
(2009) 10 AHC CK 0016
In the Allahabad High Court

Kamruddin and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Citation : (2010) 2 AWC 1287 : (2010) 124 FLR 639

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—Heard Sri A.K. Srivastava, learned Counsel for the petitioners, learned standing counsel for respondent Nos. 1 to 4 and Sri Anoop Mishra appearing on behalf of respondent No. 6. Notices were issued to respondent No. 5 also by registered post A.D. but he has not put in appearance. The pleadings are complete. As requested by the learned Counsels for the parties, this writ petition is being heard and disposed of finally under the Rules of the Court at this stage.

2. The petitioner is seeking a writ of certiorari quashing the order dated 23.10.2006 (Annexure-4 to the writ petition) passed by the respondent No. 2, District Magistrate, Etah, whereby the representation of the petitioners claiming substantive appointment on the post of Collection Peon has been denied. The facts in brief giving rise to the present dispute are as under.

3. The petitioner No. 1 Kamaruddin is a member of Other Backward Class (hereinafter referred to as the, "O.B.C."). He was engaged as a Seasonal Collection Peon on 17th February, 1998 in tehsil Jalesar, district Etah. Petitioner No. 2 Sri Sanjiv Kumar (a general candidate) was engaged as Seasonal Collection Peon on 1.11.1997 and he was also posted in tehsil Jalesar, district Etah. Recruitment and appointment on the post of Collection Peon is now governed by "The U.P. Collection Peon Services Rules, 2004" (hereinafter referred to as "2004 Rules") which came into force on 17.12.2004. A seniority list of Seasonal Collection Peon was prepared on 9th February, 2006 wherein the petitioner No. 1 was shown at serial No. 21 and the petitioner No. 2 was at serial

No. 169 while the respondent Nos. 5 and 6 were placed at serial Nos. 65 and 222. It is said that a Selection Committee was constituted and persons junior to the petitioners, i.e., respondent Nos. 5 and 6 were appointed as Collection Peon on substantive basis. The petitioners approached this Court in Writ Petition No. 36650/06, Kamaruddin and Ors. v. State of U.P. and Ors., which was finally disposed of on 14th July, 2006 directing the petitioners to make representation before the District Magistrate concerned who was directed to decide the same within three months.

4. Pursuant to the said judgment, it appears that the petitioners approached the respondent No. 2, District Magistrate by making a representation and the impugned order has been passed by the District Magistrate on such representations.

5. A counter-affidavit has been filed on behalf of respondent Nos. 1 to 4 stating that the recruitment /appointment to the post of Collection Peon is governed by 2004 Rules which provides for recruitment 50% by direct and 50% from Seasonal Collection Peons who have worked satisfactorily in at least four fasals and are not above 45 years on the first July of the year in which the selection is to be made. In order to consider the Seasonal Collection Peon against the vacancy falling in the quota of Seasonal Collection Peon Under Rule 5(2) of Rules, 2004, a tentative seniority list was published on 9th February, 2006 inviting objections from the employees concerned. Thereafter, a final seniority list was published on 13th April, 2006. The Selection Committee consisting of Sri Ram Kumar the then District Magistrate as Chairman, Sri Chhote Lal (Member Scheduled Caste) Sri Prabha Shankar Shukla, the District Employment Officer (Member General Category), Sri B.S. Yadav Zila Airth Avam Sankhya Adhikari (Member O.B.C.) and Nabab Ali Khan (Finance and Revenue) (Member minority) held selection on 14th June, 2006 and selected 22 Seasonal Collection Peon including the respondent No. 6. However, respondent No. 5 Ramji Lal appears to have submitted an application that he belongs to caste Prajapati which has been declared scheduled caste under the Government order dated 10th October, 2005, therefore, as per seniority list of scheduled caste candidates, he ought to be appointed as Collection Peon in substantive capacity. He was so appointed.

6. In para 10 of the counter-affidavit, the respondents admit that the appointment of Ramji Lal as Collection Peon is clearly erroneous since the Government order dated 10th October, 2005 was challenged before this Court in Writ Petition No. 76992/05, Dr. Bhimrao Ambedkar Granthalaya Avam Jan Kalyan Samiti v. State of U.P. and Ors., which was stayed on 20th December, 2005. Thereafter, the State Government itself revoked the Government order dated 10th October, 2005 vide subsequent Government order dated 21st January, 2008 and therefore, Ramji Lal continued to be an O.B.C. It further says in para 15 that subsequently on further scrutiny, the selection process was found erroneous on various reasons and thus guidance sought from the Board of Revenue. This counter-affidavit has been sworn by Sri J.K. Jain, Tehsildar, Jalesar, district Etah

on behalf of respondent Nos. 1 to 4 and his affidavit is dated 18th September, 2009.

