

State of U.P. and Others

Vs

Ajay Kumar

Civil Appeal No. 1568 of 1997

17.02.1997

ORDER

1. Leave granted. We have heard learned counsel on both sides.
2. This appeal by special leave arises from the Division Bench judgment of the Allahabad High Court, made on 9-11-1995 in Special Appeal No. 302 of 1995.
3. The admitted position is that the respondent came to be appointed on daily-wage basis on 14-2-1985 as Class IV employee, Nursing Orderly, in the Medical College by the Medical Superintendent. When the respondent filed a writ petition in the High Court for his regularisation, the learned Single Judge pointed out that the respondent has not brought to the notice of the Court, any statutory rule under which the respondent could be regularised, on the basis of the service rendered by him as a daily-wage earner. Even the method of recruitment adopted by the Superintendent was not proper inasmuch as he did not call for applications. The Division Bench reversed the decision of the learned Single Judge and had given directions. It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then. The direction in the backdrop of the above facts is, obviously, illegal.
4. The appeal is accordingly allowed. The order of the learned Single Judge stands upheld and that of Division Bench stands set aside. No costs.