
(2008) 02 AHC CK 0243
In the Allahabad High Court

Mithlesh Kumar and Muztuba Hussain	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 2 AWC 1127 : (2008) 2 UPLBEC 90

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Aggrieved by the orders dated 29.12.2005 (Annexures 13-A and 13-C to the writ petition), whereby the respondents No. 10 and 11 have been appointed as Collection Amin on regular basis, the petitioners have filed the present writ petition assailing the said orders and have sought a writ of certiorari for quashing the same. The petitioners have also sought a writ, order or direction in the nature of mandamus restraining respondents from taking any action in favour of respondents No. 10 and 11 on the basis of the orders dated 29.12.2005 and further to grant regular appointment to the petitioners as Collection Amin and to pay them regular monthly salary as payable to the regularly appointed Collection Amins.

2. The facts in brief, giving rise to the present writ petition, are. that both the petitioners. Mithlesh Kumar and Muztuba Hussain were engaged as Seasonal Collection Amin on 01.07.1991 and have been continuously engaged from time to time as Seasonal Collection Amin since thereafter from 05.03.2002 till 30.07.2005 the petitioners were not engaged as Seasonal Collection Amin and were not assigned any duty at all. But thereafter they were engaged on 10.08.2005 till 30.09.2005 in the aforesaid capacity. A seniority list of Seasonal Collection Amins of District Chitrakoot was prepared by the Collector on 30.05.2003 wherein the respondents No. 10 and 11 were shown at Serial No. 16 and 23 while the petitioners were placed at Serial No. 10 and 18 respectively. It is also alleged that the petitioners as well as the respondents No. 10 and 11

belong to backward class and, therefore, are entitled to claim all benefits admissible to Other Backward Classes. There were 17 posts of Collection Amin lying vacant in 2004. Recruitment to the post of Collection Amin is governed by U.P. Collection Amins Service Rules, 1974 (hereinafter referred to as the "1974 Rules") which provides that 35% of the vacancy shall be filled in by regular appointment of Seasonal Collection Amins, 15% shall be filled in by promotion of Collection Peons and rest shall be filled in by direct recruitment.

3. An advertisement was published on 24.12.2004 for direct recruitment against 8 vacancies of Collection Amin under Rule 5(1) of 1974 Rules. Rest of the vacancies were liable to be filled in by promotion of Collection Peons and regular appointment of Seasonal Collection Amins. On 01.07.2005 the Additional District Magistrate (Finance and Revenue), Chitrakoot issued a circular letter to all Sub-Divisional Magistrates and Tahsildars of District Chitrakoot requiring them to submit details of Seasonal Collection Amins working within their jurisdiction giving percentage of recovery, performance report and service record thereof. Vide letter dated 05.07.2005 the Tahsildars, Tahsil Karvi and Man were required to specify-recovery percentage of Seasonal Collection Amin in the last four Fasals (crops) since for the purpose of determining satisfactory service one has to satisfy an average recovery of at least 70% in the last four Fasals (crops). Based on the report received from the aforesaid authorities, a chart was prepared in the office of District Magistrate, Chitrakoot with respect to recovery percentage of various Seasonal Collection Amins in the preceding four Fasalis. A copy of the aforesaid chart has been placed on record as Annexure-7 to the writ petition. It is further stated that the Selection Committee was scheduled to hold its meeting on 01/02.08.2005 wherein it finalise six names of Seasonal Collection Amins for regular appointment on the post of Collection Amin which included the name of petitioners also. However, instead of giving effect to the aforesaid Selection, another meeting was held on 29.10.2005 and pursuant to the recommendation made by the Selection Committee in its meeting dated 29.10.2005 five appointment letters have been issued to Seasonal Collection Amins appointing them on regular basis as Collection Amin which included the names of respondents No. 10 and 11 and other three persons are Sri Shamsheer Bahadur, Sri Krishna Pal Singh and Sri Vidya Sagar. It is said that the selection of respondents No. 10 and 11 who are junior to the petitioners is arbitrary and violative of principle of natural justice as well as 1974 Rules since there is no justification to ignore the petitioners for appointment as regular Collection Amin as they fulfil the requirement of satisfactory service for appointment as contemplated under 1974 Rules. It is said that Rule 5(1) requires 70% average recovery in the last four Fasals which is well satisfied by the petitioners and, therefore, they could not have been ignored for the aforesaid appointment.

