



2024:UHC:6402-DB

Reserved on:14.06.2024

Delivered on:05.09.2024

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE MS. RITU BAHRI
AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL No.200 OF 2022

State of Uttarakhand & others ..Appellants

Versus

Gauri Dutt and others ..Respondents

With

SPA No.202 of 2022

SPA No.205 of 2022

SPA No.206 of 2022

SPA No.221 of 2022

SPA No.222 of 2022

SPA No.296 of 2022

SPA No.45 of 2023

SPA No.46 of 2023

SPA No.58 of 2023

SPA No.146 of 2023

Counsel for the appellant/State : Mr. C.S. Rawat, learned CSC, with Mr. Gajendra Tripathi, learned Brief Holder.

Counsel for the writ petitioner : Mr. M.C. Pant, Mr. Harendra Belwal, learned counsels.

JUDGMENT : (per Ms. Ritu Bahri, C.J.)

The facts of the present case are that out of the three petitioners, services of the writ petitioner nos.1 and 2 was regularized, and they were given a



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benefit of regularization notionally on the date of their superannuation i.e. on 31.05.2018 and 30.09.2017. However, the benefit of notional benefit of the regularization was not given to the writ petitioner no.3. He was retired on 31.01.2017.

2. Keeping in view the above fact, the learned Single Judge has rightly allowed the writ petitions, in paragraph 52 of the judgment passed by the learned Single Judge in WPSS No.910 of 2021, “Ganga Singh Vs. State of Uttarakhand and others” and connected matters, it has been observed that if juniors to the employees, who were appointed as daily wager has been regularized that could not be a valid reason for the State for not considering the regularization of those employees, who were appointed as a daily wager prior to them.

3. This aspect has been considered in detail in “Prem Ram Vs. Managing Director, Uttarakhand Pey Jal and Nirman Nigam, Dehradun and others” *2015 INSC 428*, dated 15.05.2015, by the Hon’ble



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Apex Court, and it had considered this aspect, where regularization was given to the juniors and denied to the senior daily wager. In paragraph nos.7, 8, 9 of the judgment, it was observed as under:-

“7. When the matter came up for hearing before this Court on 8th July, 2013, learned counsel for the respondent-Corporation was granted time to take instructions whether any scheme within the contemplation of para 53 of Umadevi (3) case (supra) had been formulated by the respondent-Corporation and in case no such scheme has been formulated, whether the Corporation is willing to formulate one. The matter again came up for hearing on 18th November, 2013. It was argued by Ms. Rachana Srivastava, counsel appearing for the respondent-Uttarakhand Pey Jal & Nirman Nigam that while the Nigam had passed a resolution adopting the scheme formulated by the State Government in terms of the directions of this Court in Umadevi (3) case (supra), the Government’s approval for such an adoption had not so far been received. She prayed for and was granted time to place on record a copy of the Government scheme adopted by the Nigam as also the resolution under which the same was adopted besides, a copy of the approval, if any, granted by the Government to such adoption. On 27th October, 2014, when the matter came-up once again for hearing, our attention was drawn to additional documents filed by the appellant from which it appeared that the persons who figured at serials no.78 to 82 at page 12 of the said additional documents had been regularized w.e.f. 1st July, 2003, although their entry into service was shown to be 6th of June, 1989 onwards. It was on that basis argued that persons junior to the appellant having been regularized in service, whereas the appellant could not have been deprived of a similar benefit simply because his services were illegally terminated. On behalf of the



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respondent-Jal Nigam it was, on the other hand, argued that there was a difference between cases of persons appearing at serial nos.78 to 82 and that of the appellant inasmuch as the former were work-charged employees while the appellant was appointed as a daily-wager. At the request of learned counsel for the respondent-Nigam the matter was adjourned by four weeks to enable the Nigam to file an additional affidavit as to whether regularization had been ordered after undertaking any screening/selection process and if so, on what terms and condition.

