
(2013) 09 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 3386 of 2005

Mehtab Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 100 ALR 882 : (2014) 1 AWC 91

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Swarn Kumar Srivastava, Anil Kumar Srivastava, Pradeep Kumar, Pramod Kumar and Syed Wajid Ali, for the Appellant; Ganga Prasad, for the Respondent

Final Decision : Disposed Of

Judgement

Manoj Misra, J.—Heard Sri Syed Wajid Ali for the petitioner and the learned standing counsel for the respondents. As parties have exchanged their affidavits, with the consent of the learned counsel for the parties, the petition is being finally decided at the admission stage itself.

2. By this petition, the petitioner has sought a mandamus commanding the respondents to consider regularization of the petitioner on Class III post with effect from 11.11.2002, i.e., from the date when juniors to him were given regularization consequent to the U.P. Regularization of Daily Wages Appointment on Group "C" Posts (Outside the Purview of U.P. Public Service Commission) Rules, 1998 (hereinafter referred to as "Regularization Rules, 1998").

3. The case of the petitioner is that he has been working as Clerk in the office of Collectorate, Maharajganj since last several years and that he is entitled to be considered for regularization under the Regularization Rules, 1998. It his case that when the claim for regularization was not being considered, the petitioner alongwith other daily wagers filed Writ Petition No. 44562 of 1999, which was disposed of vide order dated 5.10.1999 requiring the respondents to consider the

claim of the petitioner for regularization.

4. From the counter-affidavit it appears that pursuant to the direction given by this Court in Writ Petition No. 44562 of 1999, the claim of the petitioner alongwith four other employees for regularization was considered by the Selection Committee in its meeting dated 10.11.2002, minutes of which have been enclosed as Annexure-CA-1 to the counter-affidavit. A perusal of the minutes would reveal that out of the remaining four employees, who were considered alongwith petitioner for regularization, Shiv Kumar was junior to the petitioner, inasmuch as, his date of initial appointment was 2.7.1990 as compared to 6.6.1990 of the petitioner. The report of the Selection Committee discloses that the name of the petitioner was not recommended for regularization, inasmuch as, pursuant to a departmental enquiry an adverse entry was given to the petitioner.

5. The order-sheet reveals that the petitioner had filed a supplementary-affidavit on 22.12.2006 in the registry, which was not placed on record, accordingly, by order dated 4.1.2013, the petitioner was permitted to file a reconstructed copy of the same. In compliance of the order dated 4.1.2013, the petitioner filed Application No. 15822 of 2013 annexing therewith copy of the supplementary-affidavit. Alongwith the said supplementary-affidavit the petitioner has brought on record the order dated 15.7.2002 (Annexure-SA-1) by which the adverse entry was given to the petitioner.

6. A perusal of the order dated 15.7.2002 reveals that punishment of stoppage of one increment and an adverse entry, with observation never to post petitioner on a sensitive post, was inflicted on two charges. The charge No. 1 related to some land dispute between the petitioner and his fellow villagers, which had resulted in proceedings u/s 107/116, Cr.P.C. Whereas the charge No. 2 was in respect of absence of the petitioner from duty without permission in the year 2001, while the petitioner was handling sensitive work relating to detentions under the National Security Act.

7. The submission of the petitioner is that the Regularization Rules, 1998 came into force on 9.7.1998, i.e., the date when they were published in the official Gazette. It is his case that the punishment order dated 15.7.2002 could not have been relied on for denying the benefit of regularization, inasmuch as, the petitioner's rights stood crystallized prior to the passing of the order. This plea though was not taken in the main petition, but was taken by the petitioner by filing supplementary-affidavit dated 13.3.2013. Vide order dated 16.5.2013 time was granted to the standing counsel to file supplementary counter-affidavit, but till date no supplementary counter-affidavit has been filed. However, as sufficient time had already elapsed, no further time was provided for filing supplementary counter-affidavit.

8. The submission of the learned standing counsel is that under the Regularization Rules, 1998, there is no creation of any right for regularization.

The rules only provide for a right to be considered for regularization. The Selection Committee constituted under the rules is required to assess the suitability of a candidate on examination of character rolls and such other records, therefore, it was open to the Selection Committee to consider the punishment order dated 15.7.2002, even though the same might have been passed after the enforcement of the Regularization Rules, 1998.

9. Before assessing the weight of respective submissions, it would be useful to examine Rule 4 of the Regularization Rules, 1998, which provides as follows:

4. Regularisation of daily wages appointment on Group "C" Posts.--(1) Any person who,

(i) was directly appointed on daily wage basis on Group "C" posts in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(ii) possessed requisite qualifications prescribed for regular appointment for that post at the time of such appointment under the relevant service rules on daily wage basis, shall be considered for regular appointment on Group "C" post in permanent or temporary vacancy as may be available on the date of commencement of these rules, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Other Categories, shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and the Uttar Pradesh Public Service (Reservation for Physically Handicapped, Dependants of Freedom Fighters and Ex-Servicemen) Act, 1993, as amended from time to time, and orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of Service Rules.

