

A STATE OF UTTAR PRADESH & ORS.

v.

MOHD. SULEMAN SIDDIQUI

(Civil Appeal Nos.4262-4263 of 2015)

B FEBRUARY 12, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

- Labour Laws: Regularisation – Claim of – Respondents engaged as registration clerks on daily wages – Respondent's case that his appointment was on a regular basis and not as a daily wager – Proceedings before the High Court and this Court – On remand to the High Court to consider whether the appointment made were in consistent with r. 22, the High Court holding that the appointment was not in breach of r. 22, set aside the termination and issued directions for grant of consequential benefits – On appeal, held: Record clearly indicate that the engagement of the respondent at all material times was only as a daily wager and, there is no order by which he was treated to be in the regular service of the District Registrar – He has no vested right to claim regularization in service – Plea for regularization has, in fact been rejected in the judgment of the Division Bench – Order of the Single Judge, quashing the rejection of the representation of the respondent will not amount to a mandamus to regularize the respondent or to treat him in the regular employment of the State – All that the High Court will be construed to have held is that once the respondent was reinstated in service following the earlier order, his services could not have been dispensed with without an order of termination in accordance with law – In the absence of an order of termination, the respondent may be treated to be in the employment of the State, albeit on a daily wage basis – Furthermore, his services were discontinued due to the pendency of a criminal case – Subordinate Offices Ministerial Staff (District Recruitment) Rules 1985 – r. 22.*

Disposing of the appeals, the Court

HELD: 1.1 The initial appointment of the respondent in pursuance of the proceedings of the Departmental Selection

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Committee held on 24 February 1991, was on a daily wage basis. The Minutes categorically indicate that against the six posts available for selection against regular vacancies, the Committee selected six candidates and indicated the names of two more candidates having regard to the probable vacancies which were likely to arise during the recruitment year. However, the Selection Committee noted that the office of the District Registrar had engaged daily wagers as registration clerks. Eleven such persons were engaged, including the respondent. Before this Court, it was asserted by the State that the respondent was not engaged on a regular basis. The respondent contended that his appointment was on a regular basis and not as a daily wager. This Court remanded the proceedings to the High Court for considering whether the appointment was made in a manner consistent with Rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules 1985. The High Court concluded that the appointment was not in breach of Rule 22 of the Rules. Consequently, the order of termination was set aside with a direction for grant of consequential benefits. There is no finding of fact to the effect that the appointment of the respondent was on a regular basis. The record clearly indicates that the initial engagement was only on a daily wage basis. [Para 16] [597-E-H; 598-A-B]

1.2 The services of the respondent were discontinued due to the pendency of a criminal case. This led the respondent to institute fresh proceedings, in which, there was an interim order in his favour. However, the significant fact which emerges from the record is that the engagement of the respondent at all material times was only as a daily wager and, there is no order by which he was treated to be in the regular service of the District Registrar. The order by which the respondent was disengaged was challenged before the High Court, which culminated in the judgment of the Division Bench. [Para 17, 18] [598-B-D]

1.3 The status of the respondent at all material times has been of a daily wage employee. He has not been appointed on a regular basis. He has no vested right to claim regularization in service. The plea for regularization has in fact been rejected in the judgment of the Division Bench. The order of the Single Judge, quashing the rejection of the representation of the

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- A respondent will not amount to a *mandamus* to regularize the respondent or to treat him in the regular employment of the State. All that the High Court will be construed to have held is that once the respondent was reinstated in service following the earlier order his services could not have been dispensed with without an order of termination in accordance with law. In the absence of an order of termination, the respondent may be treated to be in the employment of the State, albeit on a daily wage basis. [Para 19] [598-E-G]
 - C 1.4 The engagement of the respondent is as a daily wage employee. The respondent has not been appointed on a regular basis in the services of the State of Uttar Pradesh. Any arrears of wages that are due and payable to the respondent on that basis shall be computed and paid over to him within the stipulated period. [Para 21] [599-B-C]
- D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4262-4263 of 2015.

From the Judgment and Order dated 18.04.2014 and 23.09.2014 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 67599 of 2011 and Special Appeal Defective No.812 of 2014 respectively.

- E R.K. Raizada, Sr. Adv., Bhakti Vardhan Singh, Adv. for the Appellants.

U. K. Uniyal, Sr. Adv., Dinesh K. Garg, Abhishek Garg, Dhananjay Garg, Deepak Mishra, Vivek Gupta, Advs. for the Respondent.

