

**(2015) 04 AHC CK 0050**  
**In the Allahabad High Court**  
**Case No : Writ A. No. 11203 of 2015**

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|-----------------------------------|----|------------|
| Lal Pratap Singh                  | Vs | APPELLANT  |
| State of Uttar Pradesh and Others |    | RESPONDENT |

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**Date of Decision :** 16-04-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Warehousing Corporations Act, 1962 — Section 20, 23, 42

**Citation :** (2015) 5 ADJ 199 : (2015) 3 AWC 3081 : (2015) 3 UPLBEC 1846

**Hon'ble Judges :** B. Amit Sthalekar, J

**Bench :** Single Bench

**Advocate :** Pankaj Srivastava, for the Appellant; Mohit Singh, Advocates for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

B. Amit Sthalekar, J.—By this writ petition the petitioner is seeking the following reliefs:

"1. issue a writ, order or direction in the nature of certiorari quashing the order dated 22.1.2015 passed by the respondent No. 1 (Annexure No. 1 to the writ petition);

2. issue a writ, order or direction in the nature of mandamus directing the respondents not to fill any post till the statutory rules of regularization are framed pursuant to the directions of the Division Bench of this Hon"ble Court in Special Appeal No. 399 of 2011 (U.P. State Warehousing Corporation Vs. Sunil Kumar) affirming the Single Bench judgment dated 18.3.2011 in Civil Misc. Writ Petition No. 7621 (S/S) of 2008 (Ram Naresh and others Vs. State of U.P. and others), which was affirmed by the Hon"ble Supreme Court in its judgment dated 29.7.2013 in S.L.P. No. 12793 of 2013 (Annexure Nos. 2, 3 and 4 to the writ petition);

3. issue a writ, order or direction in the nature of mandamus instituting a CBI

probe in respect of 398 appointments made pursuant to the impugned advertisement No. 01/2013 who were issued appointment letters after retirement of the respondent No. 6 on 31.1.2014, in view of the law laid down by the Hon"ble Supreme Court in Krishna Yadav Vs. State of Punjab judgment and O. Chankradhar Vs. Union of India order;

4. issue a writ, order or direction in the nature of mandamus to comply the direction contained in Special Appeal No. 399 of 2011 U.P. State Warehousing Corporation Vs. Sunil Kumar Srivastava and regularise the services of the petitioner;

5. issue a writ order or direction in the nature of certiorari quashing the decision of the Board of Directors dated 26.7.2013 (Annexure No. 14) impugned advertisement No. 01/2013 (Annexure No. 11) and all consequential appointments done on the post;

6. issue a writ order or direction in the nature of mandamus that pending writ petition the services of the petitioner be not disturbed in any manner and he be paid salary regularly"

2. I have heard Shri Pankaj Srivastava, learned counsel for the petitioner, Shri Ajay Bhanot, learned counsel appearing for the respondents No. 2 and 3 and Shri Pankaj Rai, learned Addl. Chief Standing Counsel appearing for the respondent No. 1.

3. The petitioner is stated to be working in the U.P. State Warehousing Corporation (hereinafter referred to as the Corporation) as a Group D employee on a fixed pay of Rs. 6,200/- per month. The grievance is that although he is working as such since 2001 and there are about 2200 other employees similarly situated in the whole of U.P. and Uttarakhand in the various departments of the respondent-Corporation, his services have not been regularized. It appears that the Board of Directors of the Corporation had taken a decision for regularization of the services of such persons but when that was not done, writ petition No. 7621 (S/S) of 2008 Ram Naresh and others Vs. State of U.P. and others) was filed. Several other persons also filed similar writ petitions and the said writ petitions were allowed by a learned Single Judge of this Court by a common judgement dated 18.4.2011 and while quashing the G.O. dated 17.5.2009 and the advertisement No. 3 dated 13.11.2008 the Court directed the Board of Directors to implement its decision for regularization of the petitioners within a reasonable time. In the said judgement it was observed by the learned Single Judge that since no procedure for appointment was prescribed under the Regulation and the petitioners were appointed only on fixed wages, their appointment cannot be said to be illegal.

4. Aggrieved the Corporation filed special appeal No. 399 of 2011 alongwith connected special appeals and while deciding the same it was held by a Division Bench of this Court in its judgement dated 20.3.2013 that the Corporation cannot be treated as a part of the Government Department which may result into

interference by the Government in its routine functioning (paragraph 34 of the judgment). In paragraph 44 and 46 of its judgment the Division Bench further held as follows:

"44. In the present case, admittedly, no policy decision has been framed by the State Government regulating the service conditions of the employees of the appellant corporation or other corporations. When the Board took a decision to regularise the services and there exists no guideline or policy decision of the State Government which could have been taken into account, the decision of Board may not subject to approval of Government. There is neither any service rules nor any regulation which may come into way of the Board to take a decision or frame scheme for regularisation of services.