(4) The appointing authority shall having regard to the provisions of sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of order of appointment and, if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee alongwith their character rolls and such other records, pertaining to them, as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4) and if it considers necessary. It shall interview the candidates also to assess their suitability.

(6) The Selection Committee shall prepare a list of selected candidates arranging their names in order of seniority and forward the same to the appointing authority.

10. A perusal of the Rule 4 reveals that any person who was directly appointed on daily wage basis on Group "C" post in Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment under the relevant service rules on daily wage basis, shall be considered for regular appointment on Group "C" post in permanent or temporary vacancy as may be available on the date of commencement of these rules, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service Rules or orders.

11. Sub-rule (3) of Rule 4 provides that the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of Service Rules. The sub-rule (4) provides that the appointing authority shall having regard to the provisions of sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of order of appointment and, if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list so prepared is to be placed before the Selection Committee alongwith their character rolls and such other records, pertaining to them, as may be considered necessary to assess their suitability. Sub-rule (5) provides that the Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4) and if it considers necessary, it shall interview the candidates also to assess their suitability. Sub-rule (6) further provides that the Selection Committee shall prepare a list of selected candidates arranging their names in order of seniority and forward the same to the appointing authority.

12. A careful perusal of Rule 4 would reveal that it only provides for a right to be considered for regularization and does not confer any vested right to be regularized. Further, no specific period or time limit has been fixed by the Rules, 1998 for the constitution of the Selection Committee by the Appointing Authority. Sub-rule (4) of Rule 4 though provides that the Selection Committee would consider the character rolls and such other records, pertaining to candidates, to assess their suitability but does not provide that the character rolls up to the date of the notification of the Regularization Rules, 1998 alone, would be taken into consideration. Therefore, once regularization is subject to assessment of suitability and no vested right has been created for regularization, the argument of the petitioner that any material post the notification of the Regularization Rules, 1998 cannot be considered, is unworthy of acceptance.

13. But there is another aspect to the matter. A perusal of the minutes of the meeting of the Selection Committee dated 10.11.2002 (Annexure-CA-1) reveals

that the name of the petitioner was not recommended for regularisation only because the appointing authority/disciplinary authority had ordered for his reinstatement in service after recording an adverse entry. There is, however, nothing in the report to indicate that the petitioner was not found suitable for regularization. There is also nothing in the report or the record, which may indicate that on account of rejection of the claim of the petitioner for regularization, his services were liable to be dispensed with, or were dispensed with, as is the mandate of Rule 8 of the Regularization Rules, 1998.

14. The submission of the learned counsel for the petitioner is that the petitioner, even after rejection of his claim for regularization, is continuously working and discharging his duties as a clerk without there being any kind of complaint from any corner (vide paragraph 11 of the writ petition). Such contention has not been specifically denied in paragraph 16 of the counter-affidavit, which pertains to the reply to paragraph 11 of the writ petition. In fact, even the punishment order dated 15.7.2002 imposing adverse entry reinstates the petitioner in service, though, with caution.

15. A careful reading of the provisions of Rule 4 of the Regularization Rules, 1998 suggests that the Selection Committee has to assess the character rolls and other records to assess a person's suitability for the post. A person might be inflicted with minor punishment but that does not mean that he is unsuitable for the post. Even a permanent employee is punished, but that does not mean that his services has to be dispensed with. What is, therefore, to be assessed is whether the incumbent is suitable for the post or not. The facts and the record of the instant case reveal that there is no assessment by the Selection Committee with reference to the suitability of the petitioner for the post. What transpires from the record is that as the petitioner had been inflicted with minor punishment he was kept out of the zone of consideration for regularisation while others were regularized. The record does not reveal that consequent to rejection of petitioner's claim his services were terminated. Rather from the averments made in paragraph 16 of the writ petition, which have not been specifically denied in the counter-affidavit, it appears that the petitioner has been continuing in service. In such circumstances the Court is of the considered view that the claim of the petitioner for regularisation needs to be considered afresh by considering the character rolls and all other records with a view to assess whether the petitioner is suitable for the post or not. If the petitioner is found suitable for the post, the order of regularisation may be passed, in accordance with law. This writ petition is, therefore, disposed of with a direction to the respondent No. 2 to constitute a Selection Committee to consider the case of regularization of the petitioner, afresh, in accordance with law and in the light of the observations made herein above. The aforesaid exercise shall be completed within a period of one month from the date of production of a certified copy of this order.