

Court No. - 2

A.F.R.

Case :- SPECIAL APPEAL No. - 96 of 2024

Appellant :- Ramesh Kumar Pathak @ Ramesh Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Horticulture
Civil Sectr. Lko. And Others

Counsel for Appellant :- Vishal Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. Heard.
2. By means of this appeal the appellant has challenged the judgment dated 05.04.2024 passed in Writ A No.2741 of 2024 which reads as under :-

"1. Heard Sri Vishal Kumar Upadhyay, the learned counsel for the petitioner, Sri Uttam Kumar Srivastava, the learned Standing Counsel appearing on behalf of the State and perused the records.

2. By means of the instant application filed under Section 226 of the Constitution of India, the petitioner has prayed for quashing of an order dated 13.02.2024, whereby the petitioner's request for granting the benefit of regularization with effect from 2003 instead of regularization with effect from the date of order dated 10.09.2010, has been rejected.

3. The petitioner's services on a Group-D post of Mali were regularized along with the services of six other employees by means of an order dated 10.09.2010, with effect from the date of passing of the order.

4. The petitioner and some other persons filed Writ-A No.3068 of 2011 seeking a direction to the opposite parties to regularize services of the petitioners with effect from 2001 when the relevant Regularization Rules were notified. The said writ

petition was disposed of by means of an order dated 01.11.2023 giving the petitioners liberty to file a fresh individual representation regarding their grievance.

5. Accordingly, the petitioner submitted a representation dated 25.11.2023 praying that the benefit of regularization of service be granted to him with effect from 2003 since when he is working against a vacant post. The said representation has been rejected by means of the impugned order dated 13.02.2024.

6. It is stated in the impugned rejection order that the petitioner used to work as a daily wage labour for rendering assistance to malis in taking care of plants and trees and he was given wages for the post he worked. The petitioner was not appointed as per the prescribed rules by issue of an advertisement, under a transparent process. The petitioner was paid minimum wages in compliance of the orders passed by this court with effect from the year 2003. The daily wagers Shiv Kumar and Gautam, who were senior to the petitioner have been regularized with effect from 11.09.2014 and 10.09.2016. Therefore, the Deputy Director rejected his representation holding that there was no ground for granting benefit of regularization to the petitioner with effect from 2003.

7. The learned counsel for the petitioner has placed reliance on the following passage of a judgment of a coordinate Bench of this Court in the case of Jag Lal and others Vs. Director, Horticulture, U.P.: 2003 (3) UPLBEC 2528:-

"25. Repeated directions were given by this Court in the order dated 12.12.1995, as well as subsequent orders passed in these writ petitions to give petitioners regular wages in the minimum of the pay scale and allowances. Respondents violated the orders and are facing action in contempt. The same Horticulture Department of the State Government, however, accepted the orders passed by the Lucknow Bench of this Court in group of cases led by Writ Petition No. 6378 (S/S) of 1997, between Bechan All and Ors. v. Government of U.P., and that the Director of Horticulture by his order dated 17.2.2001 annexed in Annexure-I in Writ Petition No. 37136 of 1999, directed payment of minimum of pay scale to the daily wages in the department. These petitioners were, however, arbitrarily discriminated. Having accepted similar orders passed by

Lucknow Bench the Department could not have ignored the claims of the petitioners supported by similar orders. All the petitioners are, therefore, entitled to regular pay scale with effect from 17.2.2001 i.e., the date when State Government accepted the claims of similarly situated employees."

8. The aforesaid judgment nowhere lays down the law that a person who has worked on daily wages can be regularized with retrospective effect. Therefore, the aforesaid judgment is of no help to the petitioner.

9. The petitioner has failed to establish any legal right for giving him the benefit of regularization of services with effect from 2003. The writ petition is without any force. It is accordingly dismissed."

