

**AFR**  
**Reserved on 12.02.2021**  
**Delivered on 14.06.2021**

**In Residence**

**Case :-** WRIT - A No. - 8385 of 2020

**Petitioner :-** Shiv Shankar

**Respondent :-** State Of U P And 3 Others

**Counsel for Petitioner :-** Sanjeev Singh, Ghan Shyam Yadav

**Counsel for Respondent :-** C.S.C.

along with

**Case :-** WRIT - A No. - 18664 of 2019

**Petitioner :-** Shiv Shankar

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Ghan Shyam Yadav

**Counsel for Respondent :-** C.S.C.

**Hon'ble Mrs. Sunita Agarwal, J.**

1. The aforementioned two writ petitions have been filed by a daily wage worker engaged as Class-IV employee (*Mali*) in the Social Forestry Department, Siddharth Nagar. The orders dated 04.06.2019 and 04.08.2020 passed by the Divisional Director, Social Forestry Department, District- Siddharth Nagar are subject matter of challenge, separately in the above writ petitions.

2. It is the case of the petitioner that he was initially engaged in the year 1995 as a Class-IV employee in different units of Khesaraha Range of the Forest Department in District Siddharth Nagar. Since his initial engagement, the petitioner had been continuously working as daily wager without any complaint. For some period in the interregnum he had not been engaged but the said period has to be treated as artificial break, inasmuch as, the petitioner had continuously been engaged for the need/requirement of the department from 1995 till the date of termination of his services by the impugned order dated 04.08.2020 and had been discharging the duties of *Mali* in the Social Forestry Department on daily wage basis.

3. When the claim of the petitioner for regularisation under the prevalent rules in the Department was not considered, he filed writ petition(A) No.51403 of 2017 (Shiv Shankar vs. State of U.P. & ors.) wherein by the order dated 18.02.2019 direction was issued to consider the claim of the petitioner for regularisation and payment of minimum wages. Pursuant thereto, the claim of the petitioner for regularisation was considered and rejected vide impugned order dated 04.06.2019 on the ground that the petitioner's services were discontinued for two long years during the entire period of his working and the same cannot be ignored as artificial break. The petitioner was, thus, held ineligible for regularisation under the Regularisation Rules, 2016. With regard to the claim of minimum wages, it was held that the petitioner having not been appointed against a sanctioned post and no appointment letter having been issued to him, he was not entitled for grant of minimum wages.

4. During the pendency of the writ petition of 2019 challenging the order dated 04.06.2019 rejecting claim of the petitioner for regularisation and grant of minimum wages, the petitioner had also been disengaged as daily wager by the order dated 04.08.2020 on the ground that he was not found eligible for regularisation and as such he cannot continue as daily wager in terms of Rule 10 of the Regularisation Rules, 2016. The writ petition of 2020 was, thus, instituted by the petitioner to challenge the same.

5. Since the affidavits have been exchanged between the parties in previous writ petition filed in the year 2019 and both the counsels for the parties admit that the issues in both the writ petitions can be decided without calling for counter affidavit in the writ petition no.8385 of 2020, both the writ petitions were heard together and are being decided by this common judgment.

6. Challenging the orders impugned, the contention of the learned counsel for the petitioner is that the claim of the petitioner for regularisation had been rejected on a misinterpretation of the provisions

of Rules, 2016. The chart of year-wise working of the petitioner, as extracted in the order impugned dated 04.06.2019, indicates that the initial engagement of the petitioner as daily wager was made in August, 1995 and the petitioner had worked for a period of 7 months in the year 1995-96. The said chart also shows that the petitioner was still working on the date of the commencement of the Regularisation Rules, i.e. in the month of September, 2016 and had also worked for 11 months and 9 months in the year 2017-18 and 2018-19; respectively. As the daily wage engagement of the petitioner was due to the necessity of the Department and he had worked for more than 10 years, the benefit of regularisation Rules, 2016 ought to have been provided to him. The discontinuance of services of the petitioner on account of non engagement in the years 2002, 2011 and 2012 cannot be treated as break in the services rendered by the petitioner as daily wage employee. The reason given in the order impugned for holding the petitioner ineligible for regularisation is, thus, illegal.

7. As regards the order dated 04.08.2020 for termination of services of the petitioner, it is contended that the respondent no.3 has misinterpreted the provisions of Rules, 2016, inasmuch as, only if a daily wager has been found unsuitable, he can be disengaged. In the case of the petitioner, his suitability for the regular post had never been assessed nor is there any such indication in the order of rejection of the claim of the petitioner for regularisation. The termination of services of the petitioner by the order dated 04.08.2020 taking recourse to the provisions of Rule 10 of Rules, 2016 is, therefore, contrary to law. Both the orders are, thus, liable to be set aside and a direction is to be issued to the respondents to regularise the services of the petitioner strictly in accordance with the Regularisation Rules, 2016.

