

Court No. - 6

Case :- WRIT - A No. - 5382 of 2023

Petitioner :- Munshi Lal

Respondent :- State Of U.P. Thru. Prin. Secy. Forest Deptt.
And 2 Others

Counsel for Petitioner :- Prem Chandra Chauhan, Kashi Ram

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner as well as learned Standing counsel for the State-respondent(s).
2. With the consent of learned counsel appearing for the contesting parties, the writ petition is finally being decided.
3. The instant petition has been filed challenging the order dated 23.03.2023, a copy of which is annexure 1 to the petition, whereby the claim of the petitioner for regularization has been rejected by the respondents.
4. The contention of the learned counsel for the petitioner is that the petitioner is working under the respondents as a Daily Wager Mali since the year 1994. The petitioner had earlier staked his claim for being regularized which had been rejected by the respondents vide orders dated 28.02.2022 & 15.03.2022.
5. Being aggrieved by both the orders, the petitioner had filed **Writ A No.2887 of 2022 in Re: Munshi Lal Vs. State of U.P. and Others** before this Court. This court vide judgment & order dated 02.02.2023, a copy of which is annexure 9 to the petition, quashed the orders by which the claim of the petitioner for regularization had been rejected and held that the petitioner is covered with the Uttar Pradesh Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in

Government Department 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"**) and the respondents were required to pass appropriate orders with regard to his regularization.

6. In pursuance thereof, the order impugned dated 23.03.2023 has been passed by the respondents whereby the claim of the petitioner for regularization has been rejected.

7. A perusal of the order impugned would indicate that two reasons have prevailed upon the respondents while rejecting the claim of the petitioner for regularization namely (a) that the petitioner had not been in continuous service neither he is working against a regular Group 'D' post and (b) keeping in view of the judgment passed by the Hon'ble Supreme Court in **SLP (C) No.10519 of 2020 in Re: Vibhuti Shankar Pandey Vs. State of Madhya Pradesh and Another** dated 08.02.2023, as the petitioner has not been appointed by the competent authority against the regularly sanctioned post consequently, he cannot be regularized.

8. The argument of learned counsel for the petitioner is that the Rules, 2016, more particularly, Rule 6(1) do not indicate anywhere of a person to be considered for regularization to have been in continuous working right since his appointment rather the Rule only stipulates that any person who has been appointed on or before 31.12.2001 and is engaged or employed or deployed or working as such on the date of commencement of these rules i.e. 12.09.2016 would be eligible for regularization provided he possesses the requisite qualification for regular appointment.

9. The contention is that when the writ Court vide judgment &

order dated 02.02.2023 held the petitioner as being covered by the Rules, 2016 as such, the respondents have patently erred in rejecting the claim of the petitioner on the aforesaid two grounds and thus, it is prayed that the said order be quashed and a direction be issued to the respondents for regularization of the petitioner.

10. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit argues that the grounds that have prevailed upon the competent authority while rejecting the claim of the petitioner for regularization namely (a) that the petitioner had not been in continuous service neither he is working against a regular Group 'D' post and (b) keeping in view of the judgment passed by the Hon'ble Supreme Court in **SLP (C) No.10519 of 2020 in Re: Vibhuti Shankar Pandey Vs. State of Madhya Pradesh and Another** dated 08.02.2023, as the petitioner has not been appointed by the competent authority against the regularly sanctioned post consequently, he cannot be regularized, are legally sustainable and as such the petitioner is not entitled for regularization.

11. Having heard the learned counsels for the parties and perused the record, it emerges that the petitioner being aggrieved against rejection of his claim for regularization, despite being claiming to have been working as Mali since the year 1994, had approached this Court. This Court vide judgment & order dated 02.02.2023 had quashed the orders by which the claim of the petitioner for regularization had been rejected and held that the petitioner is covered by the Rules, 2016 and the competent authority was required to pass an appropriate order pertaining to the regularization of the petitioner within a period of two months.

12. In pursuance thereof, the claim of the petitioner has been

rejected on the grounds namely (a) that the petitioner had not been in continuous service neither he is working against a regular Group 'D' post and (b) keeping in view of the judgment passed by the Hon'ble Supreme Court in **SLP (C) No.10519 of 2020 in Re: Vibhuti Shankar Pandey Vs. State of Madhya Pradesh and Another** dated 08.02.2023, as the petitioner has not been appointed by the competent authority against the regularly sanctioned post consequently, he cannot be regularized.