7. Another counter-affidavit has been filed by the respondent No. 6 stating that he was working in tehsil Patiyali, district Etah as Seasonal Collection Peon. A tentative seniority list of Seasonal Collection Peon working in tehsil Patiyali, Etah Kasganj, Aliganj and Jalesar was published on 9th February, 2006 inviting objections and thereafter a final seniority list was published wherein the name of the respondent No. 6 was shown at serial No. 78 and number of days he worked therein shown were two years, six months and nineteen days. The petitioner No. 1 is at serial No. 18. The petitioner No. 2 is at Serial No. 86 and his period of work is two years, one month and twenty six days. He says that in view of the said seniority list, the selection committee selected him (respondent No. 6) for substantive appointment to the post of Collection Peon. Consequently a letter was issued on 24th June, 2006 and pursuant thereto respondent No. 6 joined the said post. Since he is senior to the petitioner No. 2 and his work and performance is better than the petitioner No. 2, hence, there is no error in his appointment.

8. The petitioners have filed a rejoinder-affidavit wherein they have reiterated what they have said in the writ petition.

9. It is submitted that so far as the petitioner No. 1 is concerned once it is admitted by the respondents that appointment of respondent No. 5 on the post of Collection Peon is erroneous, the vacancy on which he was appointed has to be treated as vacant and petitioner No. 1 is entitled to be considered against the said vacancy. The petitioner No. 1 has stressed his claim against the vacancy on which the respondent No. 5 was appointed. In respect to petitioner No. 2, the learned Counsel pointed out that from Annexure-2 to the counter-affidavit filed by the respondent Nos. 1 to 4, it is evident that the petitioner No. 2 is at serial No. 49 and his period of work has been shown as two years, one month and twenty six days while respondent No. 6 is at serial No. 62 and his period of work has been shown as two years, six months and nineteen days. He submits that the respondent No. 6 having been shown junior to the petitioner No. 2, selection of respondent No. 6 is erroneous and is liable to be set aside. He further submits that the seniority list filed by the official respondents as Annexure-CA-2, which he claims to be dated 13th April, 2006, is final seniority list which is also the case of the respondent No. 6 but the copy of the seniority list filed by the respondent No. 6 as Annexure-CA-2 in this counter-affidavit is different than what has been filed by the respondent Nos. 1 to 4. He therefore, submits that none of the above seniority lists do inspire any confidence and have to be rejected.

10. Learned Counsel for the respondents however, controverted the above submission and stated that after collecting the details of work of all the persons, a final list was prepared on 13th April, 2006 and from a bare perusal of the number of days for which the petitioner No. 2 and respondent No. 6 have worked, it is evident that the respondent No. 6 is senior to the petitioner No. 2.

11. I have considered the rival submissions and perused the record. It is evident and admitted by the parties that the petitioner No. 1 is senior to the respondent No. 5 and both belong to the category of other backward class. The official respondents however, treating respondent No. 5 as a scheduled caste candidate made a regular appointment on the post of Collection Peon. However, in what circumstances he was treated to be a scheduled caste and was given regular appointment on the post of Collection Peon, could not be explained by the respondent Nos. 1 to 4. In their counter-affidavits it is clearly said that the said appointment is erroneous. In para 10 of the counter-affidavit filed on behalf of the respondents Nos. 1 to 4, the factum about the appointment of respondent No. 5 has been stated as under:

Mr. Ramji Lal on the basis of caste certificate dated 26.11.2005 issued to him being scheduled caste was not legal. It is also stated that Mr. Ramji Lal was appointed without consideration by any selection committee, as such the appointment of Ramji Lal is erroneous.

