
(1993) 05 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 29158 of 1990

Adya Prasad Misra

APPELLANT

Vs

U.P. Public Services Tribunal, I and Others

RESPONDENT

Date of Decision : 21-05-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 2 AWC 1007

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant;

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—In this petition by order dated 19-11-1990 learned Standing Counsel was granted six weeks" time to file counter affidavit. However, no counter affidavit was filed. The case came up before the Court on 20-1-1992 on which date respondents Nos. 6 to 10 were allowed to be deleted from the array of the parties and learned Standing Counsel was granted three week"s further time to file counter affidavit by a stop order. However, no counter affidavit could be filed. The case was listed before me on 28-4-1993 and on the request of learned Standing Counsel, it was again adjourned for 4-5-1993 but in spite of this last opportunity granted, no counter affidavit has been filed. A supplementary affidavit was filed by petitioner annexing therewith the list of seniority prepared for the applicants-Amins on the basis of the first appointment Learned Standing Counsel has not requested for any opportunity to file counter affidavit to this supplementary affidavit, A questionnaire obtained from Tahsildar Sadar, Tahsil Mirzapur has also been filed showing that Vijai Tiwari and Vishwanath Singh, Collection Amins, did not work in the year 1986 on their post. Learned Counsel for petitioner and learned Standing Counsel have agreed that petition may be decided finally on merits at this stage.

2. Facts giving rise to this petition are that in Mirzapur district proceedings for

selecting Collection Amins were initiated and applications were invited. Petitioner also applied and appeared in the written test in which it is claimed that he qualified and thereafter he was called for interview by letter dated 29-11-1976, which is Annexure I to the writ petition. Under this letter, petitioner was to appear before the Selection Committee on 3-12-1976. Petitioner appeared before the Selection committee and thereafter he was appointed as Amin and posted in Tahsil Sadar with effect from 20-12-1976. It has also been stated that petitioner was already working on the post of Collection Amin with effect from 7-1-1976. On the basis of the aforesaid written test and interview a seniority list was prepared of all the persons who were selected in this list petitioner stood at serial No. 38. Seniority was determined on the basis of the date of joining the post before selection proceedings. Respondents Nos. 3 to 5, however, on 19-10-1986, issued appointment letter appointing eleven persons, including Vidya Bhau Upadhyaya, mentioned at serial No. 40, and Brigunath Upadhyaya, mentioned at serial No. 74. The order dated 19-10-1986 has been filed as Annexure 3 to the writ petition. The petitioner being senior to aforesaid two persons filed a claim petition before respondent No. 1 alleging discrimination and challenging action of the respondents in appointing juniors on regular basis and ignoring the claim of the petitioner illegally. This claim petition was registered as Claim No. 226/1 of 1989.

3. The claim of petitioner was contested by the respondents Nos. 2 to 5. The U.P. Public Services Tribunal, by its judgment dated 9-8-1990, rejected the claim of the petitioner, aggrieved by which the present petition has been filed.

4. Before petitioner filed his claim petition, twelve persons similarly situated had already filed claim petition No. 16/1 of 1987. In this claim petition the grievance raised was the same that persons who were mentioned below the petitioners of that claim petition, were illegally regularised by order dated 19-10-1986. The Tribunal, by order dated 31-8-1990, allowed the claim petition and directed to appoint the twelve petitioners in that claim petition on regular basis. Learned Counsel submitted that the same Tribunal by the impugned order illegally rejected the claim of the petitioner though there was no difference in the facts of the two claim petitions. Learned Counsel has submitted that the order dated 31-8-1990 was binding on the respondents and the claim of petitioner ought to have been allowed. It has been further submitted that the learned Tribunal has illegally distinguished the case of petitioner on the ground that petitioner was not in service in 1986 for at least three years and hence there was no question of regularisation of his services. Learned Counsel for petitioner has submitted that the Tribunal committed a manifest error of law in rejecting the claim of the petitioner on the aforesaid ground. The petitioner and all other persons mentioned in the list were seasonal Collection Amins and they were not working on their post on regular basis. They were at the mercy of the authorities who were free to take or not to take work from them. Learned Counsel for petitioner has submitted that there is nothing on record that petitioner was asked to work and he refused to work on his post. No order was ever passed deleting his name

from the seniority list or directing that he is not available to work on his post and in these circumstances the distinction drawn by the learned Tribunal is wholly artificial and non-existent. Learned Counsel has also relied on the questionnaire filed as Annexure 2 to the supplementary affidavit for showing that even other Collection Amins who could not work in the year 1986 have been regularised on the post. The names of the Collection Amins mentioned in the Questionnaire are Vijai Tiwari and Vishwanath Singh who were petitioners Nos. 10 and 12 before the Tribunal in the earlier case. It has been submitted that petitioner has been illegally discriminated in the matter of employment and the action of the respondents is illegal and violative of Articles 14 and 16 of the Constitution of India.