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46. Since the Act or regulation or policy decision of the State Government does not confer power or contain a provision that the resolution of the Board with regard to service condition of employees or alike matters should be referred to the State Government for approval, reference of resolution with regard to services of the petitioners seems to be exceeding of jurisdiction. An independent decision should have been taken by the Board in accordance to law with regard to services of the respondent petitioners in business interest without sending it to the State Government for its approval. The Board is competent to regulate the service conditions of its employees under the Act."

5. So far as the case of the petitioners therein was concerned, the Division Bench held that their engagement was done in pursuance of the resolution of the Board of Directors and the Board itself took a decision to regularize their services and referred its decision to the State Government for grant of approval and it was also observed that whether regularization is to be done or not and the proposed Rules or Regulation are to be framed or not is a matter which should be considered by the Board and not by the Government keeping in mind the provisions contained in Section 23 of the Act. It is for the Board to exercise powers conferred by Section 42 of the Act to frame new Regulations or amend the existing one or chalk out a Scheme for regularization. Paragraph 56 of the judgment reads as under:

"56. From a plain reading of the aforesaid portion of judgment of Uma Devi (supra), it appears that the principle of legitimate expectation may be applied in case some assurance is given to daily wagers by the competent authority. In the present case, engagement was done in pursuance to resolution of the Board of Directors (supra) and the Board itself on the basis of the report submitted by various authorities took a decision to regularise services and referred its decision to the State Government for approval. Whether regularisation is to be done or not and the proposed rules or regulations are to be framed or not is a matter which should be considered by the Board and not by the government keeping in view the provisions contained in Sect. 23 of the Act, more so when no general

guideline or policy decision is in existence. It is for the Board to exercise power conferred by Section 42 of the Act to frame new regulation or amend the existing one or chalk out a Scheme for regularisation."

6. The findings recorded by the Division Bench has been outlined in paragraph 64 of the judgement which reads as under:

"64. In view of above, the impugned judgment and order passed by Hon'ble Single Judge requires no interference on merit but it requires some modification in terms of the finding recorded hereinafter:-

(I) Policy decision means a decision in Rem, not in Personam.

(II) Sub Section (4) of Section 20 may not be read in isolation but it should be read conjointly along with Sub Section (5) of Section 20 of the Act which provides that in the event of conflict with regard to the question of policy between the Central and State Warehousing Corporation, the matter shall be referred to the Central Government whose decision shall be final. A conjoint reading of Sub Section (4) and Sub Section (5) of Section 20 reveals that the policy decision should be pre-existing policy regulating an issue. In absence of any pre-existing policy decision, that too keeping in view Section 23 of the Act, the Board of Directors is empowered to take decision with regard to recruitment and appointment of its officers and staff, regulate service conditions. Whether the government has got right to regulate the service conditions of the Corporation by taking a policy decision under the teeth of Section 23 of the Act is a question, which we leave open in case raised in appropriate case.

(III) Statutory corporations are autonomous bodies to some extent and the government lacks jurisdiction to interfere in their day to day functioning. Statutory corporations are juristic personality and they may sue and may be sued. Being legal entity, they have right to discharge their obligations in accordance with statutory provisions. The government lacks jurisdiction to interfere in their day to day functioning.

(IV) Under Section 23 of the Act, the appellant U.P. Warehousing Corporation has got right to make appointment of officers and employees. A decision to fill up the vacancies in accordance with rules is to be taken by the Corporation itself and the Government has not been conferred power under the Act to interfere in the matter.

Of course, the Corporation while taking a decision to make recruitment of officers and employees has to abide by law. Instead of sending the matter to the State Government for seeking approval for regularisation, the Board of Directors should have taken a decision on its own within the four corners of Section 23. Appropriate Scheme or regulation should have been framed by the Board of Directors for regularisation and continuance of almost 2000 respondent employees working since more than decade.

(V) Since out of 55 posts, 30 posts have been reserved leaving 25 posts for

general category, the impugned advertisement suffers from the vice of arbitrariness in view of settled principle of law (supra)."

The special appeals filed by the Corporation were dismissed.

7. The S.L.P. filed against the said judgement was also dismissed by the Supreme Court by its order dated 29.7.2013 (Annexure-4 to the writ petition) in Special Leave to Appeal (civil) No. CC 12793 of 2013 (Vipin Kumar Srivastava and others Vs. State of U.P. and others).