13. So far as the ground (a), of the petitioner not being in continuous service since his appointment, is concerned, the said issue is not longer *res integra* as having been considered by this Court in **Writ Petition No.19047(S/S) of 2018 in Re: Munnu Lal Vs. State of U.P. and Others** decided on 16.07.2021 wherein this Court has held as under:

"Having heard learned counsel for the parties and having perused the records, what comes out from perusal of the impugned order dated 22.03.2018 is that the case of the petitioner for regularization under 2016 Rules has been rejected solely on the ground that in terms of 2016 Rules the petitioner was not in continuous employment since 31.12.2001 to 12.09.2016. It is not the case of the respondents that the petitioner was not employed prior to 31.12.2001 or was not in engagement on 12.09.2016 i.e. the date of promulgation of 2016 Rules.

So far as the engagement of the petitioner prior to 31.12.2001 is concerned, the respondents themselves in the earlier order dated 25.06.2009 have admitted that the petitioner was engaged in June 1988 till February 1992 and thereafter from July 1999 to September 1999 and was also engaged subsequent thereto. Thus, the engagement prior to 31.12.2001 is admitted by the respondents. There is also nothing on record to indicate that the petitioner was not in engagement as on 12.09.2016. Rule 6(1) of 2016 Rules for the sake of convenience is reproduced below:-

"6. (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."

Thus, it is apparent that 2016 Rules are applicable on those persons who are engaged prior to 31.12.2001 and are still in engagement or employed on the date of commencement of 2016 Rules i.e. 12.09.2016 and also possess requisite qualifications prescribed for regular appointment. Certain other conditions are also mentioned therein.

A perusal of the impugned order would indicate that the respondents have not indicated that the petitioner is not qualified for being regularized on the said post rather the only ground of rejection is that he was not in engagement continuously from 31.12.2001 to 12.09.2016. As already indicated above, Rule 6(1) of 2016 Rules does not contain any such stipulation of being in continuous engagement for a particular period. Thus, it is apparent that the case of the petitioner for regularization has wrongly been rejected by the respondents.

Taking into consideration the aforesaid, the writ petition deserves to be allowed and is hereby allowed. A writ of certiorari is issued quashing the order dated 22.03.2018, a copy of which is Annexure-1 to the writ petition. A writ of mandamus is issued to the respondents to consider the case of the petitioner for regularization in accordance with 2016 Rules within a period of two months from the date of receipt of a certified copy of this order."

14. From a perusal of the judgment of this Court in the case of **Munnu Lal (supra)**, it emerges that this Court after considering the provision of the Rule 6(1) of the Rules, 2016 has held that the only condition as stipulated in Rule 6(1) of the Rules, 2016 is that a person should be in engagement or employment as on date of the promulgation of the Rules i.e. 12.09.2016 and should have been appointed on or before 31.12.2001. The said Rule 6(1) of the Rules, 2016 do not contain any stipulation of a person being in continuous engagement and consequently, the rejection of the claim of the petitioner on the ground (a) cannot be said to be legally sustainable in the eyes of law.

15. So far as the ground (b) is concerned i.e. keeping in view of the judgment of Apex Court in the case of **Vibhuti Shankar Pandey (supra)** the petitioner has not been appointed by the competent authority and consequently could not be regularized, it would be suffice to state that the Rules, 2016 do not stipulate anywhere of the appointment of the Daily Wager or a work charge employee or a contractual employee to have been made by the competent authority. Even otherwise, the Apex Court in the case of **Vibhut Shankar Pandey (supra)** was considering the case pertaining to the State of Madhya Pradesh, wherein in the instant case it is the Rules, 2016 which have been issued and has given a right to the petitioner to stake his claim for regularization and this Court vide judgment and order dated 02.02.2023 has held the petitioner to be covered under the Rules, 2016. Thus ground (b) as taken by the respondents while rejecting the claim of the petitioner for regularization is also not sustainable in the eyes of law.

16. Keeping in view of the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 23.03.2023, a copy of which is annexure 1 to the petition, is **quashed**. The respondents are directed to consider the claim of the petitioner for regularization in terms of the Rules, 2016 keeping in view the judgment of this Court dated 02.02.2023 as well as the discussion made above. Let such consideration be done within a period of six weeks from the date of the receipt of the certified copy of this order.

Order Date :- 30.4.2024
S. Shivhare