8. Learned Standing Counsel, on the other hand, defending the order impugned states that the break of two continuous years in the total services rendered by the petitioner cannot be ignored as an artificial

break. As the petitioner had not rendered continuous services from the date of engagement till the date of the commencement of the Rules, he has rightly been held disentitled for regularisation. With the rejection of claim of the petitioner by the duly constituted committee, he cannot be allowed to continue even on daily wage basis, in view of Rule 10 of the Regularisation Rules, 2016.

9. Having heard learned counsel for the parties and perused the record, it is clear that the controversy revolves around the interpretation of the Regularisation Rules, 2016 namely the U.P. Regularisation 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 the 'Rules, 2016').

10. Certain relevant provisions of the said Rules are pertinent to be noted hereinunder:

*"5. Subject to the provisions of rule 2, regularisation under these rules shall be done on available vacant post in a Government Department:*

*Provided that if vacant post is not available then, as and when required, a supernumerary post may be created with the approval of the Government.*

*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 qualification 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.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Schedule Castes, Schedule 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 service rules.

(4) The Appointing Authority shall, having regard to the provisions of sub rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of engagement or employment or deployment on daily wages, on work charge or on contract and, if two or more persons are engaged or employed or deployed together, from the order in which their names are arranged in the said engagement or employment or deployment order. The list shall be placed before the Selection Committee alongwith their character rolls and such other relevant records, pertaining to them, 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 to assess their suitability.

(6) The Selection Committee shall prepare a list of selected candidates arranging their names in order of seniority and forward the same to the appointing authority.

7. The appointing authority shall, subject to the provisions of sub-rule (2) of rule 6, make appointments from the list prepared under sub-rule (6) of the said rule, in the order in which their names stand in the list.

8. Appointments made under these rules shall be deemed to be appointments under the relevant service rules or orders, if any.

10. The services of a person who is working on daily wages, or on work charge or on contract and who is not found suitable, after consideration under these rules, shall be terminated forthwith and, on such termination, he shall be entitled to receive one month's wages.

12. Notwithstanding anything contained in these rules, the person/persons working on daily wages or on work

*charge or on contract, shall have no claim for regularisation as a matter of right."*

11. There is no dispute regarding the applicability of the Rules in the Social Forestry Department and that the petitioner being daily wage employee of the said Department was entitled for consideration of his claim for regularisation by the competent authority.

12. As to how and in what manner the entire exercise of regularisation of daily wager had to be made under the said Rules can be understood by the plain and simple reading of the Rules itself. As regard eligibility, under the Rules, 2016, an incumbent was required to fulfill the following conditions for consideration for regularisation:

(i) He must had been directly engaged or working on daily wage basis on Group-'C' or Group-'D' post on or before 31.12.2001; and,

(ii) he was still engaged or working as such on the date of the commencement of the Rules i.e. on 12.09.2016; and,

(iii) he must possess the requisite qualification prescribed for regular appointment for the post at the time of such engagement on daily wages under the relevant service rules, subject to the provisions of Rule 2 and Rule 5 of Rules, 2016; and,

(iv) regularisation may be made in a permanent or temporary vacancy as may be available on the date of the commencement of the Rules i.e 12.09.2016 as also the available vacancy in the Government department as per Rule 5.

13. As regards the procedure for regularisation, the rules provide that:-

(i) regular appointment be made on the basis of assessment of the service record and suitability of the daily wager in accordance with the relevant service rules or orders; and,

(ii) for the purpose of consideration for regularisation under Rule 6(1), a selection committee in accordance with the relevant provisions of the service rules is to be constituted by the appointing authority;

(iii) an eligibility list of the candidates, arranged in the order of seniority, as per their eligibility, in accordance with the provisions of Rule 6(1) has to be prepared by the appointing authority wherein seniority is to be determined from the date of engagement on daily wages, on work charge or on contract;

(iv) the said list has to be placed before the Selection Committee along with the service record of the employees such as character roll and other relevant records as is necessary to assess their suitability. On assessment of the service record of the daily wage employees, as referred in Rule 6(4) of the Rules, the selection committee may also interview the candidates to assess their suitability;

(v) after completion of the selection process, the Selection Committee has to prepare a list of selected candidates arranged in order of their seniority and forward the same to the appointing authority;

(vi) subject to the provisions of sub-rule (2) of Rule 6 which provides that the reservation rules in force at the time of regularisation under the Rules shall be applicable in making regular appointment under these rules, the appointing authority shall make appointment from the list prepared under Rule 6(6) and forwarded by the Selection Committee.