8. The contention of the petitioners therefore is that once it has been held by the Division Bench that the Corporation is an autonomous body and it has to frame a policy decision and the Board of Directors is empowered to take a decision with regard to the recruitment and appointment of its officers and staff and regulate their service conditions, there was no impediment in the way of the Corporation framing a Scheme or Regulations for regularization of services of all the casual employees including the petitioner. It was held that under the provisions of section 23 of the Warehousing Corporation Act, 1962, the U.P. State Warehousing Corporation has been conferred the right to make appointment of officers and other employees and to fill up the vacancies in accordance with the Rules and decision in this regard is to be taken by the Corporation itself and the Government has not been conferred the power under the Act to interfere in the matter. It has also been held by the Division Bench that in the matter of regularization the Board of Directors should have taken a decision on its own within the four corners of Section 23 of the Act and appropriate Scheme or Regulation should have been framed by the Board of Directors for regularization and continuance of almost 2000 employees working under the Corporation instead of sending the matter to the State Government for seeking approval for regularization.

9. When the directions given in the judgment of the Division Bench were not complied with some of the persons filed contempt petition No. 2367 of 2013 and contempt petition No. 200 of 2013. The said contempt petitions were dismissed with the observation that no specific direction is being issued for regularization either by the writ court or by the court having jurisdiction in special appeal nor any time limit had been framed for laying down the policy in this regard.

10. It has been submitted by Shri Pankaj Srivastava, learned counsel for the petitioner that in the contempt petition an affidavit of compliance/counter affidavit was filed stating therein that the resolution dated 26.7.2013 had been passed by the Board of Directors to fill up 50% posts from the direct recruitment and 50% posts by regularization by issuing advertisement dated 26.11.2013. The submission is that this document, said to be the resolution, is a manufactured document as it has only 8 pages whereas the actual resolution dated 26.7.2013 contains about 33 pages and copy thereof has been filed as Annexure-14 to the writ petition and the decision to make amendments in the Recruitment Rules was taken up as agenda No. 7 and a three member

Committee was constituted to examine the matter and submit its recommendations by the next meeting of the Board of Directors. This information regarding the resolution dated 26.7.2013 and agenda No. 7 could be obtained only through an RTI application. It is also stated that 16.11.2013 was fixed as the last date for submitting the application forms in the recruitment drive to be conducted by the Sansthatagat Sewa Mandal, which agency was to conduct the written test and interview. It is stated that the petitioner's form was accepted by the Regional Manager but no call letter was received by the petitioner and the recruitment was made by 100% interview and the persons above 50 years of age were included, as stated in paragraphs 19 and 20 of the writ petition. It is also stated that Sansthatagat Sewa Mandal was not authorized either under the Act of 1962 or under the Regulations framed by the Corporation to conduct any such recruitment. It is also submitted that in the said recruitment 159 posts of (Chaukidar/Chaprasi/Messenger/Assistant) were advertised to be filled by casual employees of the Corporation. Copy of the advertisement has been filed as Annexure-15 to the writ petition.

11. Shri Ajay Bhanot, learned counsel appearing for the respondents No. 2 and 3, on the other hand, submitted that the impugned order dated 22.1.2015 (Annexure-1 to the writ petition) though, grants liberty to the Corporation to fill up the 73 various posts in the Corporation but in paragraph 3 thereof it only makes a further recommendation that prior to making such appointments prior approval will have to be taken from the Board of Directors of the Corporation but the Corporation will have to keep in mind that no financial burden is cast upon the State. He therefore, submits that such an order is an innocuous order and even otherwise it is quite a legitimate anxiety on the part of the State Government to ensure that no financial burden is cast upon the State and further that even if in view of the judgement of the Division Bench approval of the State Government was not required by the Board of Directors before holding the recruitment nevertheless the approval having been granted the same would neither impinge upon the powers of the Board of Directors nor interfere with the recruitment to be conducted by the Board. So far as the relief No. 2 and 5 are concerned, he submits that the selection was notified on 1.9.2013 and 1.11.2013. The selections have not only been finalized but the selected candidates have also been given appointment and in any case the said advertisement cannot be interfered with at this stage since no selected candidate has been impleaded in the writ petition and even otherwise the challenge to the said advertisement through the present writ petition is belated and the writ petition to that effect is barred by laches. So far as the relief No. 3 and 4 are concerned, the submission is that the question of C.B.I. probe does not arise as the petitioner himself had never challenged the selection at the relevant point of time and he is raising all these issues at this belated stage only to frustrate the working of the duly selected and appointed candidates. Shri Bhanot further submits that in any case the petitioner had not himself applied in the selection and therefore he cannot legitimately challenge the selection of the selected

persons. It is also submitted by the learned counsel for the respondents that in the advertisement of 2013 (Annexure-15 to the writ petition) there was a clear stipulation that casual/contractual employees of the Corporation applying for the post of Chaprasi/Chaukidar/Meseenger/Assistant would not have to pay any examination fee. He submits that the petitioner never applied against the said advertisement and therefore it is not open for him to question the selection or appointment of the selected candidates at this stage.