8. From the affidavit filed, in compliance with the directions issued by this Court, it appears that the Government of Uttarakhand had framed Regularization Rules 2011 for regularization of daily-wagers and temporary employees who had been appointed on or before 1st November, 2011 and had completed 10 years of continuous service by that date. The said Rules were then adopted by the Board of respondent-Jal Nigam in terms of resolution passed in its 12th Meeting and approval of the State Government for implementation of the said Rules in the Nigam sought under Managing Director's letter dated 3rd March, 2012 addressed to the Principal Secretary, Peyjal Nigam, Government of Uttarakhand. While the approval of the Government was still awaited, the Government appears to have framed fresh Regularisation Rules in supersession of the Rules of 2011. These Rules are said to be under challenge before the High Court of Uttarakhand at Nanital in which the High Court appears to have passed certain interim orders also. From the affidavits it is further evident that five persons named by the appellant appearing at serials no.78 to 82 of the list of juniors have been regularized in service. It is not in dispute that all these persons were appointed on dates subsequent to the date of appointment of the appellant. The respondent, however, has attempted to justify the regularization of juniors mentioned above on the ground that they had been appointed in work-charge establishment



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whereas the appellant herein was a daily-wager. We asked learned counsel for the respondent as to whether daily-wagers on the basis of their seniority or otherwise were brought on to the work-charged establishment and if there was no such practice or procedure followed, what was the basis on which the department would decide whether the person has to be engaged on a work-charged establishment or as a daily-wager. We must regretfully say that we did not get a satisfactory answer to that question nor does any of the several affidavits filed in these proceedings by the respondent-Jal Nigam point out a qualitative difference between daily-wager on the one hand and a temporary engagement on work-charged establishment on the other. If engagement in a work-charged establishment rest on a criterion, no better than the absolute discretion of the authority engaging them or the fortuitous circumstances of a vacancy or need in a work-charged establishment, then, there is indeed no difference between a daily-wager on the one hand and work-charged employees on the other. No distinction can resultantly be made between these two categories of employees for in essence, the nature of their engagement remains the same except that in the case of work-charged employees, the wages/emoluments appear to be borne from out of the allocation for the project in which they are employed while in the other case there is no such specific allocation of funds. The classification of work-charged and other employees to say the least remains wholly unsatisfactory at least for the purposes of the case in hand leaving no option for us but to treat the case of the daily-wagers and work-charge employees on the same footing when it comes to granting regularization to them.

9. If that be so, there is no denying the fact that the persons who were junior to the appellant, having been engaged much later than him, steal a march over him in terms of regularization in service while the appellant remained embroiled in litigation over what was



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eventually found to be an illegal termination of his service. It is true that the appellant has already superannuated. That does not, however, make any difference. What is important is that the appellant had been appointed as early as in the year 1988 and had by the time the decision of this Court in Umadevi's (3) case (supra) pronounced, already completed more than 10 years service. Government has formulated rules for regularization of such daily-wagers, no matter the same are the subject matter of a challenge before the High Court. What is noteworthy is that neither the State Government nor the Jal Nigam has resented the idea of regularization of those who have served for over a decade. The rules providing for regularization are a sufficient enough indication of that fact. We do not, therefore, see any impediment in directing regularization of the service of the appellant on the analogy of his juniors with effect from the date his juniors were regularized and for the release of all retiral benefits in his favour on that basis by treating him to be in continuous service till the date of his superannuation. We make it clear that this direction will not entitle the appellant to claim any amount towards arrears of salary based on such regularization."

4. Thereafter, a reference has been made to the judgment to the Hon'ble Supreme Court reported in 2019 (10) SCC 516, "Prem Singh Vs. State of Uttar Pradesh and others", and even in that case, as far as the observations made by the learned Judge with respect to the benefit of the regularization on attaining the age of the superannuation is concerned, the case is squarely covered in favour of the petitioners, who have



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a right to be regularized on the date of their superannuation to claim benefit of pension for the past services rendered as daily wagers.

5. Similar issue has already been decided by this Court in SPA No.940 of 2018, “State of Uttarakhand and others Vs. Balraj Singh Negi and others connected appeals”, in which, the Division Bench of this Court has modified the order challenged in the special appeals filed by the State to the effect that the benefit of the past service before regularization can only be given for the purposes of pension. The relevant paragraphs 9 and 10 are as under:-

“9) Keeping in view the judgments rendered by Hon’ble Supreme Court in Secretary, Minor Irrigation Department and others Vs Narendra Kumar Tripathi, (2015) 11 SCC 80, as well as in recently pronounced judgment in the case of Rashi Mani Mishra and others Vs State of Uttar Pradesh and others, 2021 0 Supreme (SC) 387, where the Hon’ble Supreme Court has consistently held that the seniority of a person has to be counted from the date of substantive appointment. His ad hoc appointment prior to the date of substantive appointment cannot be made ground to give him benefit of seniority. The only benefit which a person can take is that his services from ad hoc before he was substantially appointed or regularized will be counted for the benefit of pension.

