

(2003) 04 AHC CK 0088
In the Allahabad High Court
Case No : Writ Petition No. 562 (S/S) of 1998

Naresh Chandra and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Uttar Pradesh Agricultural Produce Market Committees (Centralized) Service Regulations, 1984 — Regulation 12(4)
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 25A, 26X

Citation : (2003) 2 UPLBEC 1163

Hon'ble Judges : Khem Karan, J

Bench : Single Bench

Advocate : S.K. Kalia, for the Appellant; N.C. Mehrotra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Khem Karan, J.—The petitioners have prayed for :

- (a) quashing the order dated 15.10.1997 (Annexure No. 18), passed by the Director, Mandi Parishad;
- (b) quashing the order dated 26.5.1997 (Annexure No. 9) passed by the Additional Director (Administration), Krishi Utpadan Mandi Samiti, Varanasi; and
- (c) for commanding the opposite parties not to give effect to those orders and to allow the petitioners to work on their respective posts and to pay them their salary since May, 1997.

2. The case of the petitioners is that all of them were appointed in the year 1996, on the posts and on the dates, detailed in Para 12 of writ petition, in Mandi Samiti, Varanasi, by the then Secretary of Samiti, after following due procedure, prescribed in Uttar Pradesh Agriculture Produce Market Committees (Centralized) Service Regulations, 1984 (for short the Regulations of 1984), framed under Sections 25-A and 26-X of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964.

They say that they continued working, on the respective posts in Class IV, till May, 1997, and it was on 26.5.1997 that the Addl. Director (Administration), Mandi Parishad, wrote a letter (Annexure No. 9) to the Regional Deputy Director, Varanasi, directing him not to take work from the petitioners and in compliance of these directions, the Secretary of Samiti passed an order (Annexure No. 10) on 28.5.1997, asking the petitioners to stop working. It was further clarified that, now on wards, the petitioners would not get any salary, till further orders of Mandi Parishad. It appears that on representation of the petitioners, certain orders such as 11.9.1997, were issued by Addl. Director for taking work, but before the same could be acted upon, the Director, Mandi Parishad, issued an order (Annexure No. 10) on 15.10.1997 cancelling the orders dated 8.10.1997 and 11.9.1997 of the Addl. Director. He set the controversy at rest by reiterating the earlier stand taken in letter of May, 1997. The petitioners have tried to say that their services have not formally been terminated and so they continue in service and are entitled to wages. since May, 1997.

3. The opposite parties No. 2 to 6, have contested the claim of the petitioners by saying that the appointment of the petitioners, in the year 1996, on the dates and on the posts, described in Para 12 of the writ petition, was not regular one and in accordance with Regulations of 1984, as the process of regular selection was postponed, by the Regional Deputy Director, the Chairman of the Selection Committee. They say that Shri Paramhans Singh, the then Secretary of Mandi Samiti, Varanasi any how succeeded in getting approval of the Director of Parishad for few adhoc appointments for a period of 89 days and taking advantage of this approval, he issued appointment letters to the petitioners, without disclosing therein that the engagement was for 89 days only. According to them, this engagement of the petitioners was extended once or twice, on the request and recommendation of Samiti, as regular selection was pending. It has also been alleged that there were no posts in Samiti, as the posts created vide order of 11.1.1995, were meant for the entire region, covering 18 Samitis, and 37 Sub-Market Yards. The opp. parties No. 2 to 6 have clearly stated that the Director refused to accord approval for extension of the term of the petitioners. According to them, the then Secretary of Varanasi Samiti was placed under suspension vide order dated 2.9.1997 for making illegal and irregular appointments. It has also been said that the services of the petitioners came to an end in May, 1997, and since then neither they are working nor salary is being paid to them. It is stated that similarly situated persons had filed a Writ Petition No. 40550 of 1997. Tarkeshwar Misra and Ors. v. Rajya Krishi Utpadan Mandi Parishad and Ors., before this Court at Allahabad, and the same was dismissed on 3.2.1998, holding that the appointments were illegal. The decision of this Court in Writ Petition No. 6662 of 1997, Om Prakash v. Director, Mandi Parishad and in Writ Petition No. 508 of 1998, Mahesh v. Rajya Krishi Utpadan Mandi Parishad, are being relied on, for saying that in identical matters, this Court refused to interfere under Article 226 of the Constitution.