12. So far as the direction given by the learned Single Judge in the judgment dated 18.4.2011 and of the Division Bench on 20.3.2013 are concerned, there is no quarrel between the various contesting parties that it was the Board of Directors which alone was competent to take the decision in the matter of recruitment and that an appropriate Scheme or Regulation should have been framed by the Board of Directors for regularization of the several casual employees working under the U.P. State Warehousing Corporation. There is no dispute with the fact that the resolution of the Board of Directors was passed on 26.7.2013. It may be that in the affidavit filed alongwith the contempt petition only some of the papers relating to the said resolution were filed but thereafter when the petitioner has himself filed the complete resolution as Annexure 14 to the writ petition and this resolution refers to the Agenda No. 7 under which the decision was taken to constitute a three member Committee which would submit its recommendations to the Board of Directors regarding recruitment, validity of the resolution cannot be doubted. It has also been pointed out by the respondents that this resolution became the subject matter of challenge in writ petition No. 7149 of 2013 Rajesh Kumar Srivastava Vs. State of U.P. and others and the prayer for interim relief has been rejected by the Court by order dated 29.11.2013 (Annexure-5 to the writ petition). Thereupon the petitioner therein filed special appeal No. 852 of 2013 which has also been dismissed by order dated 11.12.2013. The Division Bench held as follows:

"So far as the interest of the appellant and other casual/daily wage/contractual employees is concerned, Hon"ble Single Judge in the impugned order has clearly provided that their services will not be dispensed with in case they do not get selected in the selection being held for regularisation pursuant to the advertisement. As regards the apprehension expressed by the learned counsel for the appellant to the effect that in the process initiated by the Corporation for regularisation of casual/daily wage/contractual employees, only 50% posts are being earmarked for regularisation of these employees and hence most of the employees will be compelled to work thereafter in the same capacity, we can safely observe that the decision taken by the Board of Directors in its meeting held on 26.7.2013 at Agenda item No. 7 shall be strictly adhered to. Sri J.N. Mathur, learned Senior Advocate appearing for the Corporation, on the basis of instructions received from the officers of the Corporation, has categorically stated that the Committee constituted by the Board of Directors in its meeting held on 26.7.2013 is collecting the necessary data and ministerial work is almost complete and the said Committee is likely to hold its meeting within ten days

from today. He undertakes that as soon as the decision of the requisite strength of the staff is taken by the said Committee, the same shall be presented before the Board of Directors within a month thereafter."

13. Resolution dated 26.7.2013 was challenged in writ petition No. 67453 of 2013 (Amar Kumar Sinha Vs. State of U.P. and others) and the learned Single Judge observed that the Minister of the Department concerned was appointed as Chairman of the Corporation without observing the provisions of Section 20 sub section (2) of the Warehousing Corporation Act, 1962 but since the process of the recruitment was on and the examination was going to be held on the next day, the learned Single Judge declined to stay the forthcoming examination but restrained the respondents from proceedings in the matter of recruitment till further orders of the Court by its order dated 13.12.2013. The U.P. State Warehousing Corporation challenged the order dated 13.12.2013 in special appeal (D) No. 1302 of 2013 and the Division Bench finding no infirmity or illegality in the appointment of the Minister as Chairman of the Corporation by its order dated 19.12.2013 allowed the appeal and set aside the interim direction and held that as observed by the learned Single Judge in the impugned order any appointments which are made through direct recruitment shall be subject to the result of the writ petition.

14. Another set of petitioners filed writ petition (S/S) No. 6213 of 2014 Vipin Kumar Srivastava and 9 others Vs. State of U.P. and others seeking regularization of their services as per the direction given by the Division Bench in special appeal No. 399 of 2011 vide judgment dated 20.3.2013 and also challenged the advertisement dated 1.11.2013 in which 50% of the vacancies were earmarked to be filled from the daily wagers/casual employees already working in the Corporation by giving them certain concession and the remaining 50% vacancies by direct recruitment and while granting time to the respondents for filing counter affidavit it was directed that the services of the petitioner shall not be disposed of and they shall be paid their wages.