- F The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

- G 1. A learned Single Judge of the High Court of Judicature at Allahabad, by a judgment dated 18 April 2014 allowed a Writ Petition instituted by the respondent under Article 226 of the Constitution. The Single Judge set aside an order passed by the Inspector General (Registration) rejecting a representation for regularisation, submitted by the respondent and directed the grant of consequential benefits. The Division Bench declined to condone a delay of 96 days in filing a Special Appeal as a consequence of which the order of the learned Single Judge H has been maintained.

2. On 7 February 1991, the Inspector General (Registration), Jhansi Division constituted a Selection Committee *inter alia* for selection of candidates for the Registration Department. On 24 February 1991, vacancies were notified to the Local Employment Exchange. Candidates were interviewed. The minutes of the meeting of the Departmental Selection Committee dated 24 February 1991 indicate that six posts were available for selection against regular vacancies, of which one post was reserved for Scheduled Caste and Scheduled Tribe candidates. The Departmental Selection Committee selected six candidates in order of merit against the regular vacancies. In addition, two more candidates were recommended for appointment against vacancies which were likely to fall vacant before the expiry of the recruitment year.

3. Besides selecting the above eight candidates against existing and probable vacancies falling within the recruitment year in the office of the District Registrar, the Committee noted that registration clerks were working in the office of the Deputy Registrar, Jhansi as daily wagers. Considering the requirement of registration clerks on a daily wage basis, a list of the incumbents was prepared for appointment as registration clerks on daily wage basis. The name of the respondent was among eleven such candidates.

4. On 27 May 1991, the Inspector General (Registration) addressed a communication to all the District Registrars stating that a decision had been taken to terminate the services of all the daily wage employees who had been engaged for dealing with pending work in the establishments under their control. The services of the respondent were dispensed with together with other daily wage employees.

5. Following the dispensation of their services, the daily wage employees moved the Allahabad High Court. An interim order staying termination was passed on 1 July 1991. Adverting to the interim order of the High Court, the District Registrar, Jhansi, issued a circular dated 19 July 1991 directing that the eleven daily wage employees would be permitted to work as before on the same terms and conditions. The Writ Petition before the Allahabad High Court was dismissed on 8 February 1995. Proceedings were initiated before this Court under Article 136 of the Constitution. On the grant of special leave, that proceeding, which was numbered as Civil Appeal No.9136 of 1995, was disposed of by a two Judge Bench of this Court on 27 September 1995.

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- A 6. Before this Court, a submission was made on behalf of the daily wage employees, who were the appellants, that they had not been employed as registration clerks on a daily wage basis, but had been duly selected by the Departmental Selection Committee constituted under the Rules and had been appointed on a regular basis by the District Registrar, Jhansi. On behalf of the State, it was urged that the appointments were made without complying with the provisions of Rule 22 of the Subordinate Offices Ministerial Staff (District Recruitment) Rules 1985¹, as a result of which the selection was void *ab initio*.

- B 7. Since this question was not examined by the High Court, the proceedings were remitted back to the High Court for a decision afresh.
- C On remand, a Division Bench of the High Court, by its judgment dated 9 September 1999, set aside the orders that were impugned in the writ petitions. The State was directed to give consequential benefits. The Division Bench of the High Court held that under Rule 22 of the Rules, vacancies were required to be notified to the Employment Exchange.
- D Moreover, it was open to the appointing authority to invite applications directly from persons registered with the Employment Exchange for which purpose an advertisement was required to be issued in the daily newspaper. The High Court held that since the appointing authority did not call for applications directly from candidates, there was no need to publish an advertisement in the newspapers. The High Court observed
- E that since the vacancies had been notified to the Employment Exchange, Rule 22 of the Rules was, in substance, complied with. Though the candidates in question had not been sponsored by the Employment Exchange, but had directly applied for appointment, in the view of the High Court, this was not prohibited by Rule 22. The directions of the
- F High Court are extracted below :

- G “...The judgment of the learned Single Judge is liable to be set aside and the orders impugned in the writ petitions are liable to be quashed, in such view of the matter the question of issuing a direction to the concerned authority to consider the case of the appellants for regularization in accordance with the judgment of the Apex Court in Khagesh Kumar (*supra*) does not arise.

