
(2014) 08 AHC CK 0080
In the Allahabad High Court
Case No : Special Appeal No. 474 of 2014

Lalta Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2014) 125 RD 213 : (2014) 4 UPLBEC 2722

Hon'ble Judges : Devi Prasad Singh, J; Arvind Kumar Tripathi (II), J

Bench : Division Bench

Advocate : A.M. Tripathi, Advocate for the Appellant

Judgement

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Devi Prasad Singh and Arvind Kumar Tripathi (II), JJ.—Heard Sri A.M. Tripathi, learned Counsel for the appellant and Sri Abhinav N. Trivedi, learned Standing Counsel for the respondents. This Special Appeal under Chapter V Rule 8 of the Rules of the Court has been preferred against the impugned judgment and order dated 13th August 2014 passed by learned Single Judge in Writ Petition No. 10351 (S/S) of 1990.

2. Submission of learned Counsel for the appellant-petitioner is that aforesaid Writ Petition was preferred for a direction to the respondents to not to create artificial breaks and further to regularize his service on the post of Collection Amin. It was further prayed that service of the appellant be not terminated on unfounded grounds. Further prayer was made for a direction seeking confirmation of the appellant on the post of Collection Amin. The reliefs claimed by the appellant-petitioner while preferring Writ Petition, are reproduced as under:

"(A) To issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties regularise the petitioner in his service;

(B) To issue writ, order or direction in the nature of mandamus thereby commanding the opposite parties not to create any artificial break in service.

(C) To issue a writ, order or direction in the nature of mandamus, thereby commanding the opposite parties not to terminate the petitioner's service on the post of Collection Amin.

(D) To issue a writ, order or direction in the nature of mandamus, thereby commanding the opposite parties to confirm the petitioner on the post of Collection Amin and to continue to pay him regular salary and allowance each and every month as and when the same falls due.

(E) To issue any other appropriate writ, order or direction, which this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

(F) To award the cost of the writ petition."

3. Learned Counsel for the appellant-petitioner invited attention of the Court to the amendment done in the Uttar Pradesh Collection Amins Service Rules, 1974 in the year 2004. For convenience, the amendment done by Notification dated 17th December 2004, in its totality, is reproduced as under:

4. A plain reading of the aforesaid Rule reveals that quota has been provided to Seasonal Collection Amins to the extent of 35% and procedure has been laid down for their regularization.

5. Since the appellant-petitioner has been conferred a statutory right to be considered for regularization against the quota of 35%, the Writ Petition could not have been dismissed without recording a finding with regard to the merit of the matter in terms of the pleadings and reliefs claimed thereon.

6. It is well settled proposition of law that petitions are to be decided keeping in view the pleadings on record and the reliefs claimed thereon. Since the relevant Rules (supra) carve out provision for regularization to the extent of the quota prescribed, there appears to be no reason to dismiss the Writ Petition without recording finding with regard to the right of the appellant-petitioner to be considered for regularization in terms of aforesaid Rules. Further, the petitioner had made a prayer that no artificial breaks be made in the appellant-petitioner's service career. Admittedly, after putting in service of four continuous seasons, the appellant-petitioner became entitled for being considered for regularization. Ordinarily, in case works are available, then in pursuance of the seniority list maintained in the Revenue Tahsil, the Seasonal Collection Amins cannot be deprived to discharge duties in their respective units. It is not disputed that in the Revenue Tahsil, seniority list has been maintained of all the Seasonal Collection Amins. The appellant-petitioner had also filed copy of the seniority list while preferring the Writ Petition.

7. Without adventing to the pleadings and the material on record, and that too without considering the statutory rights of the appellant-petitioner, dismissal of

the Writ Petition does not seem: to be justified. The finding recorded by the learned Single Judge that no right vested in the appellant-petitioner to seek continuance in employment like other regular Collection Amin, seems to be incorrect. It is not the question of continuance of regular Collection Amin, but it is question of statutory right of the appellant-petitioner, viz-a-viz be considered for regularization in terms of Regularization Rules (supra) in order of seniority list maintained in the Revenue Tahsil. Without recording a finding, the question involved, in terms of the pleadings, seem to affect the appellant-petitioner's fundamental right of livelihood guaranteed under Article 21 of the Constitution.

8. We have been informed that affidavits have been exchanged, but even then without adventing to the pleadings on record, the Writ Petition has been dismissed, which seems not to be proper.

9. We have further been informed that in pursuance of the interim order, the appellant-petitioner was continuing in service. Accordingly, the respondents shall permit the appellant-petitioner to continue in service as Seasonal Collection Amin till final adjudication of the controversy by the learned Single Judge. In view of the above, the appeal is allowed. Impugned order dated 13.8.2014 is set aside and Writ Petition No. 10351 (SS) of 1990 is restored to its original number, and it be listed peremptorily, within first ten cases of the case list, for being final disposal, with effect from second week of September 2014.