14. Rule 8 further provides that appointments made under the regularisation rules shall be deemed to be appointments under the relevant service rules. Rule 10, however, provides that in case a person who is working on daily wages, or on work charge or on contract is not found suitable, after consideration under these rules, his services shall be terminated forthwith and on such termination, he shall be entitled to receive one month's wages.

15. Having carefully gone through the entire scheme of the Rules' 2016, it is evident that the rule making authority had contemplated to complete one time exercise for consideration of claims of regularisation of daily wage employees already working in the Department on the date of commencement of the Rules 2016, that is 12.09.2016 as against the available permanent or temporary vacancies in the Department on the said date. The subsequent exercise of regularisation can be made in case of available vacancies in the department as per Rule 5.

16. As per the procedure, the appointing authority was required to prepare an eligibility list of the candidates working on daily wages, on work charge or on contract in the Department, arranged in order of seniority to be determined from the date of engagement or employment or deployment so as to place the same before the Selection Committee for consideration for regularisation.

17. The eligibility list as contemplated under Rule 6(4) had to be prepared having regard to the provisions of Rule 6(1) which provides two cut-off dates. The first date is of initial engagement which is on or before 31.12.2001, and the second is of working or engagement or employment on 12.09.2016, the date of the commencement of the Rules. The language employed in Rule 6(1)(i) nowhere requires that the incumbent must have been working continuously without any break from the date of the initial engagement till the date of the commencement of the Rules. The only requirement to be fulfilled is that the incumbent must have been engaged initially on or before 31.12.2001 and must be still engaged or employed or working as such (i.e. in the same capacity) on the date of the commencement of the Rules, i.e. 12.09.2016.

18. The word “continuous working” or “continuous engagement or employment or deployment” is neither contemplated nor can be read into the Rules. In the opinion of the Court, the reason being that the rule making authority had framed the rules with the clear idea in mind that it was to provide for regularisation of services of those persons who were



engaged or deployed or working in the Department on daily wages, on work charge or on contract and the nature of their engagement on daily wages, on work charge or on contract itself, being in the exigencies or necessities of the Department, could not be regular or continuous. That means there may be break in service of an employee engaged on daily wages, work charge or on contract, who was found covered under the rules.

19. As per the requirement of the Rules' 2016, if daily wage engagement of an incumbent remained necessity of the Department or the requirement thereof for more than 15 years between two cut off dates (from prior to December, 2001 till September 2016), the benefit of regularisation had to be provided to him, irrespective of breaks in his service. The rule nowhere requires that the incumbent must have worked continuously, without any break, from the date of initial engagement till the date of the commencement of the Rules. To read these words into the rules would amount to adding words to the statute which is not permissible in law.

20. It is well settled that the plain and simple reading of the statute, if shows no ambiguity, the rule has to be followed as such. In the instant case, the plain and simple reading of the Rule 6(1)(i) shows no ambiguity. It is further clarified that having regard to the requirement of the rules considering the nature and period of working of a daily wage employee, it is always open for the competent authority to consider as to whether long break in service between two dates, i.e. the date of initial engagement and the date of the commencement of the Rules would be a 'break in service' or the same can be ignored as 'artificial break' in a given case. For instance, if an employee had worked only for few months in some years between the above noted two cut off dates, the 'break in service' in that case cannot be treated as 'artificial break' rather the same would be 'break in service' of the employee as the Department did not require his services for a long time. The benefit of regularisation in such a

case may be refused. Thus, the question as to what would be 'artificial break' which can be ignored while considering the eligibility of a candidate would depend upon the facts and circumstances of a particular case. No universal or strait-jacket formula can be derived for such an assessment. Each case has to be decided on the facts and circumstances of that case, considering the nature and period of working of the incumbent.