In view of the above discussion the appeals succeed and are allowed. The judgment under challenge are set aside and the orders impugned in the writ petitions are quashed. The

H ¹“the Rules”

respondents are directed to give consequential benefits to the A appellants.”

8. The respondent was in the meantime involved in a criminal case, following which he was prevented from discharging his duties. A representation was addressed by the respondent to the Inspector General (Registration) on 8 August 2011. This was following the order of the Allahabad High Court in another writ petition² instituted by him. The High Court, in its order dated 12 May 2011, observed that one of the grievances of the respondent was that he had been prevented from discharging his duties due to the pendency of the criminal case. The respondent stated that the criminal case had ended in acquittal, as a result of an order passed by the High Court in a criminal revision. The second grievance of the respondent was that other similarly placed employees had been given the benefit of regularization. The Allahabad High Court directed the Inspector General to deal with the representation. On 16 August 2011, the representation was rejected.

9. A case had been registered against the respondent under Sections 498A, 323, 504 and 506 of the Indian Penal Code. He was convicted by the Additional Chief Judicial Magistrate, Jhansi on 28 June 2000 and sentenced to six months' simple imprisonment. In appeal, the conviction was confirmed by the Sessions Judge. However, on 13 September 2006, in the course of the hearing of Criminal Revision 721 of 2001, the High Court was informed that the complainant and the respondent—accused had entered into an agreement out of Court. Based on the purported compromise, the High Court allowed the Criminal Revision and set aside the judgment of conviction. Based on these facts, the representation submitted by the respondent was rejected by the Inspector General (Registration). The respondent was held unfit for joining government service. He was also found unfit for regularisation and grant of consequential service benefits.

10. The respondent once again instituted a Writ Petition³ before the Allahabad High Court. The relief which was sought was the quashing of the order dated 16 August 2011 rejecting his representation. During the pendency of the Writ Petition, by an interim order dated 21 May 2011, the State was directed to permit the respondent to continue in service pending further orders.

² WP 60259 of 2009

³ [Civil Miscellaneous Writ Petition 67599 of 2011]

- A 11. The Writ Petition was allowed by a learned Single Judge of the High Court, by the impugned order dated 18 April 2014. The learned Single Judge, while allowing the Writ Petition and setting aside the order dated 16 August 2011, granted all consequential benefits. The learned Single Judge of the High Court, during the course of the judgment took note of the fact that Writ Petition 19357 of 2001 instituted by the respondent had been disposed of on 11 May 2004. During the pendency of the Writ Petition, there was an interim direction to allow the respondent to continue. Against the final judgment dated 11 May 2004, Special Appeal 385 of 2005 had been filed, which was pending. The learned Single Judge held that:
- B (i) The order of conviction had been set aside by the High Court in a Criminal Revision;
- C (ii) The services of the respondent had never been terminated;
- D (iii) The selection of the respondent was on a regular basis and the termination was found to be illegal and was set aside on 9 September 1999; and
- E (iv) There was no order of termination in accordance with law.
- F 12. A Special Appeal was dismissed by a Division Bench on 23 September 2014 on the ground of delay.
- G 13. Learned counsel appearing on behalf of the appellants submits that the basis of the judgment of the High Court is flawed. The Minutes of the Departmental Selection Committee indicate that the respondent was appointed on a daily wage basis. As against six regular vacancies, the Departmental Selection Committee recommended eight candidates. This list did not include the name of the respondent. Learned counsel submitted that consequent upon his termination being set aside by the High Court on 9 September 1999, the respondent was taken back to work. However, learned counsel has adverted to the fact that against the judgment of the learned Single Judge dated 11 May 2004, a Special Appeal was filed by the State being Special Appeal 385 of 2005. That Special Appeal, together with a batch of appeals, was disposed of by a Division Bench of the High Court on 5 October 2017, as a result of which the plea for regularization of daily wagers who were engaged as registration clerks has been rejected. Learned counsel submitted that the pendency of the Special Appeal 385 of 2005 was noticed in paragraph
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7 of the impugned judgment of the learned Single Judge. Since the Special Appeal has been disposed of, it was submitted that the respondent cannot be considered for regularization.

