

(1995) 01 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 37740 of 1994

Jawahar Lal and Others

APPELLANT

Vs

District Magistrate, Kanpur Dehat and Others

RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Citation : (1995) 01 AHC CK 0068

Hon'ble Judges : S.N. Agarwal, J

Final Decision : Disposed Of

Judgement

Sudhir Narain, J.—Petitioners Nos. 1 to 5 claim that they are working as Seasonal Collection Peons since the years 1981, 1988, 1982, 1986 and 1982 respectively in Thasil Bilhaur, district Kanpur Dehat. They seek a writ of mandamus commanding the respondents to appoint them to the post of permanent Collection Peons.

2. The Seasonal Collection Peons are normally attached with Seasonal Collection Amins for realisation of Government dues. They are normally appointed during the seasons when the collection of Government dues are made. The work of Seasonal Collection Peon is not of permanent nature, Their appointments are made due to exigencies of work

3. The Petitioner is claiming that he should be regularised on the post of Collection Peon against the vacant post of Collection Peon. A distinction has been drawn between the employees who work regularly on a post and the employees who are appointed seasonally or for a fixed period in a year or in a month. Such Seasonal employees cannot claim a right of regularisation to the regular post on which other employees are working and performing the same duties all the years regularly.

4. In Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. and another v. Maharashtra State Cooperative Cotton Growers' Marketing Federation Employees' Union and another, AIR 1994 SC 1046, the question was

whether the Award dated 3181994 of the Industrial Tribunal was applicable to the seasonal employees. Their Lordships of the Supreme Court held that by the nature of employment, temporary seasonal employees can be made permanent only as a permanent seasonal employee and not as permanent perennial employees. The Court observed as under :

"On the undisputed fact, that the procurement and processing operations under the Cotton Scheme do not last for more than 4 to 6 months and in any case not more than 8 months, to make the Seasonal employees permanent and give them all the benefits of the perennial employees would mean that they would get the salary and all other benefits throughout the year as the perennial employees do, without putting in work throughout the year as the latter have to do. On the admitted fact that there is a need of seasonal employees and there is no work available to be given to them for a part of the years, the Cotton Scheme has always to maintain a distinction between the perennial employees and seasonal employees and has to provide them with different service conditions though some of the service conditions may be common. It is the failure to understand the nature of the operations and the nature of the employment required under the Cotton Scheme which is responsible for the impugned decisions of the Industrial Court and the High Court."

5. In *Rajesh Kumar Khare and another v. State of U. P. and others*, 1993 (1) UPLBEC 729, where Seasonal Collection Amins claimed regularisation of their services, this Court took the view that their appointments are made for few months and they cannot claim regularisation. It was, however, directed that if any post of Collection Amin was vacant the cases of the petitioners may be considered for appointments in accordance with Rules. Seasonal Collection Peons are normally attached to Seasonal Collection Amins. A Seasonal Collection Peon cannot claim a better right than a Seasonal Collection Amin.

6. The State Government has framed Rules for appointment of Collection Amins known as "U. P. Collection Amins" Rules, 1974. The Rule was amended from time to time. The State Government issued Notification No. 2755(I)x222/I/7197/7 dated 23rd October, 1992 whereby certain amendments in the Rules were made which is known as "U. P. Collection Amins" (Fifth Amendment) Rules, 1992. The amended Rule 5 provides the source of recruit; it follows :

(1) 15% of the vacancies are to be filled up by promotion of Collection Peons who were appointed on the substantive vacancies provided they have passed High School examination or examination equivalent to it and secondly they had worked in the revenue department at least for six seasons.

(2) 35% of the vacancies are to be filled up by Seasonal Collection Amins by way of selection provided they had worked for four seasons satisfactorily and secondly their age does not exceed 45 years on the date of selection.

(3) 50% of the vacancies to be filled up by direct recruitment after due selection

7. Seasonal Collection Amins, who had worked for minimum four seasons satisfactorily, are entitled to appear for selection. Rule 17A provides that the Collector shall prepare a list of the Seasonal Collection Amins who had worked satisfactorily for at least four seasons. The list shall be prepared according to seniority. There is an explanation added according to seniority. There is an explanation added to it that the work shall be treated *as satisfactory if the collection is not less than 70% of the target fixed. The procedure for selection has been provided under Rule 18.

8. A perusal of the aforesaid Rule indicates that 15% of the vacancies are to be filled up by promotion of Collection Peons. A person who is not working as Collection Peon on a substantive vacancy is not entitled to be appointed as Collection Amin. It further provides that 35% of the vacancies are to be filled up by Seasonal Collection Amins by way of selection as provided under the Rules. There is no Rule similar to the Rule which is applicable for Seasonal Collection Amins giving a right to be considered for appointment to the post of Collection Amins on substantive vacancies.

9. Hon"ble R. B. Mehrotra, J. in Writ Petition No. 45819 of 1993 Bacchan Lal v. The Pargana Adhikari, Khaga, Fatehpur and others, noted this situation regarding appointment of Seasonal Collection Peons and expressed the opinion that the Government should frame Rules, similar to Rules which are applicable to Seasonal Collection Amins for appointment to the post of Collection Amins, for the persons who are working as Seasonal Collection Peons. It was observed that the Government may fill up the vacancies on the basis of seniority of such persons who are working as Seasonal Collection Peons for a long time and the appointment to the post of Collection Peons may be made to the extent of 50% of those Collection Peons who had been working for a long time. The Court also noted the letter of the Board dated 851974 which provided that the Seasonal Collection Peons whose work has been good may be given preference in the appointment to the post of Collection Peons taking into consideration their seniority and their conduct. They may further be given relaxation in age while considering their eligibility for selection.

10. The copy of above judgment was directed to be sent to the Secretary Board of Revenue and the Chairman Board of Revenue but it appears the Government has not framed any Rules regarding appointments of Collection Peons giving certain rights to those Seasonal Collection Peons who had been working under the District Magistrate for many years. It would be appropriate that till any Rule is framed by the Government, the claim of Seasonal Collection Peons may be considered for their appointments to the post of Collection Peons or their regularisation to such posts on the lines and criteria laid down under U. P. Collection Amins" Rules, 1974 a.;; amended by U. P. Collection Amius" (Fifth Amendment) Rules, 1992. ;

11. In the case of appointment to the post of Collection Peon there does not seem to be any subordinate service claiming the right for promotion to the post

of Collection Peon. It would be appropriate that 50% vacancies should be given to the Seasonal Collection Peons in accordance with their seniority but subject to the condition their work and conduct had been good. For this purpose the District Magistrate concerned may prepare a seniority list and thereafter appoint a selection committee for considering the cases of such Seasonal Collection Peons. As in Collection Amins' Rules, 1974 the criteria has been fixed for six seasons the same criteria may be applicable with regard to Seasonal Collection Peons as well subject to other qualifications, eligibility and age limit. The age limit may be relaxed to the extent provided for Seasonal Collection Amins.

12. The petitioner shall make representation to the Collector alongwith a certified copy of this order and a true copy of the writ petition. On such representation being made the Collection shall dispose of the same, keeping in view the observations made above and in accordance with law, within two months from the date of making representation as stated above.

13. The writ petition is accordingly disposed of finally.

14. The Registry shall send the copy of this judgment 10 to State Government and the Board of Revenue for making Rules in the matter considering every aspects relating to service of Seasonal Collection Peons.