21. As regards the decision of the Special Appellate Court in Surendra Singh and another in Special Appeal No.1016 of 2005, which has been made basis of rejection of claim of the petitioner, relevant is to note that the said decision had been rendered in the facts and circumstances of that case. No universal formula or rule has been prescribed in the said case so as to assess what would be the break which cannot be treated to be an 'artificial break' in service. A perusal of the said decision indicates that in the facts of the said case, it was found that the writ petitioners therein had failed to discharge the burden of establishing that they were working on daily wages in the forest department during the relevant period and the contentions of the writ petitioners therein that they had been working without payment of any wages was not accepted by the learned Single Judge, with the finding that it was difficult to believe that the writ petitioners actually worked for two years without payment of wages. While upholding the views of the learned Single Judge, the Special Appellate Bench has held therein as under:

*"In the present case, the writ petitioners had not worked on daily wage basis for a long period of two years. This break cannot be treated to be an artificial break in the service. The writ petitioners did not satisfy the essential requirements contained in the 2001 Rules. They were, therefore, not entitled for regularisation under the 2001 Rules.*

*There is, therefore, no error in the judgment which may call for any interference in this Special Appeal.*

*The Special Appeal is, accordingly, dismissed."*

22. At this juncture, the decision of a learned Single Judge of this Court in *Janardan Yadav vs State of U.P. 2008 (1) ADJ 60* is relevant to

be noted wherein Rule 4(1) of the U.P. Regularisation of Daily Wages Appointment on Group 'D' Posts Rules, 2001 (Regularisation Rules 2001) *pari materia* to rules 2016 was the subject matter of consideration. It was observed therein as under:

*"Since the Rules are applicable only to daily wage employees, the Rules framing authority was aware that such employee could not have worked continuously throughout and, therefore, has clearly provided that the engagement must be before 29.06.1991 and he is continuing as such on the date of commencement of the rules. If a daily wage engagement has been made before 29.6.2001 and was continuing on 21.12.2001, meaning thereby the daily wage engagement remained necessity of the department or the requirement thereof for more than 10 years, for such a person only, the benefit of regularisation under 2001 Rules has been provided, and it nowhere requires further that the incumbent must have worked continuously from the date of initial engagement till the commencement of these Rules and to read these words would amount to legislation, which is not permissible in law."*

23. However, in the instant case, looking to the chart of year-wise working of the petitioner, extracted in the order impugned itself, it is evident that the petitioner herein had worked for the whole year (12 months) in several years after his initial engagement in the year 1995. Though the petitioner was not engaged in the years 2002, 2011 and 2012 but from the year 2003 onwards till the year 2009, he had worked for more than 10 months and even up to 12 months in one calendar year. From the year 2013 onwards till the date of the commencement of the Rules in September, 2016, the petitioner was engaged for about 9 to 11 months in one calendar year. Besides, on the date of the commencement of the Rules i.e. on 12.09.2016, the petitioner was 'still working' in the Department as a daily wager. The initial requirement of the rules of working as daily wager between the two dates i.e. from the date of initial engagement till the date of the commencement of the Rules is, thus, fulfilled in the case of the petitioner.

24. Disengagement or discontinuance of the services of the petitioner in the year 2002 and again in the years 2011 and 2012 cannot be said to be break in service rather it can be seen that the daily wage engagement of the petitioner remained necessity of the Department and he was engaged and worked as *Mali* continuously (with artificial break)

in the Social Forestry Department, for the requirement of the department, for more than a period of 22 years (from 1995 to 2016). The claim of the petitioner for regularisation has, thus, illegally been rejected treating the period of non-engagement as break in service, for holding him ineligible for consideration for regularisation by the Selection Committee. Thus, it can be seen that the sole ground of rejection of the candidature of the petitioner is the above noted breaks in his daily wage engagement. Other requirements of the rules had not been adverted to while rejecting his claim for regularisation.

25. The Court may further note that it seems that the exercise of regularisation as per the procedure in the Rules' 2016 has not been completed in the department. The claim of the petitioner on individual basis had been considered under the directions of this Court. The record does not reflect that any eligibility list had been prepared by the appointing authority in terms of Rule 6(4) in order of the seniority of all daily wage employees working on the date of commencement of the Rules i.e. 12.09.2016 for consideration of their candidature for regular appointment on the permanent or temporary vacancies available either on the date of commencement of the rules, or any other vacancy available in the department subsequent thereto as per the Rule 5 of the Rules' 2016.

26. Further, the reading of the Rule 6 of Rules, 2016 makes it evident that the exercise of regularisation was required to be undertaken by the Department on its own and there was no requirement of making individual claim by one or two employee(s). Further, the entire exercise of regularisation was required to be undertaken strictly in accordance with the procedure prescribed in sub-rules (4), (5) and (6) of Rule 6 of the Regularisation Rules' 2016. The Selection Committee had to be constituted to assess the suitability of all the eligible candidates arranged in the order of seniority in the list prepared by the appointing authority. On relative assessment of all eligible candidates from the said list on the basis of assessment of their service records and interview of the

candidates, if considered necessary, the select list had to be prepared by the Selection Committee for forwarding the same to the appointing authority for regular appointment. The record does not indicate that any such exercise had been undertaken by the respondent. It seems that claim of individual applicant (employee) had been considered and rejected without adhering to the procedure and the requirement of the Rules' 2016.