4. In reply to the pleas in counter-affidavit, the petitioners filed rejoinder-

affidavit it and also supplementary affidavit of Om Prakash Singh, saying that even if their appointments were for a initial period of 89 days, they had right to continue till their services were formally terminated by a valid order. They contend that they cannot be punished for irregularities or illegalities, if any, committed by the then Secretary of Varanasi Mandi Samiti. As regards the decision dated 3.2.1998 in Writ Petition No. 40550 of 1997, they say that there was an order of termination, whereas here there is none and moreover, on an application for review of order dated 3.2.1998, the Court passed an interim order on 21.3.2001, providing for continuance in service of those petitioners.

5. In short, the contentions of Sri S.K. Kalia, the learned Senior Advocate, appearing for the petitioners are (i) that the material on record conclusively proves that the appointments of the petitioners on respective posts in Mandi Samiti, Varanasi, as described in Para-12 of the writ petition, was regular and in accordance with the Regulations of 1984, (ii) that even if it is assumed that the appointments of 1996 were not in accordance with the Regulations of 1984, and were purely adhoc and for a fixed period of 89 days as contended in counter-affidavit, the petitioners have right to continue, because the period was extended from time to time and also because there is still need of such hands and their services have not been dispensed with by order in writing. Sri Kalia has also argued that the petitioners are also entitled to the benefit of the decision dated 11.8.2000 of this Court in Mukesh Kumar v. U.P. Krishi Utpadan Mandi Parishad and Ors. and several other connected writ petitions. The learned Senior Advocate submits that even if the then Secretary of Mandi Samiti, Varanasi, committed some irregularities in the matter relating to the appointments of the petitioners, the latter cannot be punished by dispensing with their services.

6. On the other hand, Sri N. C. Mehrotra, the learned Counsel appearing for opposite parties No. 2 to 6, has contended that the appointments in question, of the petitioners as mentioned in Para 12 of the writ petition, were not regular or in accordance with relevant Regulations of 1984, but were purely adhoc and for fixed period and when the Director declined to extend the same, these came to an end in May, 1997 and there was hardly any requirement of terminating the services. The learned Counsel goes on to argue that the then Secretary of Varanasi Mandi Samiti obtained the approval of the Director for making such adhoc appointments for a fixed period, by concealing the true facts, at a time when process for regular recruitment was in progress. It has also been argued that the then Secretary, intentionally omitted to mention in the initial appointment letters of the petitioners that their engagement was purely on an adhoc basis and for a fixed term of 89 days. Sri Mehrotra has argued that such appointees as the petitioners, whose appointments were dehors the Regulations of 1984, are not entitled to any relief. In this connection reference has been made to the decisions of this Court in Arvind Kumar Vs. Director, Rajya Krishi Utpadan Mandi Parishad, Lucknow and others, ; Qamar Vishal Siddiqui v. Director, Krishi Utpadan Mandi Parishad, UP., Lucknow and Ors. (1999) 2 UPLBEC 1998.

7. The first question that arises for consideration is as to whether the appointments of the petitioners in the year 1996, on respective posts in Group "D" in Mandi Samiti, Varanasi, as described in Para 12 of the writ petition, were under and in accordance with relevant Service Rules i.e. the Regulations of 1984. There is no controversy on the point that the Regulations of 1984 (copy of which is Annexure-1) as amended in 1989 and in 1991 (Annexures 3 and 2), also regulate the recruitment on the post of Mandi Sahayak and Mandi Abhirakshak, in a Mandi Samiti. It is quite clear from Regulation 12 (4) and it is also conceded in Para 9 of the writ petition that the Selection Committee, for Group "D" posts, is to consist of Regional Deputy Director (Admin.), one officer to be nominated by the Director and the Secretary of the concerned Samiti. There is no dispute that 27.8.1996 was fixed as a date for interview. Call letters were issued to some of the petitioners. They have filed copy of some of these call letters (Annexure-5). In Para 13 of the writ petition it is said that after interviews the petitioners were selected by the committee and in pursuance thereof appointment letters (Annexure-6) were issued accordingly by the then Secretary of Mandi Samiti. It is stated in Paras 13, 14 and 15 of the counter-affidavit that it is correct that the selection committee was constituted for the purpose, dates for interview were fixed but call letters were not issued to all the petitioners (see Para 14 of counter-affidavit) and finally the process was cancelled vide letter dated 2.9.1996.

