2025:AHC:192258

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 23812 of 2003

Anjani Kumar Singh

.....Petitioner(s)

Versus

State Of U.P. Thru Principal Secy. Forest U.P. And Ors.

.....Respondent(s)

Counsel for Petitioner(s)	:	Jay Prakash Gupta, V.K. Singh
Counsel for Respondent(s)	:	C.S.C.

Court No. - 34

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Jay Prakash Gupta, learned counsel for the petitioner and Sri Rahul Malviya, learned Standing Counsel, who appears for State-respondents.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the writ petitioner being fully eligible and qualified in all respects, was appointed as a Forester/ Van Daroga, a Group 'C' post in the year 1991 in the Forest Department at Dehradun which is a part of State of Uttar Pradesh prior to U.P. Reorganization Act, 2000. It is also the case of the writ petitioner is that the writ petitioner's candidature is/ was considered for regularization in terms of the Subordinate Forest (Deputy Rangers and Foresters) Service Rule, 1951 read with the provisions contained under Uttar Pradesh Regularization of Daily Wages Appointment on Group 'C' Posts (Outside Purview of Uttar Pradesh Public Service Commission) Rules, 1998. The process for regularization stood commenced by the respondents and the writ petitioner was required to submit high school certificate and he appeared for physical walking test at Allahabad held on March, 2002. Thereafter on 26.03.2002, an order came to be passed by the respondents, regularizing the services of the writ petitioner. The writ petitioner joined as a regular employee on 01.04.2002. However to the under surprise of the writ petitioner, an order

came to be passed by the Conservator of Forest, Varanasi Division, Varanasi whereby the regularization of the writ petitioner was cancelled on 07.05.2003 on the ground that on the date of the engagement, the writ petitioner was aged about 16 years 8 months and 28 days since the date of the birth was 01.10.1974.

4. Questioning the said order, the writ petitioner preferred the present petition.

5. This this Court on 14.07.2023 proceeded to pass the following orders:

"Learned standing counsel is granted four weeks' time to file counter affidavit. Petitioner will have two weeks' time thereafter to file rejoinder affidavit.

List in the 1st week of Sept. 2003.

Petitioner was engaged in January 1991 on daily wages in the Forest Department. It is contended that there are no rules for engagement/appointment on daily wage basis and that petitioner had not concealed his age. At that time, petitioner, was about 16 years of age. was about In view of decision in Putti Lal's case, the Regularisation Committee recommended the regularisation of petitioner on 26th March, 2002. Petitioner was regularised and he took over charge on 1.4.2002. Now a show cause notice was issued to the petitioner as to why he should not be held entitled on the ground that he was minor on 29.5.2001-

The question to be considered in this case, is that whether a person, who was less than 18 years of age could be offered appointment/engagement on daily wages in January 1991 in the Forest Department and whether petitioner was guilty of concealing his age.

Until further orders, the petitioner shall be allowed to continue as regular employer and be paid salary regularly."

6. Post passing of the aforesaid orders, affidavits have been exchanged.

7. Learned counsel for the writ petitioner has sought to argue that the entire exercise sought to be undertaken by the respondents culminating into passing of the order dated 07.05.2003 cannot be sustained in the eyes of law for the simple reason that it is not the case of the concealment, fraud or misrepresentation and further the writ petitioner was inducted in the month of January, 1991 and merely because according to the respondents, the writ petitioner was not over and above 18 years of age would not take away the vested right of the petitioner and there is nothing on record to show that

there is no deficiency or anything adverse against the petitioner. Submission is that with open eyes, the regularization of the writ petitioner was done and the writ petitioner in pursuance of the interim order dated 14.07.2003 while staying the order dated 07.05.2003 cancelling the regularization is still performing the duties in that regard. It is also contended that had there been any deficiency or deformity in that regard, the services of the writ petitioner could not have been regularized and with the passage of time, the irregularity stands cured as according to him, the same can at best be attributed to be a an irregularity and not an illegality. Reliance has been placed upon the Division Bench judgment of this court in ***U.P. Power Corporation Ltd. through its Chairman/ Managing Director and Executive Engineer, Electricity Distribution Division-II, U.P. Power Corporation Ltd. v. Satya Narain (Driver) and State of Uttar Pradesh through Secretary, Department of Energy, Government of Uttar Pradesh; 2005 (5) AWC 4843, Ram Prakash v. State of Uttar Pradesh and others; 2023 (12) ADJ 224*** and ***Mohd. Ashique v. State of Uttar Pradesh and others; 2025 (4) ADJ 396***.