27. Further, on the question of termination of the daily wage engagement of the petitioner taking aid of Rule 10 of the Regularisation Rules, it is evident that the language of Rule 10 had been mis-interpreted by the respondent. Rule 10 clearly states that services of a person who is not found 'suitable' after consideration under the Rules shall be terminated. Meaning thereby that a person who is not found 'suitable' for regular appointment under the Rules would not be entitled to continue even on daily wages, or on work charge or on contract.

28. Under the rules, the 'suitability' of the candidates has to be judged by a Selection Committee on consideration of the character roll and other relevant records pertaining to the services as are necessary to assess their suitability in accordance with the service rules. Whereas 'eligibility' of a candidate, to be included in the eligibility list prepared in accordance with Rule 6(4), is to be scrutinised by the appointing authority in terms of the conditions of Rule 6(1) of 2016 Rules. The 'eligibility' and 'suitability' of the candidates for regularisation, thus, are two independent parameters which have to be assessed by two separate authorities at two different stages of the consideration as mentioned in Rule 6(4). The word used in Rule 10 is 'suitable' and not 'eligible'. That means only if a daily wage incumbent is not found 'suitable' for regular appointment after consideration by the Selection Committee on assessment of his service record such as character roll etc., he would not be entitled to continue even on daily wage basis. The same yardstick cannot be applied in a case where a daily wage incumbent is not found 'eligible' for regularisation under Rule 6(1), to be included in the list of

eligible candidates, arranged by the appointing authority in accordance with Rule 6(4) for placing the same before the Selection Committee, as the question of 'suitability' of the candidate for regular appointment does not arrive at all.

29. Having said that, the Court may reiterate that the claim of the petitioner for regularisation had been rejected only on the ground that he was not eligible under Rule 6(1), inasmuch as, he had not rendered continuous services between two dates i.e. 31.12.2001 till 12.09.2016. The order of rejection of claim of the petitioner for regularisation does not state that the petitioner had not been found suitable on assessment of his service record by a duly constituted selection Committee in accordance with the sub-Rule (4) & (5) of Rule 6. As the second stage for assessment of 'suitability' of the petitioner had not been arrived in the instant case, the termination of daily wage engagement of the petitioner by the impugned order dated 04.08.2020 is found illegal.

30. In view of the above discussion, both the orders dated 04.06.2012 and 04.08.2020 are found unsustainable in the eye of law and hence quashed.

31. The petitioner herein is held entitled to continue on daily wages in the Social Forestry Department till his claim for regularisation is considered afresh strictly in accordance with the Regularisation Rules, 2016. He shall be entitled to payment of wages as is admissible to a daily wage employee of the Department as and when the same falls due.

32. As regards the claim of regularisation of the petitioner, the matter is relegated to the respondents with the directions as follows:

(i) The appointing authority shall prepare an eligibility list in accordance with the Rule 6(4) of the Rules 2016 and constitute a Selection Committee in accordance with the Rule 6(3) for placing the same before it;

(ii) The eligibility of the candidates (daily wagers) working in the department shall be determined in accordance with the requirement of the Rule 6(1) of the Rules' 2016, considering the long period of their engagement in the necessity or requirement of the department.

(iii) The selection Committee shall consider cases of all eligible candidates included in the eligibility list placed by the appointing authority before it, in accordance with sub-rule (5) of Rule 6 and prepare the list of selected candidates as is required under Rule 6(6).

(iv) The regular appointment on the available vacancies, subject to the provisions of Rule 5 in accordance with the sub-rule (1) of Rule 6, shall be granted to all suitable candidates recommended in the select list prepared by the Selection Committee, in accordance with the Rules 7 and 8.

(v) The services of only those daily wagers included in the eligibility list who are not found suitable by the Selection Committee on assessment of their service records, can be terminated by taking recourse to the Rule 10 of the Rules by giving them one month's wages.

(vi) The entire exercise of regularisation of daily wage employees working in the Social Forestry Department, who fulfill the eligibility criteria prescribed in Rule 6(1) of 2016 Rules, in accordance with the above directions, has to be completed by the Department within a period of six months from the date of the presentation of the copy of this order. Any deviation or digression from the procedure prescribed in the Regularisation Rules' 2016 shall be seen as inaction or infraction of law and may entail adverse action against the competent authority.

33. With the aforesaid observations and directions, both the writ petitions are ***allowed***.

**Order Date :-** 14.06.2021  
P Kesari