

Court No. - 17

Case :- WRIT - A No. - 9144 of 2023

Petitioner :- Hasan Zia

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

Counsel for Petitioner :- Ghaus Beg

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

Hon'ble Manish Mathur, J.

1. Heard Mr. Ghaus Beg, learned counsel for petitioner, learned State Counsel for opposite party nos. 1 & 2 and Mr. Sankalp Dewari, learned counsel for opposite party nos. 3 to 5 whose supplementary counter affidavit filed today is taken on record.

2. Petition has been filed challenging order dated 23.08.2023 whereby petitioner's representation for regularization of service has been rejected primarily on the ground that he was a minor at the time when he was engaged in service on contractual basis and that he did not make available any order of status quo passed in Special Appeal No. 315 of 2018.

3. It has been submitted that earlier petitioner had challenged Government order dated 23.07.2012 insofar as it provided for termination of contractual services of employees. The aforesaid petitions were connected with other petitions and were thereafter dismissed vide judgment and order dated 24.05.2018 whereagainst a number of special appeals were filed with petitioner's special appeal bearing No. 315 of 2018 being connected with leading Special Appeal No. 96 of 2018, **Umesh Chandra Yadav versus State of U.P. and others**. The aforesaid special appeal was thereafter allowed by means of judgment and order dated 23.09.2022 and Special Leave Petition (Civil) Diary No. 18904 of 2023 thereagainst was also dismissed vide order dated 05.07.2023.

4. It is submitted that during pendency of special appeal, petitioner's services were terminated vide order dated 08.12.2021, which was challenged in Writ-A No. 1307 of 2022 and was disposed of vide order dated 05.01.2023 granting benefit of the judgment rendered in the case of **Umesh Chandra Yadav (supra)**.

5. It is submitted that it is in the light of judgment rendered in

special appeal in the case of **Umesh Chandra Yadav (supra)** that petitioner's case for regularization in service was required to be considered by opposite parties who have instead rejected the same on the twin grounds indicated hereinabove.

6. It is submitted that once judgment rendered by Division Bench in special appeal was upheld by Hon'ble Supreme Court and directions for following the same in case of petitioners were issued in Writ-A No. 1307 of 2022, it was incumbent upon opposite parties to have adhered to same and not to have rejected petitioner's representation on extraneous ground. It is also submitted that although petitioner was minor at the time of initial engagement on contractual service but subsequently attained majority prior to cut of date of 31.12.2001 as required under 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.

7. Learned counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with the submission that once petitioner's initial engagement in service itself was illegal and not irregular, there was no question of regularizing his services particularly in view of admitted situation that petitioner was a minor at the time of engagement as a contractual employee. It is submitted that it is in consonance with the aforesaid facts that impugned order has been passed.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is admitted fact that petitioner was a party to the Writ Petition No. 7043 (S/S) of 2012 which was dismissed judgment and order dated 25.05.2018. It is also admitted that petitioner's Special Appeal No. 315 of 2018 was also part and parcel of the judgment and order dated 23.09.2022 rendered in the case of **Umesh Chandra Yadav (supra)**. It is therefore evident that the same applied upon him particularly in view of order dated 05.07.2023 rendered by Hon'ble Supreme Court dismissing Special Leave Petition.

9. It is also an admitted fact that during pendency of petitioner's special appeal, his services were terminated vide order dated 08.12.2021 against which he filed Writ-A No. 1307 of 2022 in which specific directions were issued on 05.01.2023 that he would be granted benefit of judgment rendered in special appeal.

10. A perusal of the impugned order however makes it evident that petitioner's case for regularization has been rejected primarily on the ground that he was a minor at the time of initial engagement in service. Furthermore, his case was found not covered by the benefit granted in special appeal since he was not covered by interim protection of status quo granted on 15.06.2018.

11. So far as the second ground is concerned, it is quite evident that the opposite parties have completely misdirected themselves in not considering the fact that special appeals were thereafter decided by means of judgment and order dated 23.09.2022 in which eight directions had been issued for consideration of appellants for regularization in terms of regularization rules of 2016. The order also indicates a direction to opposite parties for creation of supernumerary post by State Government for regularization of services of contractual employees.

12. Once the aforesaid special appeals had been decided finally, there was no question of petitioner being covered or not by interim directions passed therein since she obviously was covered by final directions issued by Division Bench of this Court. This situation is more-so in the light of direction issued by this Court vide order dated 05.01.2023 passed in Writ-A No. 1307 of 2022 wherein the opposite parties had been directed to consider petitioner's case in the light of judgment and order dated 23.09.2022.

13. So far as the first ground is concerned, it is admitted by petitioner that he was a minor being aged about 17 years 11 months at the time of initial appointment. However, learned counsel has drawn attention to the scholars register and transfer certificate dated 14.08.2020 issued by the college concerned to submit that petitioner's date of birth was 18.02.1982 due to which he attained majority within one month of being engaged in service.

14. It is also evident that initial engagement of petitioner in service was on a contractual basis which would come to an end automatically upon expiry of the contractual period whereafter obviously and admittedly the opposite parties continued petitioner in service till 08.12.2021, on which date his services were terminated as indicated in the impugned order itself.

15. The said fact also evidences that petitioner's services were thereafter renewed on contractual basis time and again and therefore the only aspect required to be considered is whether petitioner had attained the age of 18 years as on 31.12.2001 or

not. In case she had already attained majority prior to the cut of date, the aforesaid ground of rejection of minority of petitioner does not hold good ground.

16. In view of aforesaid facts and circumstances and admitted situation, it is evident that the impugned order does not consider aspect of petitioner's regularization in the light of judgments rendered by this Court earlier. Consequently, the impugned order dated 23.08.2023 is hereby quashed by issuance of a writ in the nature of certiorari with a further writ in the nature of mandamus being issued commanding the opposite party no.3 i.e. Municipal Commissioner, Nagar Nigam, Lucknow reconsider petitioner's case for regularization in the light of directions issued by this Court vide judgment and order dated 23.09.2022 in the case of **Umesh Chandra Yadav (supra)**. The concerned authority shall also take into account the scholars registrar and transfer certificate dated 14.08.2020 for the purposes of determining whether or not petitioner had attained majority as on the cut of date of 31.12.2001.

17. The aforesaid exercise shall be completed within a period of eight weeks from the date a certified copy of this order is produced before the concerned authority.

18. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 19.2.2024

Satish