3. The petitioner herein had initially filed a writ petition bearing Writ Petition No.4142 (S/S) of 1995 for issuance of writ of mandamus to opposite party to allow the petitioners to continue to work without creating any artificial break and to pay equal wages to them, which are being paid to the regularly absorbed persons and to consider the petitioners for their regular absorption taking into account their long tenure of engagement and not to appoint any one without absorbing the petitioners on the regular side. The said petition was decided on 05.04.1999 in the following terms :-

"The petitions by the present petition under Article 226 of the constitution of India have prayed for issue of a writ of mandamus to command the opposite parties to allow the petitioners to continue to work without creating any artificial break and to pay equal wages to the petitioners which are being paid to the regularly absorbed persons and to consider the petitioners for their regular absorption taking into account their long tenure of engagement and not to appoint any one without absorbing the petitioners on the regular side. The petitioners are continuing till the present day and they are all

working on the Muster-roll prepared by the opposite parties and they have completed 240 days and they are entitled for regularization. The further contention of the petitioners is that the opposite parties have adopted a practice of engaging the persons on the basis of daily wages and after 2-3 years they have absorbed such daily wages employees in the regular cadre on the post of Mali while the petitioners have not been absorbed on the regular cadre and are being paid Rs 33.00 per day only. Since the petitioners are continuing in service itself indicates that the vacancies is of permanent nature are available against which the petitioners can be engaged if they are not being paid the minimum wages prescribed under the minimum wages Act. They have further submitted that on account of poverty and the lack of job opportunities the petitioners are working on such a meager amount.

A counter-affidavit has been filed in which it has been stated that whenever work is available then the daily wages labourers are engaged from time to time and they are being paid their wages daily. They are not being appointed against any of the vacant post. Only petitioners are being engaged to work in the Garden/Farm/Nursery as daily wage labourers, and they are being paid wages at the rate fixed by the State Government from time to time.

Learned Counsel for the petitioners submitted that since the petitioners are working from the years 1979,84,1986 and 1997, they have become over age and they are being continuously engaged shows that the work is available with the petitioners.

In these circumstances, the respondents are directed to consider the case of the petitioners for giving them regular appointment and for considering them in regular employment on Class IV posts, a seniority list of daily wages be prepared and no person from the outside shall be given regular appointment till the petitioners are absorbed.

With the aforesaid observations, this writ petition is disposed of finally."

4. This judgment was never put to challenge by the opposite parties.

5. The case of the petitioner in said petition was that he along with others were initially engaged in the year 1986 and had been continuing since then.
6. Be that as it may, the case of the petitioner was considered in terms of the above judgment, however, the same was rejected vide order dated 05.04.1999.
7. The said order was put to challenge by the petitioner along with others in Writ Petition No.275 (S/S) of 2000 wherein an interim order was passed on 20.01.2000 allowing the petitioners to continue to work and to pay minimum of pay scale and also to consider them for regularization within a period of three months. Ultimately the opposite parties in compliance of such order granted minimum of pay scale to the petitioner along with others vide order dated 22.04.2003.
8. Thereafter on 14.07.2004 another order was passed by the concerned opposite party of the said petition rejecting the claim of the petitioner along with others for regularization. This happened during pendency of Writ Petition No.275 (S/S) of 2010.
9. The petitioner filed another writ petition along with others bearing Writ Petition No.4078 (S/S) of 2004 challenging the order dated 14.07.2004 referred hereinabove. The said writ petition was connected with the earlier writ petition, filed by

the petitioner, and both of them were decided by a common judgment dated 15.02.2010 which reads as under :-

"Writ Petition No.275 (SS) of 2000, has been filed for quashing the oral disengagement order 1.12.1999 and allowing the petitioners to work and pay them minimum scale, whereas the order passed by the opposite party No.2 dated 14.7.2004 has been assailed in Writ Petition No. 4078 (SS) of 2004.

Heard learned Counsel for the parties.

