal No. 96 of 2018 (supra), meaning thereby that the petitioners shall be entitled to the observations/directions contained therein with corresponding obligation upon the opposite parties.

At this stage, Mr. Namit Sharma, learned counsel for the Nagar Nigam says that this may be without prejudice to the rights of the Nagar Nigam to challenge the aforesaid judgment of the Division Bench before Hon'ble the Supreme Court.

It is made clear that this order is without prejudice to such rights."

10. On the basis of the aforesaid judgement, the petitioners staked their claim for consideration of regularisation under Rules 2016. By means of the orders impugned dated 23.08.2023, copies of which are annexure 1 to the petition, the

claim for regularisation has been rejected on the ground that no special appeal was filed in their case and as such they are not entitled for regularisation.

11. The contention of learned counsel for the petitioners is that the respondents have patently erred in passing the orders impugned in as much as the writ court vide judgement and order dated 05.01.2023 had already granted the benefit of the judgement passed in the Special Appeal No. 96 of 2018 to the petitioners and thus the respondents are required to consider this aspect of the matter which has not been considered by them while casually rejecting their claim for regularisation solely on the ground of no special appeal having been filed.

12. The further argument is that once the petitioners have already been granted benefit of the judgement of Special Appeal and also the judgement passed in the Special Appeal No. 96 of 2018 dated 23.09.2022 has already been affirmed with dismissal of special leave petition filed by the respondents vide **Special Leave Petition (Civil) Diary No. 18904 of 2023 in re: Nagar Ayukta Lucknow Nagar Nigam Lucknow U.P. & another vs Umesh Chandra Yadav & others** vide the order dated 05.07.2023, a copy of which is annexure 20 to the petition, consequently the respondents have patently erred in rejecting the claim of the petitioners for regularisation on the said ground.

13. On the other hand, the aforesaid factual and legal position is fairly admitted by Shri Shailendra Singh Chauhan, learned counsel appearing for the respondents no. 3 to 5.

14. Accordingly, keeping in view the aforesaid discussion, the writ petition is **allowed**. The orders dated 23.08.2023, copies of which are annexure 1 to the petition, are quashed. The

respondent no. 5 is required to consider the case of the petitioners for regularisation under Rules 2016 afresh keeping in view the discussion made above.

15. Let such a consideration be made within a period of four weeks from the date of receipt of a certified copy of this order.

Order Date :- 15.12.2023
J.K. Dinkar