

**(2017) 02 AHC CK 0068**

**In the Allahabad High Court**

**Case No :** Civil Misc. Application No. 20174 of 2017 and Special Appeal Defective No. 78 of 2017

Manjeet Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 20-02-2017

**Acts Referred:**

**Citation :** (2017) 4 ADJ 317

**Hon'ble Judges :** Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

**Bench :** Division Bench

**Advocate :** Ashok Kumar Verma, Advocate, for the Appellant; C.S.C, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. This special appeal questions the correctness of the judgment of the learned Single Judge whereby, the claim of selection and appointment of the appellant to the post of Gram Rojgar Sewak, which is a contractual appointment, has been declined by the District Magistrate, Barabanki, vide order dated 31.10.2013 that has been upheld by the learned Single Judge.

2. The contention of the learned counsel for the appellant is that the selections are governed under the provisions of the government order dated 23.11.2007 read with the Government order dated 29.04.2011. According to the terms and conditions of the said Government orders, a select list has to be prepared by the Administrative Committee of the Gram Panchayat. The list of selected candidates has to be drawn up in accordance with the eligibility, provided they fulfil the eligibility conditions, according to the merit of the candidates. The contention is that Clause 5 and 6 of the Government order dated 23.11.2007 makes a provision that if the candidate selected at serial No.1, shows unwillingness to join the post in spite of being selected, then the candidate next in merit shall be selected. The selection is by the Administrative Committee.

3. The other provisions contained in clause 6 are that if the selected candidate is not possessed of the eligibility as prescribed, then in that event the Gram Panchayat will proceed for selecting another candidate. Sri Verma submits that a perusal of these clauses, leaves no room for doubt that the selections were held and that the candidate selected at serial No.1 had willingly not joined on the post and the candidate at serial No.2 has to be offered the said employment. It is therefore, urged that the conclusion drawn by the District Magistrate, Barabanki in the order dated 31.10.2013 are not in consonance with the aforesaid clause and even otherwise, the elimination of the appellant is arbitrary that violates of Article 14 of the Constitution. It is further contended that the selection had not been cancelled and it was only the unwillingness of the selected candidate that had led to this situation where after, the appellant had filed this writ petition before this Court directing the District Magistrate to consider his claim in accordance with law. It is thereafter, that the order dated 31.10.2013 was passed observing that since the process of fresh selection had been decided to be undertaken, and since there was no waiting list provided for under the relevant Government orders, therefore, there was no occasion to consider the claim of the appellant to offer him employment as a Gram Rojgar Sewak.

4. A challenge being raised to the same in the writ petition giving rise to the present appeal has also failed, where the learned Single Judge has accepted the said reasoning and has in addition thereto, relying upon the judgment of the Apex Court, has held that since the engagement of a Gram Rojgar Sewak is on contract basis and only an honorarium is offered, the same does not amount to creation of a post under the Government and being an engagement under the scheme, the appellant does not have any right to claim his engagement as there was no violation of any statutory provision. Thus, the direction of the District Magistrate, Barabanki to hold fresh selections has been upheld.

5. Sri Verma submitted that the learned Single Judge has committed an error in proceeding to interpret the Government order and upholding the impugned order of the District Magistrate dated 31.10.2013, and further that even if it is apparently an appointment on honorarium basis, the provisions of Article 14 of the Constitution of India are clearly attracted that have been overlooked. Hence the impugned judgment and the order of the District Magistrate deserve to be set aside. He has also relied on the unreported judgment in the case of Smt. Shahida Parveen. v. State of U.P. and 4 others (Special Appeal Defective No.383 of 2014), decided on 16.04.2014 to substantiate his arguments.

6. Learned standing counsel on the other hand submits that the appellant does not have any vested right to claim selection or appointment inasmuch as, the selection does not give any right to appointment. He further submits that this is not statutory appointment against salary and being a contractual appointment under a Government scheme, learned Single Judge has not committed any error in refusing to interfere in the order passed by the District Magistrate directing to hold fresh selections.

7. We have considered the submissions raised and we have perused the Government order dated 23.11.2007. Clause 5 and 6 of the said Government order are extracted hereinunder:-

"5- xzke iapk;r dh iz''kklfud lfefr gkbZLdwy rFkk b.VjehfM,V ds izkIrkadksa ds izfr''kr ds vkSlr vadksa ds vk/kkj ij xzke jkstxkj lsod ds p;u gsrq ik=rk lwph rS;kj djsxh rFkk lwph esa lcls vf/kd vad izkIr djus okys vH;FkhZ dk uke igys izdze ij vkSj mlls de vad okys vH;fFkZ;ksa dks vojksgh dze esa lwphc) fd;k tk;sxkA iz''kklfud lfefr lwph esa lcls vf/kd vad izkIr djus okys vH;FkhZ dk p;u djsxh rFkk xzke iapk;r ls mldk vuqeksnu izkIr djsxhA ;fn lokZf/kd vad izkIr djus okyk mEehnokj bPNqd ugha gS] rks ;ksX;rk dze esa vxys mEehnokj dk p;u fd;k tk;sxkA

