

(2001) 01 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 35427 of 1995

Dinesh Kumar Asthana

APPELLANT

Vs

Collector, Azamgarh/Deputy Collector, Tahsil Phulpur, district
Azamgarh and others

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Citation : (2001) 1 AWC 785 : (2001) 1 UPLBEC 867

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A. K. Yog, J.—Dinesh Kumar Asthana, petitioner was first engaged on May 5, 1980, according to him, as per prescribed procedure, as Seasonal Collection Amin and he has been working throughout as such. Some more Seasonal Collection Amins were engaged by the Department and some of such persons felt aggrieved by the action of the respondents and raised a dispute that persons Junior to those (including the petitioner) were ignored arbitrarily and for no legal sanction, some of the Seasonal Collection Amins, who were junior to them, were absorbed against the substantive vacancies of Collection Amins. Some of those aggrieved persons, including the present petitioner, filed C.M.W.P. No. Nil of 1993, Sri Srikant Mishra and 9 others v. State of U. P. and others. The said petition was decided by this Court vide judgment and order dated February 9, 1993 (Annexure-2 to the writ petition) following the judgment of this Court in C.M.W.P. No. 43069 of 1992 decided on November 23, 1992, Ramanand Gupta and others v. State of U. P. through Collector, Maharajganj and another ; wherein this Court directed the concerned authority to make appointments of Seasonal Collection Amins in future in ensuring that persons whose names appear on the seniority list maintained, as indicated in the said judgment, were to be given appointments subject to their availability on the post of Seasonal Collection Amins strictly on the basis of seniority-cum-efficiency and adhering to the orders

regarding reservations of the post issued by the State Government, if any. The said judgment further required that such a list shall be required for making ad hoc appointments as against substantive vacancies as well (Annexure-2 to the writ petition). Admittedly, under the directions of the Court in aforementioned petition, the concerned authority issued order dated June 17, 1993 (Annexure-3 to the writ petition) and for making appointments in pursuance to the directions contained in the said order as per list enclosed therewith. Copy of such list has been filed as Annexure-4 to the writ petition. Name of the petitioner appears at serial No. 73. The petitioner has not clearly stated that the said list prepared under directions contained in the judgment and order dated February 9, 1993 (Annexure-2 to the writ petition) is disputed by him. According to the petitioner, even though the said list was prepared, but ignored by the concerned authorities arbitrarily, who picked up persons junior to the petitioner and issued order of regularization/absorption against the regular vacancies of Collection Amins.

2. Feeling aggrieved, petitioner has filed this petition praying for writ of mandamus directing respondent No. 1 to give regular appointment to the petitioner on the post of regular Collection Amin against the available substantive vacant post in the department and further a writ of prohibition restraining the respondent from disturbing the services of the petitioner working as Seasonal Collection Amin till regular appointment is made. Apparently, there is no warrant, in the facts of the case, to issue a writ in the nature of prohibition.

3. The petitioner's grievance is that he has, though approached the concerned authorities by filing representation dated October 20, 1995 [Annexure-6 to the writ petition) but to no avail, in spite of written representations/reminders even thereafter.

4. The respondents have filed a counter-affidavit and in para 4, it is asserted that petitioner's recovery was not up to prescribed norms. In para 7, it is asserted that appointments of Bankey Lal (respondent No. 4), Tilakdhari Ram, Lal Bahadur and Uma Ram were done in the year 1994 with an object to fulfil the reservation quota of Scheduled Caste. In para 8 of the counter-affidavit, it is contended that list is valid for one year and same is being revised at the end of each year, but since the realization by the petitioner was not up to the prescribed mark, he was not included in the list and hence the question of giving appointment did not arise.

5. Learned counsel for the petitioner states that a rejoinder-affidavit has been filed in the registry. It is not on record.

6. Heard learned counsel for the petitioner as well as the learned standing counsel and perused the record.

7. The petition, as it stands today, contains no averment to the effect that junior persons to the petitioner, who have been given regular appointment, had poor efficiency as compared to the petitioner. The above referred judgment of the High Court in the case of Ramanand Gupta (supra)--dated 23rd November, 1992

(Annexure-2 to the writ petition) laid down two criteria, namely, "seniority" as well as "efficiency".

8. Necessary pleadings on this aspect are wanting. Even the counter-affidavit does not disclose that no person in the list prepared in the year 1993 has been regularised whose recovery was below the prescribed limit or that all the persons above such regularized persons were Inefficient and/or had poor efficiency on comparison. This Court has no means to find out whether the recovery in a particular year with respect to the petitioner was low for reason other than his own efficiency. It is very relevant circumstance while considering efficiency of Seasonal Collection Amin. For example, recovery is not possible beyond a certain limit for various factors and reasons like-orders from Court, the total extent of recovery to be made in one's area and/or whether Government itself kept recovery in abeyance due to famine, flood, drought, etc. These will be relevant consideration to be taken into account and a Seasonal Collection Amin, being put to sufferance for reasons beyond his control, cannot be non-suited for low recovery as it does not reflect at all upon his efficiency.

9. It is, therefore, proper that petitioner may file representation before concerned competent authority, who may decide it by means of a speaking order after affording an opportunity of hearing to the petitioner.

10. Accordingly, I direct the petitioner to file a fresh comprehensive representation along with a certified copy of this judgment as well as certified copy of the writ petition (along with all the annexures) before the concerned competent authority within six weeks from today and If such a representation is filed within the time stipulated above, the same shall be decided by the concerned competent authority within a period of four months from the date of receipt of the said representation.

11. Writ petition stands allowed subject to the directions and observations made above.

12. It is made clear that concerned competent authority shall decide the representation, if such a representation is being filed, exercising unfettered discretion without being prejudiced by any of the observations made above.

13. No costs.