4. On behalf of respondents No. 3 to 9 a counter affidavit has been filed sworn by Sri Devi Dass, Deputy Collector, Chitrakoot wherein the date of appointment of the petitioners and the fact that the petitioners and respondents No. 10 and 11 belong to Other Backward Class are not disputed. However, it is said that no

selection process could be held in August, 2005 due to ban order dated 03.08.2005 issued by the State Government. Subsequently, when the matter was clarified that there is no ban in respect to regular selection on the post of Collection Amin, the Selection Committee held its meeting on 29.10.2005. A list of all Seasonal Collection Amins prepared at Tahsil level as on 24.10.2005 was considered by the aforesaid Committee and thereafter it recommended names of respondents No. 10 and 11 besides Sri Shamsher Bahadur, Sri Krishna Pal Singh. Sri Vidya Sagar and Sri Bhooray Lal. Sri Bhooray Lal is a scheduled castes and therefore, out of six persons who have been selected by the Selection Committee three are from general category, two from other backward class category and one is scheduled caste. It is said that the Selection Committee held that the petitioners do not fulfil requirement of satisfactory service for appointment as regular Collection Amin since their average recovery is less than 70% and, therefore, they are not fit for appointment as regular Collection Amin. However, it is not disputed that up to 15.12.2004 there were 17 vacancies of Collection Amin which were available for substantive appointment for which recruitment was made in accordance with rules of U.P. Collection Amin Sewa Niyamawali, 1992. On behalf of respondents No. 10 and 11 also a counter affidavit has been filed justifying their selection stating similar facts as stated in the counter affidavit filed by official respondents. The petitioners have filed rejoinder affidavit reiterating their stand as pleaded in the writ petition.

5. I have heard SIM Sudhir Kumar Chandraul on behalf of petitioners, learned Standing Counsel on behalf of respondents No. 1 to 9 and Sri R.S. Umrao, learned Counsel appearing for respondents No. 10 and 11. Sri Chandraul has vehemently contended that the selection has been held apparently contrary to Rule 5 of 1974 Rules as amended in 1992 and 2004. He contended that for the purpose of determining (sat is factor) work the authorities have to consider the average recovery) made by a Seasonal Collection Amin in the preceding four Fasals which should not be less than 70% on average basis. But in the present case the respondents have proceeded to consider recovery percentage for four Fasalis and not four fasals, therefore, the relevant considerations have not been applied and on the contrary the respondents have considered the matter in a manner which was not permissible under the Rules. He further contended that in the preceding four Fasals the petitioners average recovery was more than 70% and, therefore, they have wrongly been superseded by their juniors i.e. the respondents No. 10 and 11.

6. Learned Standing Counsel and Sri Umrao, Advocate appearing on behalf a respondents opposed the above submissions and writ petition reiterated thru stand taken in the counter affidavit.

7. During the course of argument learned Counsel for the partis admitted that the relevant service rules which govern recruitment to the post of Collection Amin are that of 1974 which have been amended subsequently and in the present case we are concerned with 5 Amendment Rules. 1992 published on

23.10.1992 and 6th Amendment Rules. 2004 published on 17.12.2004 and there is no rule like U.P. Collection Amin Service Rules, 1992 as stated in the counter affidavit and it appears that the reference in fact is to 1992 Amendment Rules of 1974 Rules. Besides others, the aforesaid amendments substitute Sub-Rule 1 of Rule 5 of 1974 Rules and the distinction between the amendment of 1992 and 2004 is that in the Explanation. 1992 Amendment Rules required 70% minimum recovery in the last, four Fasals while 2004 Amendmen Rules require a minimum average of 70% in the last four Fasals. Rule" of 1974 Rule as amended subsequently till 6th Amendment Rules, 2004 is reproduced as under:

5 ?1? Isok dh lkekU; Js.kh ds inksa ij HkrhZ bl fu;ekoyh ds Hkkx&5 esa O;ofLFkr jhfr ls izfr;ksfxrk ijh{kk ds ifj.kke ij dh tk;sxh A

izfrcU/k ;g gS fd miZ;qDr vH;fFkZ;ks dh miyC/krk ds v/khu jgrs gq,] iUnzg izfr"kr fjfDr;k ,sls ekSfyd :i ls fu;qDr dysD"ku pijklh;ksa esa ls inksUufr }kjk Hkjh tk;sxh&

