

Court No. - 33

Case :- WRIT - A No. - 2240 of 2022

Petitioner :- Shabihul Hasan And 3 Others

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

Counsel for Petitioner :- Prakhar Saran Srivastava, Tarun Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Subhash Vidyarthi, J.

Heard Sri Tarun Agrawal, learned counsel for the petitioners and Sri J. S. Bundela, learned Standing Counsel appearing for the State.

Petitioners were initially appointed as Computer Operator on contractual basis between the years 1997 and 2001 in Prayagraj Zone. On 30.06.2008 the Department had issued an advertisement for filling up the post of Junior Clerk. The petitioners filed a Writ Petition (Service Single) No. 5997 of 2008 (Sunil Sharma and others Vs. State of U.P. and others) which was tagged with Writ Petition (Service Single) No.4600 of 2008. The connected Writ Petition (Service Single) No. 5112 of 2008 was disposed of on 05.10.2015 and the leading Writ Petition (Service Single) No. 4600 of 2008 was disposed of on 01.12.2015 directing the Department to consider regularisation of petitioners therein. However, petitioner's writ petition was dismissed for want of prosecution. The petitioners of Writ Petition (Service Single) No.5112 of 2008 were regularised on the post of Junior Assistant on 30.12.2015. Thereafter 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 (The Uttar Pradesh Public Service Commission) Rules, 2016 were notified on 12.09.2016.

Finally the Writ Petition No. 5997 of 2008 filed by the petitioners was disposed on 14.02.2017 with a direction to the competent authority to examine the claim of petitioners for regularisation in accordance with Rules of 2016. Petitioners gave a representation in terms of the aforesaid order, which was rejected by means of an order dated 12.07.2017 passed by Superintending Engineer concerned.

Petitioners have challenged the aforesaid order by filing Writ A No. 47075 of 2017, which was allowed vide order dated 02.01.2020 holding that petitioners were directly engaged by the Department concerned and not through a third party and they are being paid from the State Exchequer and as such it cannot be accepted that the petitioners have been engaged through contractor. The Court has recorded a categorical finding

that there is a relationship of employee and employer between the petitioners and the Department. With the aforesaid finding the matter was relegated for deciding the claim of petitioners in accordance with Rules of 2016 and in view of the observations made in aforesaid order.

After passing of the aforesaid order the Engineer In Chief, Public Works Department (respondent no.2) has passed an order dated 07.10.2020 in purported compliance of the aforesaid order dated 02.01.2020 passed by this Court, stating that Selection Committed has mentioned in its report that no post of Computer Operator is sanctioned in the Department, whereas in Rule 5(2) of the Rules of 2016 it is mentioned that there is a provision for regularisation on a vacant post in Government Service.

Aggrieved by the aforesaid order, on 16.12.2020 the petitioner made a representation before the Engineer-in-Chief (Respondent no.2) stating that the Proviso appended to sub-Rule(2) of Rule 5 of 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, which provides that if the vacant post is not available then as and when required supernumerary post will be created with the approval of the Government. The petitioners invited attention of the authority to the earlier orders passed in furtherance of Writ Petition (Service Single) No. 4600 of 2008 and Writ Petition (Service Single) No. 5112 of 2008 whereby the persons working as Computer Operator were given regular appointment on the post of Junior Clerk. Petitioners stated that they may be given regular appointment on the basis of their merit on the post of Junior Assistant or any other post of Class III under the provisions of Rule of 2016.

On 21.01.2021 respondent no. 3 sent a proposal to the Government for creating six Supernumerary post of Computer Operator or for permitting to appoint the petitioners on the post of Mate as per Government Order dated 16.11.2011. On 25.03.2021 the Government Sent a reply the aforesaid letter of the respondent no. 2 directing him to take a decision in this regard at his own level after taking into consideration all the aspects of the matter and in case any guidance is requires from the Government on any specific point, a proposal be sent to the Government mentioning the specific point. In furtherance of the aforesaid order, Office Memoranda were issued on 11.5.2021 appointing the petitioners on the post of Mate referring to the order dated 2.1.2020 passed in Writ Petition (Service Single) No.47075 of 2017, Governments letter dated 25.03.2021 as well as the Rules of 2016.

However, in the letter dated 07.10.2020 sent by the respondent no. 2, it is stated that the Selection Committee had constituted in furtherance of the order dated 07.10.2020 passed by the respondent no. 2 had recommended that Rule 5 (2) of the Rules of 2016 provide for regularization in a vacant post available in the Department whereas no post of Computer Operator is sanctioned in the Department. The order states that upon the aforesaid fact after obtaining directions from the higher officers, the Office Memoranda dated 11.05.2021 appointing petitioners on the post of Computer Operator is cancelled with immediate effect.

The petitioners assailed the aforesaid order by filing Writ Petition No. 7225 of 2021, which was allowed and the impugned order dated 14.06.2021 was set aside and the matter was remitted to the respondent no. 4 to pass an order after affording an opportunity of hearing to the petitioners.

On 11.10.2021 the respondent no. 4 has issued a fresh Office Memorandum stating that the order dated 07.10.2020 passed by the respondent no. 2 in compliance of the order dated 02.01.2020 passed in Writ Petition No. 47075 of 2017 was not in the knowledge of the respondent no. 4 and the petitioners have obtained erroneous appointment order dated 11.05.2021 in their favour. Petitioners' representation has been rejected by means of the said order.

The learned counsel for the petitioners states that the order dated 07.10.2020, a copy whereof has been annexed as Annexure No. 8 to the writ petition, clearly contains an endorsement forwarding a copy of the aforesaid order to the respondent no. 4. Therefore, the contention of the respondent no. 4 that the petitioners have obtained erroneous orders and the order dated 07.10.2020 was not in his knowledge, is false on the face of the record. He further submits that by means of the order dated 11.10.2021 the respondent no. 4 has merely reiterated his earlier order dated 14.06.2021 holding that no post of Computer Operator was available and under the Rule 5 (2) of the Rules of 2016, regularization can be made only on the vacant post available in the Department. Further submission of learned counsel for the petitioner is that the aforesaid order has passed without application of mind to the facts of the case as well as provisions of the Rules of 2016 as also the order dated 25.03.2021 passed by the Government whereby the respondent no. 2 was authorized to take a decision for appointment of the petitioners on the post of Mate at his own level. In similar situation this Court in Writ Petition No. 7279 of 2021 has passed an order staying the effect and operation of an order of termination passed in case of similarly situate employee.

Further submission is that order dated 14.06.2021 cancelling the

orders of appointment of petitioners on the post of Computer Operator which engages non application of mind as the petitioners were earlier working on contract basis on the post of Computer Operator but they have been regularised on the post of Mate as the post of Computer Operator was not available.

The matter requires consideration.

All the opposite parties are allowed six weeks' time to file counter affidavit.

Rejoinder affidavit, if any, may be filed within three weeks thereafter.

List this case on 04.05.2022.

Till the next date of listing, effect and operation of impugned order dated 11.10.2021 passed by respondent no.4, a copy whereof has been annexed as Annexure No. 19 to the writ petition, shall remain stayed and the petitioners shall be allowed to work and shall be paid salary.

Order Date :- 2.3.2022

Abhishek Singh