

(2007) 05 AHC CK 0148
In the Allahabad High Court

Devendra Prasad Srivastava

APPELLANT

Vs

The Mandi Nideshak, Rajya Krishi Utpadan Mandi Parishad,
The Additional Director (Admn.), Rajya Krishi Utpadan Mandi
Parishad, The Deputy Director (Admn.), Rajya Krishi Utpadan
Mandi Parishad and The Chairman/Secretary, Krishi Utpadan
Mandi Samiti

RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

Citation : (2008) 5 AWC 4874

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—The brief facts of this case are that on 10.11.1972 the petitioner was appointed as a Cleric in Mandi Samiti Sahjanwa, District Gorakhpur. On 14.5.1977 the post of the petitioner was re-designated/changed from that of Clerk to Amin/Auctioneer. In the said order dated 14.5.1977 converting the post of the petitioner from Clerk to that of Amin/Auctioneer it was clearly stated that the seniority of the petitioner (Devendra Prasad) as Lipik (Clerk) would be added/merged with the post of Amin. Thereafter on 20.4.1982 a gradation/seniority list was prepared by the Mandi Samiti, Sahjanwa in which the date of initial appointment of the petitioner was shown as 10.11.1972 and he was given his seniority in accordance with the said date of appointment. Then on 1.8.1984, The Uttar Pradesh Agricultural Produce Market Committees (Centralized) Service Regulations, 1984 (for short "Regulations of 1984") came into force and pursuant thereto a State-wise seniority list of Amin/Auctioneer was to be prepared. On 21.8.1984 the Mandi Samiti issued a tentative seniority list of Amin/Auctioneer of the State. In the said list, the name of the petitioner found place at serial No. 368, showing his date of appointment on the post of Amin/Auctioneer as 15.5.1977. On 19.11.1984 the petitioner submitted his objections to such seniority list claiming his seniority on the basis of the date of his initial

appointment on 10.11.1972. Then on 26.7.1991 a final gradation/seniority list of the whole State was published in which the name of the petitioner was shown at serial No. 345, wherein also his date of appointment was shown as 14.5.1977. The petitioner then filed his representations dated 9.9.1991 and 23.8.2000 with the prayer that his seniority be determined after treating his date of appointment as 10.11.1972, instead of 14.5.1977. On 25.9.2000 the Deputy Director (Administration), Respondent No. 3, after scrutinizing the claim of the petitioner, recommended to the Additional Director, Respondent No. 2 to consider the claim of the petitioner for promotion and also for considering his claim of seniority from the date of his initial appointment on 10.11.1972. Since nothing was done on the said recommendations made by the Respondent No. 3, the petitioner again filed representations before the respondent-authorities on 13.2.2001 and 7/15.5.2001. In the said representations the petitioner had also mentioned that in case if nothing was done, he would be compelled to approach the court of law for redressal of his grievances. Although not directly relevant, but still it may be mentioned that thereafter on 2.8.2001 the respondent-authorities passed an order suspending the petitioner from service. Challenging the said suspension order, the petitioner filed a writ petition, in which an interim order was granted on 8.10.2001. On 29.11.2001 the respondent authorities withdrew the suspension order and reinstated the petitioner with full salary. However, since the representations of the petitioner with regard to fixation of his seniority on the basis of his date of initial appointment were still not decided, the petitioner filed this writ petition, initially with the prayer to decide his aforementioned representations and also for a direction in the nature of Mandamus commanding the respondents to fix his seniority on the basis of his initial appointment on 10.11.1972 and for grant of other consequential benefits.

2. While issuing notices to the respondents in this writ petition, on 14.12.2001 this Court had directed the respondents to specifically state in the counter affidavit as to what action had been taken by them on the representations of the petitioner. Pursuant thereto, along with the counter affidavit the respondents filed a copy of the order dated 5.2.2002 passed by the Mandi Nideshak, Respondent No. 1, whereby the representation of the petitioner had been rejected. Consequently the petitioner got his writ petition amended and besides seeking other amendments, he made a further prayer for quashing the order dated 5.2.2002 passed by Respondent No. 1 as well as the order dated 4.5.1992, of which mention had been made in the said order dated 5.2.2002 though no copy thereof was ever served on the petitioner or even filed by the respondents in their various affidavits filed.

3. I have heard Sri Manoj Kumar Sharma, learned Counsel for the petitioner, as well as Sri B.D.A. Mandhyan, learned Senior Counsel appearing on behalf of the respondents and have perused the record.

4. It is not disputed by the respondents that the petitioner was initially appointed as a Clerk in the Mandi Samiti, Sahjanwa, District Gorakhpur on 10.11.1972. The

order dated 14.5.1977 issued by Mandi Samiti, Sahjanwa whereby the post of Clerk was converted to that of Amin/Auctioneer, is also not denied. In the said order itself it has been clearly stated that "Sri Devendra Prasad ki jyesthata (seniority) Lipik varg ki awadhi ko Amin pad me sammilit ker li jayegi". Prior to the coming into force of the Regulations of 1984 with effect from 1.8.1984, there were no rules governing the service conditions of the employees of the Mandi Samiti. Regulation 13 of the Regulations of 1984 protects the rights and interests of the employees who were appointed in the Mandi Saraiti prior to the coming into force of the said Regulations. The relevant Regulation 13(2) of the Regulations is being quoted below:

(2) Except as otherwise provided in the Regulation, any appointment made to the posts included in the centralized service as a result of regular selection before the promulgation of these regulations will be deemed to be an appointment under these regulation and shall be valid for all purposes.