5. Learned standing counsel, on the other hand, has justified the order of the Tribunal and has placed reliance in case of Zakir Hussain Vs. Engineer-in-Chief, Irrigation Dept. and Others, .

6. I have thoroughly considered the submissions of the learned Counsel for parties and perused the material on record. There is no dispute that the claim of petitioner before the Tribunal was identical to that of the 13 petitioners in claim petition No. 16 of 1987 but for the alleged ground that petitioner was not working in the year 1986, he could not be refused the relief which was already granted in the earlier claim petition, hence the only question for consideration is about the fact as to whether the respondents were justified in not appointing petitioner on regular basis on account of the fact that he was not working in the year 1986.

7. In my opinion, the aforesaid distinction drawn is not correct and appears to be wholly irrelevant. It is not denied that the petitioner was working as seasonal Collection Amin from before the Selection proceedings were initiated but this working was not regular and continuous. The petitioner used to discharge the duties whenever called upon to do the same. From the documents on record, specially Annexure 1-A to the writ petition, it is clear that there were long gaps between the period petitioner was asked to work as Collection Amin and his working was totally dependant on the mercy of the respondents. However, there is no material on record to show that he ever refused to work on his post when he was called upon to do so or he ever absented himself when he was allowed to work. On preparation of the seniority list after completing the selection proceedings a right accrued in his favour to be appointed on the regular basis strictly in accordance with the seniority mentioned in the list. There was no record before the Tribunal that petitioner was called upon to join the post on regular basis and he refused or he was not available. Working prior to this regular appointment was not a condition or relevant factor, for appointing petitioner or other candidates identically situated on regular basis. The previous working can only show that they somehow remained connected with the work but their appointment on regular basis was not dependant on that. In my opinion, the Tribunal committed an error in refusing the same relief to the

petitioner which was already granted to 13 persons identically situated. Petitioner was entitled for the same relief. I have perused the case relied on by learned Standing counsel. In that case the Division Bench was dealing with the regularisation of the persons who were allowed to work without there being any regular selection proceedings. However, in the present case, there were regular selection proceedings in which petitioner was selected and his name was included in the list of the successful candidates. In my opinion, facts of the case relied on by the learned Standing Counsel are clearly distinguishable and the view expressed therein cannot be applied in the present case.

8. It may not be out of place to mention that some of the petitioners in Claim Petition No. 16 of 1987 were also junior to petitioner. Petitioner's name stood at serial No. 38 while names of Amar Nath Pandey stood at serial No. 45, Vishwanath Singh at 49, Gopinath Dubey at 63, Raj Bahadur Singh at 71 and Shiv Murti Upadhyaya at 72, i.e. much below the name of the petitioner. The Tribunal also committed an error in ignoring this material aspect of the case that it had already directed appointment of the aforesaid persons by its earlier judgment on regular basis who were junior to the petitioner. In my opinion, it is a clear case of denial of same relief which was already given to identically situated persons and for this reason, in my opinion, instead of remanding the case, petitioner should be granted relief by this Court straightway.

9. For the reasons recorded above, this petition is allowed. The order dated 9-8-1990, passed by respondent No. 1, U.P. Public Services Tribunal I, Lucknow, in Claim petition no, 226/1 of 1989 is hereby quashed. The claim petition of petitioner is allowed and the respondents Nos. 2 to 5 are directed to appoint petitioner also on regular basis with effect from 10-10-1986 from which date the persons junior to him, namely Vidya Dhan Upadhyaya and Brigunath Upadhyaya were appointed Petitioner shall also be entitled for pay on the regular basis with effect from 19-10-1986 and the arrears of salary shall be paid to him within six months from the date a certified copy of this order is, filed before the authority concerned and competent in this behalf. There "will be no order as to costs.