Learned counsel for the petitioners submit that all the petitioners were engaged during the period 1979 to 1987. Since then they are working intermittently, but continuously and have been paid wages. He submits that the petitioners and identically situated employees in the Forest Department have preferred writ petitions, on being disengaged, in this Hon'ble Court as well as at Lucknow Bench of this Hon'ble Court and by means of judgment and order dated 24th May, 1996, passed in Writ Petition No. 5442 (SB) of 1995 of this Court, this Court has directed for regularization of services of the daily wage employees. The said judgment and order was assailed by the State of U.P. before the Apex Court and the Apex Court dismissed S.L.Ps so preferred by the State of U.P. During the pendency of the aforesaid proceedings, the case of the State of U.P. and others Versus Putti Lal reported in (1998) 1 UPLBEC 313, in respect of Forest Department employees, was decided by the Apex Court. In the said case of employees of Forest Department, this Court has provided, as an interim measure, for placing the employees in the minimum of the regular pay scale. The Apex Court while disposing of the SLP has observed as under :

"Therefore, benefits of the said judgment of the learned Judge have to go to all the Daily Wagers/Muster Roll employees. It is admitted by the respondents that the pay at the rate as directed by the learned Judge in the said case, is being paid to those Daily Wagers who are members of Kumaun Van Shramik Sangh Centre and such payment is not being made to any other daily wagger working anywhere in the State including in Kumaun hills. It is also admitted that the Scheme as directed by the learned Judge has not been framed by the Government so far. The judgment of the learned Judge is binding on the Government and its functionaries. They are, therefore, bound to pay in terms of the said judgment to every daily rated

labourers/muster roll employees and the Government is also bound to frame scheme for regularization of their service."

Thereafter, the State of U.P. has framed Uttar Pradesh Regularization of Daily Wages Appointment on Group 'C' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998 for regularization of category 'C' employees in the year 1998 and the Uttar Pradesh Regularization of Daily Wages Appointments on Group 'D' Posts Rules, 2001 for regularization of category 'D' employee in the year 2001. On perusal of Rule 4 of the aforesaid Rules, it will be abundantly clear that a daily wage employee, who has been working on the cut off date, that is, 30th June, 1991 and has been working continuously on the proclamation of the notification of the aforesaid Rules shall be entitled for consideration of regularization of his services.

The aforesaid argument has been rebutted by the learned Standing Counsel on the grounds that the petitioners have working intermittently and not continuously from the cut off date till coming into force the aforesaid Rules in the year 2001. le 4 of the Rules, 2001 has been interpreted by this Hon'ble Court in the case of Visheshwar vs. Principal Secretary, Forest Anubhag-3 and others (writ petition No. 47568 of 2002, decided on 29.11.2004) and this Court in the said case has held that in case the employee is working on the cut off date and is continuing as such on daily wage post on the date of proclamation of the notification of the aforesaid Rules, he is entitled for regularization, inspite of the fact that the employee worked intermittently.

In the instant case, the petitioners, as stated by counsel for the petitioners, were engaged during the period 1979 to 1987, though have worked intermittently, but on the cut off date i.e. 26th June 1991 as provided under the Rules they were working as daily wagers and further on coming into force of the Rules, 2001 and as such, in view of the provisions of Rule 4 of the said Rules, which specifically provides that the daily wager employees, who has been working on the cut off date and on the proclamation of the notification are entitled for consideration of regularization of his services and as such the petitioners are entitled for consideration of regularization of his services in view of the provisions of Rule 4 of the aforesaid Rules as interpreted by this Court in the case of Visheshwar (Supra).

While entertaining the writ petition No. 275 (SS) of 2000, this Court, vide order dated 20.1.2000 directed the opposite parties to allow the petitioners to continue to work and shall be paid minimum of the pay scale and shall also be considered for regularization within a period of three months from the date of production of a certified copy of this order.

In compliance of this Court's Order dated 22.1.2000, the case of the petitioners was considered and rejected by the impugned order dated 14.7.2004 is rejected.

