

(2010) 10 AHC CK 0381
In the Allahabad High Court
Case No : Special Appeal No. 1753 of 2010

Mohar Lal	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Collection Peons Service Rules, 2004 — Rule 5

Citation : (2010) 10 AHC CK 0381

Hon'ble Judges : Ferdino Inacio Rebello, C.J.; Amreshwar Pratap Sahi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant was appointed as a Seasonal Collection Peon. His claim for regularization was considered and ultimately rejected by the competent authority on 6th of August, 2008 holding that the appellant was over age inasmuch as he was above 45 years of age as on 1st of July, 2008. Hence he could not be extended the benefit of regular appointment.

2. The facts giving rise to this litigation are that the appellant having been appointed on seasonal basis in the year 1977, approached the authorities for his regularization as he had already served for more than a decade. He also filed a writ petition before this Court being Civil Misc. Writ Petition No. 35980 of 2002, which was disposed of on 28th of August, 2002 directing the authorities to consider the claim of the appellant for his regular appointment. It was also contended therein, that one Prabhu Nath, who was junior to him had filed Civil Misc. Writ Petition No. 2048 of 1998 before this Court and pursuant to the directions of this Court, the said junior person was given regular appointment. This Court disposed of the writ petition filed by the appellant on 28th of August, 2002 directing the concerned authorities to consider the claim of the appellant for regularisation and pass orders in the light of the observations made in the aforesaid judgment. The respondents admittedly took six long years to decide

the claim of the appellant and ultimately non-suited him only on the ground that he was overage.

3. The appellant claims that his date of birth is 15th of March, 1959 and he submitted that his date of birth was not correctly recorded in the order and even otherwise on the date when the direction was issued by this Court i.e. on 28th of August, 2002, juniors to the appellant had already been extended the said benefits, about which there was no consideration by the learned Single Judge.

4. The writ petition was filed by the appellant assailing the order dated 25.07.2008/6.8.2008 giving rise to the present appeal. The learned Single Judge dismissed the writ petition on the ground of laches and further that mere submission of representations to the authorities with regard to his date of birth will not improve the situation.

5. This appeal questions the correctness of the judgment of the learned Single Judge as also the order passed on 6th of August, 2008 by the respondent No. 4. Learned Counsel for the appellant submits that the appellant was fully eligible and qualified and so far as the age of the appellant is concerned, he was very much within the eligibility criteria when his writ petition was disposed of on 28th August, 2002. Any subsequent disqualification on account of age, therefore, could not have been considered and therefore, the authorities have committed an error by denying the claim to which the appellant was entitled.

6. Learned Standing Counsel submits that the appellant being over age as on the date of the consideration, was not entitled for being regularized and therefore, there is no error in the impugned order passed by the authority and accordingly, the judgment of the learned Single Judge does not deserve any interference.

7. Before coming to the merits of the matter, it is evident that the appellant had been agitating his rights since long. Not only this, he had approached this Court well within time and a direction was issued on 28th of August, 2002 to consider his claim and pass orders within two months. His claim was admittedly not considered within the prescribed period even though a list was drawn up at the district level for consideration of the claim of regularization in which the name of the appellant was at Sl. No. 16.

8. The other candidates, who are referred to in the seniority list drawn up by the respondents themselves including Prabhu Nath, have been considered and they have been offered regular appointment. The name of Prabhu Nath appears at Sl. No. 32 of the seniority list and his date of birth is 4th of June, 1959. It is, therefore, obvious that the appellant, who is senior to the said Prabhu Nath, was entitled for being considered and if Prabhu Nath has been extended the benefit of regularization, then the said factor ought to have been taken into account while considering the claim of the appellant as directed by this Court in the judgment dated 28.08.2002. A perusal of the order dated 6th of August, 2008 indicates that there is no such consideration made by the appointing authority, while proceeding to decide the claim of the appellant.

9. The appellant as noted above had approached this Court way back in the year 2002 and it is the respondents who took long years to mitigate his claim. The representations, therefore, filed by the appellant were for the redressal of his claim and the appellant cannot be blamed for any laches, as it was the respondents to comply with the directions of this Court. The delay, therefore, if any, was on the part of the respondents and the delay on the part of the appellant who approached this Court, therefore, could not have been a consideration for non-suiting him in a challenge raised to the order dated 06.08.2008.

10. Apart from this, our attention has been also invited to the Rules, which have been framed for the purpose of governing the services of Seasonal Collection Peons. The said Rules are the Uttar Pradesh Collection Peon's Service Rules, 2004. Rule 5 of the said Rules is quoted below:

5. Source of recruitment.- Recruitment to the posts in the service shall be made from the following sources -

(i) Fifty per cent by direct recruitment through the Selection Committee.

(ii) Fifty per cent posts shall be filled through the Selection Committee from amongst such Seasonal Collection Peons who have worked satisfactorily for at least four Fasals and whose age on the first day of July of the year in which selection is made does not exceed 45 years:

Provided that if suitable candidates are not available, the remaining vacancies shall be filled by direct recruitment under Clause (i).

Explanation - Satisfactory work shall mean extending full cooperation in at least seventy per cent realization as per prescribed standard fixed by the Government during the last four Fasals and good conduct throughout.

11. These Rules were promulgated vide notification dated 17th December, 2004 and have been framed upon approval of His Excellency the Governor under Article 309 of the Constitution of India. The same also provides that 50% of the posts of collection peons have to be picked up from amongst the Seasonal Collection Peons provided that they fulfil the criteria as prescribed in Rule 5 of the said Rules. The said Rule has also a rider that the age of the candidate be not above 45 years in the year in which the selection is to be made.

12. In the instant case, the right of the appellant to be considered, had undisputedly accrued long back and the directions of this Court dated 28.08.2002 had to be complied with before proceeding to non-suit the appellant on the ground of age. The directions were issued in the year 2002 to consider the representations moved by the appellant, which were well within time for consideration of his regularization. The respondents, while delaying the matter on their account, cannot therefore non-suit the appellant inasmuch as the consideration of the appellant has to be made in the year in which selections were made particularly when juniors to the appellant have been extended the

said benefit.

13. We have pointed out hereinabove that one Prabhu Nath who is stated to be junior to the appellant has been extended the benefit of such regular appointment. Not only this, the appellant narrated the entire circumstances of other employees in this regard which have been noted in the directions dated 28.08.2002. In our opinion, the authorities were obliged to consider the claim of the appellant in the light of the aforesaid facts, keeping in view the year of selection in which the appellant was entitled to be extended the said benefit. The mere passage of time on account of delay, no decision having been taken by the respondents themselves, will not invalidate the claim of the appellant, who was entitled to be considered, when he was below the age of 45 years. The new Rules of 2004 also therefore reiterate the same position. The submissions, therefore, raised on behalf of the respondents - State and the reasons as contained in the order dated 6th of August, 2008 cannot be sustained.

14. Accordingly, the order dated 06.08.2008 as well as the judgment of the learned Single Judge dated 20.07.2010 are set aside for the reasons aforesaid. The appeal is allowed. The respondent No. 2 shall now proceed to examine the claim of the appellant in the light of the observations made hereinabove and pass appropriate orders after ascertaining the correct date of birth of the appellant and his right to be considered for regular appointment as a Regular Collection Peon.