6- p;fur vH;FkhZ dk iw.kZ fooj.k ftykf/kdkjh dh v/;{krk esa xfBr lfefr dks izsf''kr fd;k tk;sxk ftlds vU; InL; eq[; fodkl vf/kdkjh] ftyk fodkl vf/kdkjh InL; lfpo ,oa ftyk iapk;r jkt vf/kdkjh gksaxsA ftykf/kdkjh dh v/;{krk esa xfBr lfefr dks ek= ;g vf/kdkj gksxk fd og xzke iapk;r }kjk p;fur vH;FkhZ dh ik=rk@vgZrk dk ijh{k.k djsa rFkk ;fn vH;FkhZ fu/kkZfjr ik=rk@vgZrk dks iwjk djrk gS rks lfefr }kjk xzke iapk;r dks fu;qfDr gsrq laLrqfr dj nh tk;sxhA mDr lfefr dks viuh rjQ ls fdlh vU; vH;FkhZ ds uke dh laLrqfr djus dk vf/kdkj ugha gksxkA ;fn xzke iapk;r }kjk p;fur vH;FkhZ fu/kkZfjr ;ksX;rk dks iwjk ugha djrk gS rks lfefr }kjk lwfpr fd;s tkus ij xzke iapk;r }kjk iqu% vU; vH;FkhZ dk p;u fd;k tk;sxkA"

8. A conjoint reading of the aforesaid two clauses leaves no room of doubt that the Administrative Committee of the Gram Panchayat has been entrusted with the task preparing the merit of the candidates applying for appointment as Gram Rojgar Sewak to be appointed on contractual basis. The select list has to be prepared on the basis of the marks obtained by the candidates in the descending order. The candidate obtaining highest marks has to be offered appointment for engagement from the list of the selected candidates and the name of the selected candidate has to be forwarded seeking approval for the same from the Gram Panchayat. In the event, the candidate obtaining highest marks shows his or her unwillingness to join the post, then the next candidate has to be offered appointment.

9. In the instant case, this procedure of obtaining the approval of Gram Panchayat and joining of the selected candidate Km. Juli took almost two years. Km. Juli the selected candidate at serial No.1 was admittedly employed in a Madarsa Institution from where she was also being paid an honorarium. Accordingly, she showed her unwillingness to join and ultimately dispatched a letter informing the Gram Panchayat to the said effect. Learned counsel for the appellant submits that this unwillingness and refusal to join the post was a clear inability of the candidate at serial No.1 for engagement due to her engagement in some other employment. Thus this unwillingness cannot be termed to be an ineligibility of the candidate and in such circumstances, no fresh selections were required to be held, and the offer had to be made to the appellant who was at serial No.2 of the select list. For this, Sri Verma has submitted that if it was a

case of ineligibility, then the option of clause 6 was open for holding the selection but in the instant case, there was no ineligibility of the candidate and rather it was her unwillingness to join the post which resulted in the vacancy and as such the placement of the appellant serial No.2 could not have been ignored.

10. The aforesaid argument of Sri Verma appears to be correct inasmuch as a conjoint reading of clause 5 and 6 clearly establishes that it is in the event of unwillingness of the selected candidate that offer is to be made to the second in the list. It is only where the candidate is ineligible when no option is left for either offering employment to any other candidate, and the only option is left to hold a fresh selection.

11. In the instant case, Km. Juli who was at serial No.1, did not accept the offer on account of her engagement elsewhere. This did not amount to any ineligibility on her part. Consequently, the offer could have been made to the appellant who was at the second place.

12. However, what happened in the case, this took a span of almost two years and even thereafter, the writ petition was ultimately decided in November, 2016 which was almost six years of the date of selection in the year 2010. The contractual engagement is for one year and extendable for another period of two years. In such a situation, we are not inclined to interfere with the impugned judgment or the order without approving of the reasons contained in the order of the District Magistrate dated 31.10.2013.

13. Sri Verma submits that on account of the changed circumstances and the alteration of the status of the Gram Pradhan of the Village, the appellant will be losing the opportunity to apply again for the said post in case fresh selections are held. In fact the candidate to be engaged now has to be a person of the caste of the Village Pradhan. This being a provision of law, the situation cannot be altered by us through a judicial intervention so as to extend any benefit to the appellant. In such a situation, even otherwise, the employment cannot be offered in contravention to the aforesaid policy of the Government.

14. The appeal therefore cannot be entertained. The same is accordingly dismissed.