8. Countering the submissions so raised by the learned Counsel for the writ petitioner, Sri Rahul Malviya, learned Standing Counsel has sought to argue that the contentions so sought to be raised by the writ petitioner cannot be accepted even for a single moment, particularly, when one of the requirement for regularization is eligibility and suitability on the cut off date, where the regularization is to be done and here on 29.06.1991 which is the cut off date, based upon the date of birth of the writ petitioner being 01.10.1974, he was 16 years 8 months and 28 days, thus, there was no occasion to regularize the writ petitioner.

9. I have heard learned counsel for the parties and gone through the records carefully.

10. The facts are not in issue. It is not issue that the writ petitioner was engaged as a daily wager in Group 'C' post in the month of January, 1991 and that is why in view of the provisions contained under writ petitioner, the cutoff date being 29.06.1991, the petitioner was found to be working on the said date and his services stood regularized on 26.03.2002. The bone of contention is the fact that the petitioner was not 18 years on the date of the consideration for regularization i.e. cut off date has based upon its date of birth being 01.10.1974, he was just 16 years 8 months and 28 days. The

issue akin to what is before this court came up for consideration before the Division Bench of this Court in ***U.P. Power Corporation Ltd. through its Chairman/ Managing Director and Executive Engineer, Electricity Distribution Division-II, U.P. Power Corporation Ltd. (supra)*** in paragraph 5 and 9 observed as under:

"[5] On the basis of that Medical Report, the service book was written up. If that writing up of the service book is correct, then the Hon'ble Single Judge's finding is perfectly in order and the respondent would retire with the expiry of the month of September 2004. On behalf of the appellant, who was the respondent in the Court below, it is argued that on the basis of the entered date of birth, the entry into service of the writ petitioner on 22.10.1961 would mean that he would have joined the service at the age of 15 years only. The rule requires a minimum age of 22 years. The age of majority requires that he be at least 18 when he goes into service. It is also argued that by the impugned order the respondent would be getting the benefit of nine month's salary without working.

[9] This is how the above principles work put in the present case. If the writ petitioner was admitted into service below age, both parties were equally guilty: no misrepresentation of the writ petitioner is on record. The service that was rendered by the writ petitioner which still under age, was paid for by the appellant, and no more. The breach of rules on both sides cannot make the writ petitioner get born earlier."

11. Further a coordinate Bench in ***Ram Prakash (supra)***, para 4 and 5 which was observed as under:

"4. He further submits that there is no allegation of fraud or misrepresentation on the part of the petitioner and once the respondents continued to permit the petitioner in service for about three decades, despite clear entry of date of birth in the service records, a highly belated order passed to the detriment of the interest of the petitioner, is hit by following authorities of this Court:

(i) U.P. Power Corporation Limited vs Stya Narain, 2005 (2) ESC 1245,

(ii) Shiv Charan vs Executive Officer, Nagar Palika Parishad, Lalitpur and another, 2006 (6) ADJ 310.

5. In the aforesaid authorities, almost identical situation had arisen before this Court and the Court, after noting down the rival contentions, observed that if the concerned petitioner was admitted into service below age, both parties were equally guilty and there being no misrepresentation of the petitioner on record, denying continuance of service would be illegal. (vide U.P. Power Corporation Limited vs Satya Narain) (supra)."