15. In paragraph 20 of the writ petition it has been stated by the petitioner that he had applied in the selection process and submitted his application form but no call letter was issued to him. However, in support of this averment no documents have been filed by way of application form or any receiving by any authority of the respondents. Therefore, a mere bald statement of the petitioner that he had submitted his application form but never received any call letter is wholly unreliable and cannot be believed. Therefore, the only irresistible conclusion would be that the petitioner has never applied against the selection advertised in 2013 and therefore he has no locus to challenge the same on the ground that no call letter was issued to him.

16. There is another aspect of the matter. The selections have already been completed and the selected candidates have also been given appointment. These selections were never stayed in any of the writ petitions which were filed challenging the resolution dated 26.7.2013 or the selection through



advertisement of the year 2013. Not one of the selected candidates has been made a party to the present writ petition nor his appointment challenged, therefore, in this view of the matter also no relief can be granted to the petitioner in this regard and the writ petition must be dismissed as bad for non-joinder of necessary parties. The Supreme Court in the case of Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, AIR 1985 SC 167 : (1985) LabIC 1196 : (1984) 2 SCALE 87 : (1984) 4 SCC 251 : (1985) 1 SCR 216 has held that at least one of the selected candidates ought to have been made a party to the writ petition in the selection challenged by the petitioner to succeed in getting the relief claimed in the writ petition. Paragraph 28 of the judgement reads as under:

"The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

17. Not even a single selected candidate has been impleaded inspite of the loud and clear objection being raised by the respondents in their short counter affidavit and therefore no relief can be granted to the petitioner so far as reliefs No. 2 and 5 are concerned and this writ petition must be dismissed in so far as it questions the advertisement No. 2 of 2013, on the ground of locus as well as non joinder of necessary parties.

18. So far as the relief No. 3 is concerned, on the facts of the case I am not inclined to issue any such direction for getting the allegations enquired through the C.B.I.

19. In view of the above, so far as the relief No. 2, 3 and 5 are concerned, the writ petition is dismissed.

20. So far as the relief No. 4 is concerned, there is already a direction of the

Division Bench in Special Appeal No. 399 of 2011 that the Corporation while taking a decision to make recruitment of officers and employees has to abide by the Scheme or Regulations framed by the Board of Directors for regularization and continuance in service of almost 2000 of such casual employees including the petitioner. This direction of the Division Bench stands confirmed by the dismissal of the S.L.P. by the Supreme Court vide its order dated 29.7.2013 and therefore the Corporation is expected to abide by those directions.

21. So far as the relief No. 1 is concerned it appears that selections have been approved for 73 posts in total in Group D. No doubt the only direction given by the State Government is that the ultimate decision to fill up the posts has to be taken by the Directors (of the Board) but they have to ensure that no financial burden is cast upon the State Government. This in my opinion does not restrain or impede the right of the Board of Directors to hold recruitment for 73 posts in Group D. However, nothing has been brought on record by the respondents to show that in terms of the directions given by the Division Bench in its judgement dated 20.3.2013 in special appeal No. 399 of 2011, any Scheme or Rule or Regulation for regularization and continuance of casual employees of the Corporation has been framed. The counter affidavit does not contain any averment to that effect. Therefore, the only inference which can be drawn by the Court is that the Board of Directors has not framed any Scheme or Regulation for regularization of the casual employees of the Corporation and therefore, even if 73 posts have been identified for being filled up by direct recruitment the respondents cannot proceed with the selection to fill up these 73 posts without first framing a Scheme or Regulation for the regularization of its casual employees. It has also not been brought out in the affidavit of the respondents whether these posts will be filled by direct recruitment ignoring the casual employees such as the petitioner or a certain percentage of these vacancies/posts have been reserved to be filled by casual employees also. The impugned letter dated 22.1.2015 is silent on this score. The preliminary objection of the respondents that the relief No. 1 is premature is misconceived and unfounded as the Court cannot ignore or condone the intent and follow up conduct of the respondent-Corporation in identifying the 73 vacancies in Group-D and thereafter seeking approval of the State Government to fill the same, without first complying the directions of the Division Bench of this Court dated 20.3.2013.

22. In this view of the matter the writ petition is partly allowed, so far as the relief No. 1 is concerned, and a mandamus is issued to the respondents restraining them from filling up the 73 posts as mentioned in the G.O. dated 22.1.2015 (Annexure-1 to the writ petition) until such time as a Scheme or Regulation as contemplated in the order of the Division Bench in Special Appeal No. 399 of 2011 is framed or notified.

23. There shall be no order as to cost.