

Court No. - 33

Case :- WRIT - A No. - 15201 of 2017

Petitioner :- Chandra Mani

Respondent :- State Of U.P. And 3 Ors.

Counsel for Petitioner :- Ravindra Nath Yadav, Abhishek Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra, J.

1. Petitioner is continuing in the employment of District Development Office, Jaunpur since 1992. It is asserted that work of generator operator/lift operator and electrician etc. has been taken from him from time to time, in which payment has also been made to him. In para 23 it is specifically asserted that petitioner's continuance is uninterrupted since 1992, which fact is not denied in para 21 of the counter affidavit. It is asserted that petitioner is, therefore, entitled to be regularized in the employment of State on a Class-IV post but the authorities have not adverted to his claim as per rule. It transpires that on a previous occasion this Court directed the District Magistrate to examine petitioner's claim in accordance with 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. The claim of petitioner, however, has been rejected vide order dated 22.3.2018, which is challenged by way of an amendment incorporated in the writ petition. This order does not dispute that petitioner has been working continuously prior to cut off date indicated in the Regularization Rules, 2016 and the only ground taken is that his claim is not covered by virtue of Sub-rule (3) of Rule 2 of the Regularization Rules of 2016. Sub-rule (3) of Rule 2 of the

Regularization Rules of 2016 reads as under:-

“2.जहाँ यह नियमावली विनियमितीकरण के लिये लागू न होगी :- यह नियमावली निम्नलिखित के विनियमितीकरण के लिए लागू नहीं होगी :

(एक)

(दो)

(तीन) राज्य सरकार की योजनाओं/परियोजनाओं या भारत सरकार द्वारा प्रायोजित कार्यक्रमों समेकित वेतन/नियत मानदेय पर लगे हुए/नियोजित/अभिनियोजित व्यक्ति/व्यक्तियों:”

It is further recorded in the order that payment has been made to petitioner from the amount of rent received by the State from various buildings maintained by it.

2. Learned counsel for the petitioner pointed out that it has nowhere been asserted by the respondents that petitioner's working was against a particular project or scheme sanctioned by the Central or State Government. It is also asserted that petitioner has not been getting fixed pay, and therefore, the exemption clause, which is stipulated in Rule 2(3), would not be attracted in the facts of the present case. Reliance is also placed upon a judgment of this Court delivered in similar circumstances in Writ Petition No.17582 of 2018, decided vide following orders on 7.9.2018:-

“Following orders were passed in the matter on 18.08.2018:-

"Petitioner is aggrieved by an order passed by the District Magistrate, Jaunpur dated 08.05.2018, which records that petitioner, although has been working since 23.10.1999 and thereby, his claim, in terms of Rules of 2016 for regularization is covered, yet, as there is no post of Generator Operator against which petitioner was working, as such, his services cannot be regularized.

It is not clear as to in absence of such a post, how the authorities have been allowing the petitioner to continue for the last about 20 years? The regularization rules, otherwise, do not state that in absence of post, regularization would be denied. Once the petitioner's entitlement under the rules is shown to be covered, it would be difficult to accept the respondents' plea that petitioner is not liable to be considered for regularization.

Let the District Magistrate, Jaunpur shall file his personal affidavit clarifying this aspect of the matter.

Put up this matter, in the additional cause list, on 27.08.2018.

In the meantime, the authorities shall not interfere with the working of the petitioner"

Pursuant to the aforesaid order passed, a counter affidavit has been filed by the District Magistrate, Jaunpur, which virtually reiterates the stand taken by the authority in its order under challenge. In para 4 of the counter affidavit, it is admitted that petitioner was appointed as Seasonal Waterman in Collectorate, Jaunpur and that, he worked as such from 16.04.1983 to 15.10.1994. It is further stated that the work for Seasonal Waterman is fixed for a period from 16th April to 15th October of the respective year, as such, his working from 1983 to 1999 was as Seasonal Waterman. It is, then, stated that petitioner was appointed as Generator Operator on 23.10.1999 on daily wage basis. The fact that petitioner's appointment on daily wage basis was prior to 31.12.2001 and that, he continues to be in engagement on the date of passing of 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, i.e., 12.09.2016, is also not disputed. What is stated is that there is no sanctioned post of Generator Operator.

The Court is at a loss to understand as to how the respondents can validly contend that no post of Generator Operator exists when work of such a post is found to be in existence during the last 20 years and petitioner has been working as such. The object of the regularization Rules of 2016 is to provide relief to such daily wagers who are working since 31.12.2001 onwards till 12.09.2016. Once it is found that petitioner's claim is covered thereunder, the relief of regularization cannot be denied for the reason, as has been put forth by the respondents.

It is, otherwise, not denied that post of Generator Operator is a Class IV post and petitioner could have been adjusted against any other vacant Class IV post. Denial of relief of regularization to the petitioner, therefore, is not liable to be sustained.

Consequently, the impugned order dated 08.05.2018, in so far as it rejects petitioner's claim for regularization, is quashed. The writ petition succeeds and is allowed.

A direction is issued to the concerned District Magistrate to pass a fresh order in light of the observations, made above, within a period of two months from the date of presentation of certified copy of this order."

3. I have heard learned counsel for the parties and have perused the materials brought on record.

4. From the facts as have been noticed above, it is not in issue that petitioner has been continuing in the employment of State since 1992 and has completed nearly 29 years of working. The regularization rules introduced by the State on 12th September, 2016 clearly intends to provide succor to persons such as petitioner who has been working for fairly long

in the employment of State. By virtue of Rule 6(1) all those, who were engaged in government department on 31st December, 2001 or prior thereto on a Class-III or Class-IV post, would be entitled to regularization provided they were still working on the date of enforcement of Regularization Rules i.e. 12.9.2016. Rule 5 contemplates regularization to be made against existing vacant post. However, the proviso to Rule 5 stipulates even where there is no vacancy yet it would be open for the Government to accommodate such person against supernumerary post. It is apparent that non-existent of post is thus not an absolute bar, so far as to the claim of regularization is concerned. The respondents have heavily relied upon Rule 2(3), which is an exception to the enabling provision contained in the Regularization Rules, 2016. The provision clearly exempts engagement of those persons, who are engaged in specific scheme/project launched by the State or Central Government and those who are engaged for such work. Except to place reliance upon Rule 2(3) it has not been shown that petitioner's engagement was against any project/scheme of the State or Central Government. Petitioner has been working for the last nearly 29 years in the office of District Development Officer. This Court has already allowed similar petition filed by one Ram Ajour, No.17582 of 2018 and the observations contained in the order dated 7.9.2018 would clearly be attracted in the facts of the present case. The authority cannot allow a person to continue on daily wage or fixed pay basis for almost three decades without regularizing his appointment. It is with the intent of providing certainty to such persons that regularization rules have been framed. The authorities of the State cannot be permitted to interpret rule in a manner

inconsistent with the objective of the Rule itself. In the facts of the present case claim of petitioner is not shown to be covered by Rule 2(3) of the Regularization Rules, 2016, and therefore, the order rejecting petitioner's claim for regularization cannot be sustained.

5. Writ petition, consequently, succeed and is allowed. Order dated 22.3.2018 stands quashed. The authorities are directed to consider petitioner's claim for regularization, forthwith, in light of the above observations, afresh.

Order Date :- 18.2.2021

Anil