12. It may be noticed at this stage that in this case initially the official respondents did not file any counter-affidavit and tried to prolong the litigation. In these circumstances this Court was compelled to pass an order dated 20th August, 2009 directing the respondent Nos. 1 to 4 to appear before this Court in person and it is only pursuant to the said order a counter-affidavit was filed and Sri Gaurav Dayal, District Magistrate, Etah was also present in the Court. He also admits that apparently the appointment of Ramji Lal on the post of Collection Peon on regular basis cannot be defended. He further admits that there were other irregularities also in the above selection which were considered by him and pointing out the same he sent a letter dated 1st February, 2009 to the Board of Revenue seeking their guidance. Copy of this letter has been placed on record as Annexure-2 to the supplementary-affidavit dated 6th October, 2009 filed by the petitioner and the said document is not disputed by Sri Dayal, District Magistrate, Etah who is present in the Court. A perusal of the said letter speaks volumes about the above selection and if what has been said therein is all correct, it depicts a sorry picture of the action of authorities of the respondents who were responsible for making selection for the post of Collection Peon evidencing the extent of illegalities committed by and thus have failed to discharge their duty honestly and in a bona fide manner. However, it makes clear that appointment of respondent No. 5 was illegal and has to be quashed,

13. Coming to the non-selection of the petitioner No. 2 qua respondent No. 6, it is not in dispute that a final seniority list was published on 13th April, 2006. The said seniority list was in the knowledge of the petitioners but they have not chosen to challenge the same. Whether the seniority list filed, as Annexure-2 to the counter-affidavit of respondent Nos. 1 to 4 or Annexure-2 to the counter-affidavit filed by the respondent No. 6 is taken into consideration, one thing is common that the number of days for which the respondent No. 6 has worked, mentioned in both lists are same, i.e., two years, six months and nineteen days

while the number of days of the petitioner No. 2 for which he has worked shown therein, that is two years, one month and twenty six days. It appears that after collecting the details of all the persons, a final list was prepared and thereafter it was rearranged according to the number of days of the respective candidates. In any case, the respondent No. 6 having worked for more than the petitioner No. 2, it cannot be said that his selection treating him senior to the petitioner No. 2 is erroneous in any manner. Therefore, so far as the selection and appointment of respondent No. 6 is concerned with reference to the petitioner No. 2, it cannot be said to be illegal in any manner and the case of the petitioner No. 2 is therefore liable to be rejected.

14. Before parting, this Court makes it clear that this judgment shall not deprive the official respondents from reviewing the selections and appointments in question pursuant to the District Magistrate's letter dated 1.2.2008. It is open to the official respondents, in case they find such serious irregularities which go to the root of the matter, to take appropriate decision in accordance with law and this judgment shall not stand in their way in taking such a decision. However, it would also be relevant to mention at this stage that in such case, the authorities who were responsible and supposed to make selection and appointment on the civil posts impartially and with due observance of law, appropriate action would be taken against them also. If the executive authorities, responsible to execute rule of law, falls to discharge their duties in the manner they are expected and on the contrary it is also found that there is serious lapses on their part it would be of utmost importance to take timely action against them and not let them go free else it will give a wrong message to the public at large. An unchallenged illegal executive action despite of knowledge to the higher authorities, if not met remedial treatment, in all respect, well in time, it is likely to erode confidence of the public in the fairness and partiality of the authorities holding high public office and ultimately would cause serious prejudice to the interest of the public at large. It is therefore, obligatory on the part of the State Government to look into such matter and other similar matters where it find that the authorities have acted in blatant disregard of the statutory provisions and take strict action after making necessary inquiry as the case may be. Since the District Magistrate, Etah has brought all the facts to the notice of the Board of Revenue, this Court trust that Board of Revenue shall consider this matter and take appropriate decision in accordance with law without any further delay.

15. With the aforesaid observations, the writ petition is partly allowed. The appointment of the respondent No. 5 on the post of Collection Peon is hereby quashed. However, since he was appointed against the vacancy meant for a scheduled caste, the petitioner No. 1 being a member of other backward class cannot be directed to be considered and appointed against the above vacancy caused due to quashing of the appointment of respondent No. 5. This Court therefore, cannot direct the respondent Nos. 1 to 4 to consider the petitioner No. 1 against the vacancy caused as a result of quashing of the appointment of respondent No. 5. So far as the petitioner No. 2 is concerned, since I am of the

view that selection and appointment of respondent No. 6 cannot be said to be erroneous as he is senior to the petitioner No. 2, no relief can be granted to the petitioner No. 2.

16. There shall be no order as to costs.