14. Opposing these submissions, it has been urged on behalf of the respondent that there was no issue as to the regularization of the respondent nor did he seek regularization. The contention which has been urged on behalf of the respondent is that the appointment in the first instance was in accordance with Rule 22 of the Rules. This was accepted in the judgment of the High Court dated 9 September 1999. Hence, it was urged that as a matter of fact the submission of the State is misconceived. Learned counsel submits that the Writ Petition filed by the respondent was tagged with a group of petitions which were heard by a learned Single Judge. Even the Special Appeal by the State was heard together with a batch of connected matters. Though by the judgment of the Division Bench dated 5 October 2017, the plea for regularization has been rejected, it was urged that the case of the respondent not being one of regularization, the matter was distinct from the connected cases which were disposed of by the Division Bench.

15. We have heard learned counsel appearing on behalf of the contesting parties and, with their assistance, perused the record.

16. The record indicates that the initial appointment of the respondent in pursuance of the proceedings of the Departmental Selection Committee held on 24 February 1991, was on a daily wage basis. The Minutes (Annexure P-1) categorically indicate that against the six posts available for selection against regular vacancies, the Committee selected six candidates and indicated the names of two more candidates having regard to the probable vacancies which were likely to arise during the recruitment year. However, the Selection Committee noted that the office of the District Registrar had engaged daily wagers as registration clerks. Eleven such persons were engaged, including the respondent. Before this Court, in the judgment which was delivered on 27 September 1995, it was asserted by the State that the respondent was not engaged on a regular basis. The respondent contended that his appointment was on a regular basis and not as a daily wager. This Court remanded the proceedings to the High Court for considering whether the appointment was made in a manner consistent with Rule 22 of the Rules. The High Court, by its judgment dated 9 September 1999, concluded that the

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- A appointment was not in breach of Rule 22 of the Rules. Consequently, the order of termination was set aside with a direction for grant of consequential benefits. There is no finding of fact to the effect that the appointment of the respondent was on a regular basis. The record clearly indicates that the initial engagement was only on a daily wage basis.
- B 17. The services of the respondent were discontinued due to the pendency of a criminal case. This led the respondent to institute fresh proceedings, in which, as we have noted, there was an interim order in his favour. However, the significant fact which emerges from the record is that, firstly, the engagement of the respondent at all material times was only as a daily wager and, secondly, there is no order by which he was treated to be in the regular service of the District Registrar.
- C 18. The order by which the respondent was disengaged was challenged before the High Court. That has culminated in the judgment of the Division Bench dated 5 October 2017 in **State of U P v Raj Kumar Srivastava⁴**. In that batch of cases, Special Appeal 385 of 2005 pertained to the respondent. This was noticed in paragraph 7 of the judgment of the learned Single Judge dated 18 April 2014. The plea for regularization was specifically negated.
- D 19. The status of the respondent at all material times has been of a daily wage employee. He has not been appointed on a regular basis.
- E He has no vested right to claim regularization in service. The plea for regularization has in fact been rejected in the judgment of the Division Bench in Special Appeal 385 of 2005. The order of the learned Single Judge, quashing the rejection of the representation of the respondent dated 16 August 2011, will not amount to a *mandamus* to regularize the
- F respondent or to treat him in the regular employment of the State. All that the High Court will be construed to have held is that once the respondent was reinstated in service following the earlier order dated 9 September 1999, his services could not have been dispensed with without an order of termination in accordance with law. In the absence of an order of termination, the respondent may be treated to be in the
- G employment of the State, albeit on a daily wage basis.
- H 20. We have noted the submission of the respondent that though Special Appeal 385 of 2005 instituted by the State was tagged with a batch of appeals which was disposed of by the High Court on 5 October

H ⁴Special Appeal No.767 of 2004

2017, the respondent was not raising an issue of regularization and, hence, A
that judgment ought not to apply to his case. As at present the judgment
of the Division Bench concludes the Special Appeal instituted by the
State against the order of the learned Single Judge in the Writ Petition
filed by the respondent.

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21. For the above reasons, we dispose of the appeals by holding
that the engagement of the respondent is as a daily wage employee.
The respondent has not been appointed on a regular basis in the services
of the State of Uttar Pradesh. Any arrears of wages that are due and
payable to the respondent on that basis shall be computed and paid over
to him within a period of three months from today. The respondent
would be entitled to arrears with effect from the date of the institution of
Civil Miscellaneous Writ Petition 67599 of 2011 before the learned Single
Judge of the High Court of Judicature at Allahabad. However, there
shall be no order as to costs. Pending applications stand disposed of.
C

Nidhi Jain

Appeals disposed of.