8. What noticeable is that none of the petitioners, has dared to controvert the factum of cancellation of selection process. Moreover, Annexures 1, 6, 7, 8, 9 and 10 to the counter-affidavit, leave no room for doubt that regular selection was pending even in December, 1996. Mandi Samiti, Varanasi itself admitted this position in its communications, addressed to the Director and it was on this ground that permission was sought for making adhoc appointments in Group "D" and the Director accorded the same for 89 days or till regular selection, whichever earlier.

9. So, it can be safely concluded that the petitioners have failed to show that their appointments of 1996, on respective posts in Group "D" in Mandi Samiti, Varanasi as mentioned in Para-12 of the writ petition, were under and in accordance with relevant Service Rules i.e. the Regulations of 1984. The language and form of the appointment letters (Annexure-6), will hardly change the true nature of the appointments. In fact, the petitioners have realized the weakness of their case of regular appointments and so have started saying in rejoinder-affidavit that even if the appointments were for a fixed period, they have right to continue. We need not enter into the discussion whether there were such number of vacancies in Group "D" in that Mandi Samiti, for even if it is found that there were, the appointments of the petitioners will remain dehors the Rules.

10. Now the next point for consideration is if the appointments of the petitioners were for a fixed period, which was extended twice or thrice, whether have they

any right to continue after the expiry of extended period and whether any orders terminating their services were legally required.

11. In appointment letters (Annexure-6), it is said that in compliance of orders dated 4.9.1996 and 10.8.1996, of the Director, the respective petitioners are being appointed on respective posts. Annexures 6, 7, 8, 9 to the counter-affidavit, make it clear that the Director had permitted for such engagements for a fixed period and the same were extended twice or thrice, on the recommendation/request of Samiti. It was on 28.12.,1996 that the Director flatly refused to accord his approval for continuing these appointments. (See Annexure-9 to the counter-affidavit). The Director was categorical in saying that the process of regular selection be completed and it was not possible to continue stop gap arrangement for unlimited period. Annexure-11 to the counter-affidavit further reveals that Mandi Parishad directed for not taking work from appointees of the then Secretary Sri Param Hans Singh, as the appointments made by him were said to be illegal and irregular and the Government had decided to hold an enquiry into the matter. In compliance of these directions the petitioners were stopped from working or getting the pay. That position stands even today.

12. Sri Kalia has contended that since there is still need of the hands there and since the work and conduct of the petitioners was satisfactory, so they have right to continue, especially when their services have not formally been terminated. It is also said that in view of the decision dated 11.8.2000 of this Court in Writ Petition 1346 of 1999, Mukesh Kumar v. U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. and in other connected writ petitions, disengagement of the petitioners is illegal.

13. The Court is of the view that the petitioners are not entitled to the benefit of the decision dated 11.8.2000, referred to in the preceding para, for the simple reason that the controversy involved in those cases, was whether the termination of services (whether oral or written) of the petitioners, in compliance of Govt. Order dated 12.2.1999 were arbitrary, unreasonable and discriminatory. This Court upheld the contentions of the petitioners of those writ petitions. Here the issue involved is quite different. The view taken by this Court in the cases of Qamar Vishal Siddiqui and Arvind Kumar (supra) does not support the case of the petitioners here. A person, who has been appointed debars the relevant Service Rules, for fixed period, has no right to continue, after expiry of that period or after expiry of extended period, especially when the period is very short, less than a year, and especially when the fairness of stop-gap arrangement is being seriously doubted by the Government. The Court will not encourage spoil system by allowing such appointees to continue. There was no need of passing formal orders of termination of services and the directions of May, 1997 were sufficient enough.

14. The Court is of the view that the petitioners are not entitled to any relief. The writ petition is dismissed, but with no order as to costs.