5. Thai protection to the service of the petitioner has been given by the Regulations of 1984. The post of Clerk was merged with the post of Amin/Auctioneer and consequently the order dated 14.5.1977 was passed in the case of the petitioner. There is no whisper of there being any! irregularity in the appointment of the petitioner either on the post of Clerk on 10.11.1972 or on the post of Amin/Auctioneer on 14.5.1977. In the impugned order dated 5.2.2002, the benefit of the service of the petitioner with effect from 10.11.1972 has been denied on the basis of a Circular dated 6.12.1985 issued by the Mandi Nideshak, Respondent No. 1, wherein it was stated that the employees appointed prior to 1.8.1984 (i.e. the date of the Regulations of 1984 coming into force) would be regularized from the date of their joining on the converted post. It has also been mentioned in the impugned order that on the basis of such Circular, the earlier representation of the petitioner on 28.9.1991 had been rejected by the Additional Director, Respondent No. 2, on 4.5.1992. Neither the instructions dated 6.12.1985 nor the order dated 4.5.1992 have been filed along with the main counter affidavit or along with any of the affidavits filed by the respondent-authorities. It is the categorical case of the petitioner that no such order dated 4.5.1992 had ever been served on him. A copy of the said order has been passed on by the learned Counsel for the respondents for my perusal during the course of the arguments. A perusal of the said order also does not indicate that any such copy of the order was marked to the petitioner. The said order dated 4.5.1992 also does not give any reasons for not giving the benefit of service to the petitioner with effect from 10.11.1972 but only relies on the instructions of the Mandi Nideshak, Respondent No. 1, issued on 6.12.1985.

6. The instructions issued by an officer cannot supersede the specific provisions of the Regulations of 1984. Regulation 13(2) of the Regulations of 1984 clearly provides that any appointment made to the post, including the one in the centralized service, prior to the coming into force of the Regulations, will be deemed to be an appointment made under the said Regulations. The

appointment of the petitioner on the post of Clerk on 10.11.1972 is admitted to the respondents. The conversion of the post of Clerk to that of Amin/Auctioneer vide order dated 14.5.1977 with the condition that the petitioner would be retaining his seniority with effect from the date of his appointment as Clerk, is also admitted to the respondents. Then it is not understood as to why such benefit of seniority has been denied to the petitioner.

7. In a case of another employee (Sri Udai Veer Sharma) who was similarly situated, the benefit of his initial appointment was given to him. Said Udai Veer Sharma was initially appointed as a clerk on 7.6.1969. His post was converted to that of Amin/Auctioneer vide order dated 1.8.1977. He was also initially granted seniority treating that he joined the service on 1.8.1977 and was thus placed below the petitioner, at serial No. 379. However, said Udai Veerm Sharma also filed a representation to the respondent authorities and by an order dated 24.11.2004 he was given the benefit of seniority from the date of his initial appointment as Clerk i.e. from 7.6.1969. A copy of the said order has been filed as Annxcxurc-1 to the affidavit accompanying Civil Misc. Application No. 78255 of 2005. In reply to the same, the respondent-authorities have slated that the order dated 24.11.2004 has now been withdrawn by the Mandi Director on 17.6.2006, a copy of which has been filed as Annexure-SCA 1 to the short counter affidavit filed by the respondents. The said order appears to have been passed after the petitioner had pointed out to the respondent-authorities of the pick and choose policy adopted by the respondent-authorities by giving the benefit to one employee and denying the same to the other similarly placed employees. The petitioner, however, claims that even after the passing of the order dated 17.6.2006, said Sri Udai Veerm Sharma is still being treated as senior to the petitioner and being given the benefit of the order dated 24.11.2004.

8. Sri B.D. Mandhyan, learned Senior counsel for the respondents, has submitted that there were no rules or regulations governing the service conditions of the employees of the Mandi Samiti prior to the issuance of the Regulations of 1984. He thus submitted that appointments made earlier were on temporary basis and could not be counted for the purposes of determination of seniority of an employee. He however, could not explain that if that was so, then why the services of the petitioner and others, which were made prior to the Regulations of 1984, were accepted for the purposes of their seniority. Sri Mandhyan could not also explain as to how can the order, by which the post of Clerk has been converted to that of Amin/Auctioneer on 14.5.1977, be taken into account and the petitioner be treated as regularized from the said date in terms of Regulations of 1984 and ignore the earlier appointment dated 10.11.1972, even though both the aforesaid orders had been issued much prior to the Regulations of 1984 coming into force. Regulation 13(2) itself protects the service of the employees, which was given prior to 1.8.1984. The reading of Regulation 13(2) as well as the specific condition in the order dated 14.5.1977 to the effect that his seniority would merge from the date of his initial appointment as Clerk, makes it clear that the seniority of the petitioner ought to be determined on the

basis of his initial appointment as clerk on 10.11.1972. The petitioner would thus be entitled to fixation of his seniority treating the date of his initial appointment as 10.11.1972, and not from such subsequent date when his post was converted to that of Amin/Auctioneer.

9. As such, the impugned order dated 5.2.2004 passed by Respondent No. 1 as well as the earlier order dated 4.5.1992 passed by Respondent no.2 are both quashed. The Mandi Nideshak, Respondent No. 1, is directed to re-fix the seniority of the petitioner after considering his initial date of appointment as 10.11.1972, instead of 14.5.1977. The same shall be done by the Respondent No. 1 within two months from today. The petitioner would also be entitled to all other consequential benefits.

10. This writ petition stands allowed. However, there shall be no order as to cost.