12. In ***Mohd. Ashique (supra)***, following observed as under:

"7. A similar issue as regards fall out of irregularities in initial appointments on the claim for regularization arose before the learned Single Judge of this Court in Surendra Kumar Srivastav vs. State of U.P. and another (Writ-A No.- 20259 of 2019) and other companion writ petitions. Ashwani Kumar Mishra, J predicated the discussion by delineating concept of irregular appointments in light of the judgment of the Supreme Court in Narendra Kumar Tiwari and others vs. The State of Jharkhand and others reported at (2018) 8 SCC 238 which held as under:-

"8. .....The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid. "

8. Thereafter Mishra, J embarked on a prescient and eloquent discussion on the concept of regularization of employees by propounding thus:-

9. So far as the first ground taken to non-suit the petitioner is concerned, it is not in issue that the petitioner was engaged in the Corporation as daily wage/ contract employee and has continued in the employment of the Corporation for nearly 30 years. The plea that he has not been engaged in accordance with rules and therefore he has not been found entitled to be regularised is noticed only to be rejected. The applicable service rules, where under regular/ substantive appointment is to be offered, do not contemplate making of appointment on daily wage or contract basis. The policy framed by the State Government to regularise the services of such employees, who have continued for decades together proceeds upon the due acknowledgment of fact that persons have been engaged on daily wage basis or on contract basis, without adhering to the applicable rules which regulates substantive employment in the Corporation itself. The non-observance of service rules while initially engaging persons on daily wage basis, and it being a ground to deny regularisation, shows complete lack of understanding on part of the Corporation to the very purpose for which the regularisation rules have been framed. The object of regularising services of employees engaged on daily wage basis is entirely distinct. In most cases of regularisation the initial engagement of employee is not in accordance with the applicable service rules which regulates substantive employment. The mere fact that the rules of recruitment have not been followed at the time of offering contractual or daily wage employment, does not render the employment illegal but it merely remains an irregularity capable of being regularised by framing rules." (emphasis supplied)

9. The concept of regularization presupposes some initial irregularities in appointments. By virtue of regularization the aforesaid infirmities which do not go to the root of the appointment are cured. After regularization the employee is treated as a regularly appointed Government servant. Upon being regularized employee is entitled to the status and benefit of other regularly appointed employees working on the same post.

13. The petitioner is entitled for regularization in light of the cases in point discussed earlier but for the aforesaid infirmity of the petitioner being a minor at the time of his initial appointment on 24.09.183, it is undisputed that the petitioner was entitled for regularization as per regularization rules applicable to the petitioner.

17. A writ in the nature of mandamus is issued commanding the respondents to execute the following directions:-

i) The petitioner shall be regularized from the date of his attaining majority. An order to this effect shall be forthwith issued by the appointing authority of the petitioner.

ii) The services rendered by the petitioner from the said date of regularization till his retirement shall be computed towards pensionable service and his pension shall be fixed accordingly."

13. On a pointed query being raised to the learned Standing Counsel whether it is a case of concealment, fraud or misrepresentation practiced by the petitioner, the answer is in negative, on a further query being raised to the learned standing counsel whether there is any other deficiency in the services of the writ petitioner, the answer is also negative.

14. Bearing in mind that the writ petitioner is working since 1991, his services stood regularized on 26.03.2002 and by virtue of the cancellation of the regularization order dated 07.05.2003, he was accorded interim protection by this Court on 14.07.2003 and he continues to work till date and there is nothing on record to show that there is anything adverse, thus, applying the principles of equity, writ petition is being decided in the following terms:

(a) the order dated 07.05.2003 passed by the Conservator of Forest, Varanasi Circle, Varanasi cancelling the regularization of the writ petitioner dated 26.03.2002 on the post of Forester is set aside.

(b) The order dated 26.06.2002 regularizing the services of the writ petitioner is restored.

(c) The writ petition shall be admissible to all consequential benefits as admissible under law.

15. Accordingly, the writ petition stands **disposed of**.

October 31, 2025
A. Prajapati

(Vikas Budhwar,J.)

Digitally signed by :-
ASHUTOSH KUMAR PRAJAPATI
High Court of Judicature at Allahabad