

Ramchander And Others

Vs

Additional District Magistrate and Others

Civil Appeal No. 2319 of 1985

(Sujata V. Manohar, G.T. Nanavati JJ)

10.09.1997

ORDER

1. Four appellants who are before us were appointed as Lekhpals under the Uttar Pradesh Board of Revenue on ad hoc basis. The dates of their appointments, as set out in the impugned judgment are - Appellant 1, 12-11-1980; Appellant 2, 11-3-1981; Appellant 3, 6-10-1982; and Appellant 4, 12-11-1982. Their services were terminated under orders issued in 1984. Copies of only two orders of termination are annexed. The first order is dated 24-2-1984. The name of the employee is left blank in the copy. The second order bears the name of the first appellant. But the date is incomplete. It is of June 1984. Apart from stating that termination orders are dated 24-2-1984/2-6-1984, learned counsel for both the sides are unable to produce anything more. Both the termination orders refer to earlier order of 17-2-1984.

2. In 1979, the U.P. Regularisation of Ad hoc Appointments (on posts outside the purview of Public Service Commission) Rules were promulgated. Rule 4 of the 1979 Rules provides as follows :

"4. Regularisation of ad hoc appointments. - (1) Any person who -

(i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service, as such, on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years' service as such,

shall be considered for regular appointment in permanent or temporary vacancy, as may be available, 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."

3. On 23-3-1984 the above Rules were amended by the addition of Rule 9 to these Rules. Rule 9 is as follows :

"9. The provisions of these Rules shall apply mutatis mutandis, also to any person directly appointed on ad hoc basis on or before 1-5-1983 and continuing in service as such on the date of commencement of the U.P. Regularisation of Ad hoc

Appointments (on posts outside the purview of the Public Service Commission)
(Amendment) Rules, 1984."

4. As a result, all those who were appointed on ad hoc basis on or before 1-5-1983 and who were continuing in service as such on 23-3-1984 became eligible for consideration for regularisation provided they fulfilled the conditions laid down in Rule 4(i), (ii), and (iii) save and except that the relevant date under Rule 4(i) would now be 1-5-1983. Rule 4(iii) requires that the ad hoc appointee should have completed three years of service or, for consideration for regular appointment, he will become eligible on completion of three years' service. The High Court has interpreted Rule 4(iii) to mean that in order to be eligible, the ad hoc employee should have completed three years of service on or before 1-5-1983. Since none of the appellants had completed three years' service on 1-5-1983 they were not eligible for regularisation.

5. We are not examining the correctness or otherwise of this interpretation because, in the present case, the appellants did not fulfil the basic requirement of Rule 4(i) namely that they should be continuing in service as ad hoc employees in order to be eligible for regularisation. The services of at least some of the appellants were terminated in February 1984. The services of others were terminated in June 1984. In view of the fact that the services of the appellants had been terminated, they will not be eligible for regularisation under the amended Rules of 1984. Those who are not in service cannot be regularised. In the writ petition which was filed, the appellants who were the petitioners, prayed for regularisation. Although they made averments relating to their termination of service, they did not pray for setting aside the orders of termination passed in their cases. So long as the orders of termination stand, they cannot get the benefit of regularisation under the amended Rules of 1984.

6. Hence, the present appeal is dismissed. There will, however, be no order as to costs.