

Court No. - 6

Case :- WRIT - A No. - 21573 of 2018

Petitioner :- Hareram Gupta

Respondent :- State Of U.P. Thru. Secy. Revenue And Anr.

Counsel for Petitioner :- Suresh Chandra Srivastava, Amrendra Nath Tripathi, Sachin Srivastava, Sushrut Pandiya

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.

2. Instant writ petition has been filed praying for the following main reliefs:-

"(i) To issue a writ of mandamus commanding the opposite parties to absorbed the petitioner on the post of peon in the department of nazarat against any one vacancy out of 23 vacancies as a IVth class employee w.e.f due date with all consequential benefits.

(ii) To issue a writ of mandamus commanding the opposite parties to ban on appointments if any be not given effective.

(iii) To issue a writ of mandamus commanding the opposite parties not to take into consideration of ban on appointment of IVth class employee so far as petitioner is concerned and further to quash the impugned office order dated 06/02/2010 contained in Annexure no. 2 to relating the petitioner by a writ of certiorari."

3. The contention of learned counsel for the petitioner is that the petitioner has been working on a Daily Wage basis on the post of 'Peon' since the year 1997. Aggrieved against non regularization of services, the petitioner had filed Writ Petition No. 6910 (SS) of 2004 Inre; Hareram Gupta Vs. State of U.P and Ors and this Court vide judgment and order dated 24.11.2004, a copy of which is annexure 3 to the writ petition disposed of the writ petition with the direction to the District Magistrate, Lakhimpur Kheri to consider the petitioner's case in accordance with law for absorption. The claim of the petitioner was rejected vide order dated 30.04.2005, a copy of which is annexure 4 to the writ petition. Being aggrieved, the petitioner filed Writ Petition No. 940 (SS) of 2009 Inre; Hare Ram Gupta Vs. State of U.P and Ors and this Court vide judgment and order dated 06.02.2009, a copy of which is annexure 5 to the writ petition disposed of the writ petition with the direction to the respondents to consider the claim of the petitioner for regularization in accordance with law, if he fulfills all the requisite qualification and there is vacancy on the a Class IV post.

4. In pursuance thereof, the claim of the petitioner has again been rejected vide order dated 06.02.2010, a copy of which is annexure 2 to the writ petition

primarily on the ground that there is a ban for appointment and that it has not been found feasible to regularize the petitioner in accordance with rules.

5. The contention of learned counsel for the petitioner is that the respondents have failed to consider two aspects of the matter namely that on 12.09.2016, 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 the Uttar Pradesh Public Service Commission) Rules, 2016 (hereinafter referred to as "Rules, 2016") has been issued which provides for regularization of persons provided they have been directly engaged or employed or deployed on daily wage on or before 31.12.2001 and are still engaged on the commencement of these rules i.e 12.09.2016.

6. The contention is that the petitioner fulfills both the conditions as have been prescribed in the Rules, 2016 and thus there cannot be any occasion for non consideration of the claim of the petitioner in accordance with the Rules, 2016.

7. So far as the alleged ban on appointment as has been indicated in the order impugned dated 06.02.2010 is concerned, learned counsel for the petitioner has invited the attention of this Court towards the orders dated 15.03.2012 & 18.04.2012, copies of which have been filed as annexures CA 2 & CA 3 to the counter affidavit to indicate that although a ban has been imposed for direct recruitment on a Class IV post yet the said ban makes an exception to those cases where the writ Court has issued directions. Thus, it is contended that once the petitioner is perfectly eligible for being considered for regularization under Rules, 2016 consequently, the ban may not stand in his way for being considered for regularization. It has also been contended that the vacancies are lying with the respondents as per the information given under the Right To Information Act, 2005 dated 31.08.2012, a copy of which is annexure 8 to the writ petition.

8. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit has justified the order impugned dated 06.02.2010 on the ground that the claim of the petitioner for regularization had not been found in accordance with the earlier rules and that on account of the ban which has been imposed by the State Government, the petitioner cannot be appointed/regularized.

9. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the records it emerges that the petitioner was appointed on a Daily Wage basis in the year 1997. Twice he has approached this Court praying for regularization of his service and both the occasions, the claim of the petitioner for regularization has been rejected the last rejection being dated 06.02.2010.

10. Perusal of the rejection order dated 06.02.2010 would indicate that primarily the claim of the petitioner for regularization has been rejected on the ground of a ban being imposed by the State Government for making any appointments on a Class IV post.

11. Without entering into the arena as to whether the said ban would also be applicable with respect to cases of regularization but considering that both the orders per which the alleged ban has been imposed i.e 15.03.2012 & 18.04.2012 clearly carve out an exception for consideration where the directions have been issued by the writ Court and further with the promulgation of Rules, 2016 which contains two conditions for the purpose of consideration of a claim for regularization namely a person having been appointed on or before 31.12.2001 and being still in service as on date of promulgation of the rules i.e 12.09.2016 and admittedly, the petitioner having been appointed in the year 1997 and there being no dispute of he continuing in service on the date of promulgation of rules i.e 12.09.2016 as such, the instant writ petition is disposed of with the direction to the respondent no. 2 i.e District Magistrate, Lakhimpur Kheri to consider the claim of the petitioner for regularization in accordance with the Rules, 2016.

12. As an abundant precaution it is provided that the alleged ban dated 15.03.2012 & 18.04.2012 would not be considered by the respondents as a direction is being issued by this Court to the respondent no. 2 to consider the claim of the petitioner for regularization in accordance with the Rules, 2016.

13. Let such consideration be done in accordance with law and the Rules, 2016 within a period of two months from the date of receipt of a certified copy of this order.

Order Date :- 19.4.2024

Pachhere/-