Considering all the aspects of the matter in view, the opposite parties are directed to consider the case of the petitioners for regularization, under the U. P. Regularization of Daily Wages Appointments on Group 'D' Rules, 2001, ignoring the order dated 14.7.2004 passed in Writ Petition No. 4078 (SS) of 2004, within a maximum period of three months from the date of presentation of a certified copy of this order.

With these observations, both writ petitions succeed and are allowed."

10. This judgment was never put to challenge by the opposite parties.
11. Now in compliance of this judgment, the services of the petitioner along with others were regularized vide order dated 10.09.2010, copy of which is on record. The date of the order is incorrectly mentioned in the impugned judgment. It appears that the services were regularized w.e.f. passing of the said order, i.e. 10.09.2010. The order itself speaks of the U.P. Regularization of Daily wages Appointments on Group D Post Rules 2001 (hereinafter referred to as '**Rules 2001**'), therefore, obviously the consideration was made as per the said Rules 2001.

12. The petitioner being aggrieved immediately filed a writ petition bearing Writ Petition No.3068 of 2011 seeking regularisation of his services from 2001. This petition was disposed of on 01.11.2023 by this Court in the following terms :-

"1. Heard learned counsel for the petitioners and learned State counsel for opposite parties.

2. This petition has been filed seeking direction to opposite parties to regularize the services of petitioners w.e.f. 2001 when the Regularization Rules, applicable upon the petitioners, were notified. Arrears of salary has also been prayed. By means of amendment, petitioners have also challenged the order dated 10.10.2010 whereby petitioners' services have been regularized with the prospective effect.

3. It has been submitted by learned counsel for the petitioners that petitioners were initially engaged in service between 1979 to 1986 in the Horticulture Department whereafter they have been continuously performing their duties. It is submitted that earlier petitioners' regularization was rejected but subsequently their services have been regularized vide order dated 10.10.2010 without taking into account services rendered by the petitioners earlier on daily wage basis.

4. For the said grievance, petitioners have already submitted representation to the authorities concerned but seek liberty to file a fresh representation.

5. Considering the fact and without entering into the merits of the case, liberty is granted to the petitioners to file fresh individual representations regarding their grievance which shall be considered and decided by the opposite party No.3- Deputy Director Horticulture, Faizabad Mandal, Faizabad within a period of eight weeks from the date said representation is submitted.

6. With the aforesaid directions, petition stands disposed of."

13. The said order was subsequently corrected on 08.11.2023 in the following terms :-

"I.A. No.22 of 2023

1. This application has been filed seeking correction of the order dated 1st November, 2023. It has been submitted that date of impugned order has wrongly been indicated.

2. The errors indicated in the judgement are purely typographical in nature and, therefore, order dated 1st November, 2023 is corrected to the extent that date of impugned order indicated as 10th October, 2010 in paragraphs 2 and 3 shall be read as 10th September, 2010

3. Application is allowed.

4. Office is directed to issue corrected copy of the order dated 1st November, 2023."

14. The matter remained pending for almost 12 years before this Court but for no fault of the appellant-petitioner.
15. In the aforesaid writ petition a claim was raised for regularization w.e.f. 2001, i.e. the cut off date mentioned in Rules, 2001. In pursuance of the aforesaid judgment dated 01.11.2023, the claim of the petitioner was considered along with others and by an order dated 13.02.2024 the claim was rejected firstly on the ground the minimum of the pay scale was granted to the petitioner in the year 1999 under the orders of the High Court and also seniors to him were also getting the same. Moreover the seniors to the petitioners, their services had been regularised on 11.09.2014 and 06.10.2015. In the earlier part of the order it is also mentioned that the initial engagement of the petitioner was on casual basis. This order was put to challenge in Writ-A No.2741 of 2024.