?d?& ftUgksus ek;/fed f"k{kk ifj"kn] mRrj izns"k dh de ls de gkbZLdwy ijh{kk ;k ljdkj }kjk mlds led{k ekU;rk izkIr dksbZ ijh{kk mRrh.kZ dh gks] vkSj

?[k?& ftUgksus jktLo foHkkx ds dysD"ku laxBu esa de ls de N% Qlyks dh vof/k ds fy, dk;Z fd;k gks%

izfrcU/k ;g vkSj fd iSrh izfr"kr fjfDr;ka ,sls lhtuy dysD"ku vehuksa es ls p;u }kjk Hkjh tk;sxh&

?d? ftUgksus de ls de pkj Qlyks rd lurks"ktud :i ls dk;Z fd;k gks]

?[k? ftudh vk;q ml o"kZ dh igyh tqykbZ dks] ftl o"kZ p;u fd;k tk;] 45 o"kZ ls vf/kd u gksA

izfrcU/k ;g Hkh fd ;fn mi;qDr vH;FkhZ miyC/k u gks rks "ks"k fjfDr;ka lh/kh HkrhZ ds ek;/e ls lkekU; vH;FkhZ;ks }kjk Hkjh tk;sxh A

Li"Vhdj.k& lUrks"ktud dk;Z dk rkRi;Z gksxk "kq: ls vUr rd vPNs vkpj.k dks lfEefyr djrs gq, vfUre pkj Qlyks ds nkSjku fofgr Lrj ds vuqlkj de ls de vkSlru lRrj izfr"kr olwyh A

5 ?2? Isok dh p;u Js.kh dh inksa ij fu;qfDr bl fu;ekoyh ds Hkkx 6 esa O;ofLFkr jhfr ls lkekU; Js.kh ds LFkk;h dysD"ku vehuksa dh inksUufr djds dh tk;sxh A

(emphasis added)

Seasonal Amin has also been defined under Rule 3(Jha) and the procedure for recruitment of Seasonal Collection Amins is provided under Rule 17A. which read as under:

3 ?>? ^^lhtuy vehu ^^ dk rkRi;Z ,sls vehu ls gS tks jch ;k [kjhQ ;k nksuks gh Qlyks ds fy, fu;qDr fd;k tk; A

17 ?d? lhtuy dysD"ku vehuksa ds p;u dh izfdz;k%& dysDVj lhtuy dysD"ku

vehuks dh tks fu;e 5 ds mi fu;e ?1? ds izFke ijUrqd ds v/khu p;u ds fy, ik= gks ,d lwph rS;kj djsxk vkSj mues ls lUrks"ktud dk;Z ds v/khu ftys es lhtuy dysD"ku vehu ds in ij mudh lsok vof/k ds vk/kkj ij mudh lsok vof/k ds vk/kkj ij visf{kr la[;k p;u djsxk A

A perusal of Rule 5(1) and 17-A of 1974 Rules read with definition of Seasonal Amin under Rule 3(Jha) makes it clear that a Seasonal Collection Amin can be engaged for Rabi or Kharif or both the fasals and based on their period of engagement, shall be placed in order of seniority. They shall be considered for regular appointment provided they have rendered satisfactory service and if so, shall be selected for appointment on the post of Collection Amin to the extent of 35% of the vacancies. Thus eligibility and criteria is the length of their service which is the criteria of their seniority and satisfactory service as defined under Rule 5(1) of 1974 Rules.

8. In the present case it is not disputed that the official respondents ascertained existing vacancies as on 15.12.2004 and pursuant thereto initiate recruitment process on 29.12.2004. The recovery performance of various Seasonal Collection Amins was requisitioned from concerned Tahsildars vide letter dated 01.07.2005 and 05.07.2005. A perusal of Annexure-7 to the writ petition shows that in the Fasali year 1408 and 1409 the petitioners and the respondents No. 10 and 11 were engaged only for one Fasal while in the Fasali year 1406 and 1407 they were engaged for both the Fasals. The chart (Annexure-7 to the writ petition) has been prepared in respect to the recovery percentage of four Fasali years namely, 1406, 1407, 1408 and 1409. The respondents, however, in their counter affidavit have filed another chart showing that besides the aforesaid four Fasalis the performance of the petitioners and others during Fasali year 1412 was also taken into consideration. This is also evident from the record of the Selection Committee which has taken into consideration the average recovery percentage as mentioned in Annexure-CA-2 to the counter affidavit filed on behalf of respondents No. 3 to 9 which refers to the recovery performance during the period of 1406, 1407, 1408, 1409 and 1412 Fasalis. It would be appropriate to refer at this stage the recovery percentage as mentioned in Annexure-CA-2 with respect to the eight persons selected by the Selection Committee which included petitioners as well as the respondents No. 10 and 11 as under:

S. No.	Name	1406	1407	1408	1409	1412
1.	Mnhiesh Kumar	70%	82%	83%	71%	25% (Petitioner No. I)
2.	Muztuba Hussain	75%	77%	82%	70%	34% (Petitioner No. 2)
3.	Manbodh	50%	71%	85%	65%	73% (Respondent No. 10)
4.	Dev Kumar	64%	72%	68%	97%	45% (Respondent No. II)
5.	Shamshcr Bahadur	76%	80%	79%	74%	Absent on medical ground
6.	Krishna Pal Singh	81%	82%	78%	77%	Absent on medical ground
7.	Bhooray Lal	75%	83%	85%	87%	Absent due to death of his father
8.	Vidya Sagar	77%	80%	82%	80%	Absent on medical ground

This Court finds that though in the Rules one has to show his average recovery of at least 70% in the last four Fasals but the chart was submitted by Tahsiklars not based on the Fasals but Fasalis i.e. the year which includes both the Fasals namely, Ravi and Kharif. The Selection Committee was also aware of this fact that it has to consider recovery performance of last four Fasals but thereafter it has clearly erred by not confining to consider performance with respect to recovery in last four Fasals but has taken the aforesaid chart to be correct without noticing the fact that the chart (Annexure-CA-2) was prepared on the basis of last four Fasalis and not on the basis of last four Fasals. One Fasali year has more than one Fasal. It is not the entire Fasali year but last four Fasals performance ought to have been considered by the Selection Committee. It has considered performance of the candidates beyond the period for which it is provided under Rule 5(1) of 1974 Rules. This *ex facie* vitiates the selection of respondents No. 10 and 11 and supersession of petitioners, therefore, it cannot be sustained.

9. Moreover, it is also true that the selection process started in "December, 2004. The recruitment year is defined under Rule 3(Jha) which provides 12 months in a calendar year starting from 1st July. When the recruitment process started in 2004, therefore, the recruitment year was 01.07.2004 to 30.06.2005. The recovery percent, therefore, for the period subsequent to 30.06.2005 also could not have been considered by the Selection Committee. In the present case, it appears that by recruitment of petitioners and others was actually made in August/October, 2005 and thus the Selection Committee has also taken into account the subsequent period though the same could not have been considered being beyond the period of recruitment for which the selection has commenced. Thus even if the Selection Committee met in October, 2005, the recovery proceedings subsequent to 30.06.2005 could not have been taken into account since the cut off date for even eligibility is the 1st July of the recruitment year and if it is taken to be with reference to the meeting of the Selection Committee i.e. October 2005 even then it would come to be 01.07.2005 and the period subsequent thereto could not have been taken into account.

10. In view of the above it is evident that the selection of the respondents No. 10 and 11 is not in accordance with law. Consequently, supersession of the petitioners is also vitiated since they have not been considered in accordance with the provisions contained under Rule 5(1) of 1974 Rules as amended in 1992 and 2004 read with Rule 17-A of 1974 Rules.

11. In the result, writ petition is allowed. The orders dated 29.12.2005 (Annexures 13-A and 13-C to the writ petition) are hereby quashed. The respondents are directed to consider the petitioners and other eligible Seasonal Collection Amins including respondents No. 10 and 11 for appointment to the post of Collection Amin on regular basis pursuant to the recruitment in question afresh in accordance with the Rules as well as the observations made above. The

aforesaid exercise would be completed by the respondents within a period of three months from the date of production of certified copy of this order. No costs.