16. The learned Single Judge in his wisdom has dismissed the aforesaid writ petition on the ground that the initial appointment of the petitioner on daily wages was for assisting the Malis and he was given wages for the post he worked upon, but the appointment was not as per the prescribed Rules. This reasoning is not sustainable as the learned Single Judge has lost sight of the fact that based on the same appointment the services had been regularized in 2010 as already referred hereinabove, therefore, this ground was neither open to the opposite parties before the Writ Court nor to the Writ Court for dismissal of the writ petition. The other ground discussed by the learned Single Judge is that seniors to the appellants-petitioners, namely, Shiv Kumar and Gautam, their services had been regularised on 11.09.2014 and 10.09.2016. In our opinion, this could hardly be a ground for rejecting the claim of the appellant-petitioner by the opposite parties in their writ petition as also by the Writ Court. In fact, the seniors could have very well claimed regularisation from the date of regularisation of their juniors or for that matter they could have claimed regularisation of their services if otherwise it was permissible from 2001 when the regularization rules came into force, but if they had been sitting over the matter and sitting over their rights, how the appellant-petitioner can be deprived of consideration of his claim as aforesaid. Whether the claim would ultimately be acceptable or not is a different matter, but

he could not have been denied consideration of his claim to seek regularisation since 2001.

17. The other reasoning given by the learned Single Judge is that the judgment referred in its order does not lay down the law that a person who has worked on daily wages can be regularized with retrospective effect, however, this reasoning is also not sustainable. The learned Single Judge lost sight of the fact that the petitioner has been litigating ever since 1999 continuously as already narrated hereinabove. Once the services were regularised on 10.09.2010, he immediately raised an objection by filing a writ petition and thereafter also he has been agitating the matter before the Court. It is not a case where he accepted his regularisation from 10.09.2010 without any demur and filed a writ petition belatedly but the case is that he immediately came to the Court. It was in fact an obligation of the concerned authority to consider the claim of eligible persons in 2001 when the Rules of 2001 came into force if the vacancies were existing and it is the case of the appellant that this was not done. The appellant-petitioner's case was that the consideration for regularisation is belated, therefore, resulting in a belated order of regularization. It should have been considered in 2001.

18. Most important it is not a case of consideration for regularisation with retrospective effect rather it is a case of being considered for regularisation from the date on which as

per the appellant-petitioner's understanding he became eligible for consideration in view of Rule 4 of the Rules 2001, which reads as under :-

"4. Regularisation 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 in 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.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens 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 the service rules.

(4) The Appointing Authority shall, having regard to the provisions of sub-rule (1), prepare an eligibility list of the candidates, arrange in order of seniority as determined from the date of order of appointment on daily wage basis and if two

or more persons were appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with such relevant records pertaining to the candidates, 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.

(6) The Selection Committee shall prepare a list of selected candidates in order of seniority, and forward the same to the Appointing Authority."

19. The said rule clearly provides the eligibility conditions for consideration and it clearly stipulates that if a vacancy is existing on the date of promulgation of those rules and before making any regular appointment such persons who are eligible under the said rules would be considered for regularisation. It is in this light that the appellant -petitioner claims a right of consideration of his services for regularization w.e.f. 2001, i.e. from the cut off date (29.06.2001) mentioned in the said Rules 2001 and also challenges the order passed by the opposite parties denying the claim which according to him is contrary to the Rules. The learned Single Judge has lost sight of this provision in the Rules 2001.
20. In fact, as we find that the reasoning given by the concerned official opposite party for rejecting the claim is also not sustainable, in fact, the concerned authority should have considered the same in the light of the Rules 2001 and thereafter should have taken a considered decision and the

consideration had to be in accordance with the Rules 2001 and the law on the subject, which has not been done as already discussed hereinabove, and as it is not the case of the opposite parties at least as of now that there was no vacancy existing on the date of coming into force of the Rules 2001 against which the petitioner could have been considered, therefore, while we set aside the judgment of the Writ Court, we also set aside the order impugned in the writ petition out of which this appeal arises and direct the concerned respondent no.3 to take a fresh decision in the matter in the light of the observations made hereinabove.

21. The writ petition and appeal are **allowed** in the aforesaid terms.

Order Date :- 7.5.2024

Anand Sri./-

(Om Prakash Shukla, J.) (Rajan Roy, J.)