
(2014) 11 AHC CK 0071
In the Allahabad High Court
Case No : Special Appeal No. 970 of 2014

Ram Avtar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2015) 1 UPLBEC 128

Hon'ble Judges : Vijay Lakshmi, J; Rakesh Tiwari, J

Bench : Division Bench

Advocate : Krishna Ji Khare and Mritunjay Khare, Advocates for the Appellant;
Satish Mandhyan, Advocates for the Respondent

Judgement

Rakesh Tiwari and Vijay Lakshmi, JJ.—Heard Sri Kishan Ji Khare assisted by Sri Mritunjay Khare for the appellant, learned C.S.C. appearing for the State and Sri Satish Mandhyan for the respondents-Mandi Parishad and perused the records. The appellant-petitioner Ram Autar was initially appointed as Class IV employee on daily wage basis w.e.f. 9.4.1982 to work as waterman in Krishi Utpadan Mandi Samiti. He claims to have discharged the duties on the post of Kamdar/Mandi Sahayak on the basis of orders issued from time to time. However, in the regularization order dated 9.4.1988, the appellant-petitioner was shown to be appointed as Waterman. Aggrieved by his regularization on the post of Waterman, he approached this Court by means of Civil Misc. Writ Petition - A No. 8377 of 2011 Ram Autar v. State of U.P. and others praying for quashing of the order dated 3.1.2011 issued by the Board (Deputy Director, Administration Marketing) cancelling the order dated 30.5.1995 inter alia that there is no evidence on record to show that appointed appellant-petitioner was appointed on the post of Mandi Sahayak. The appointment of the petitioner on the post of Waterman was approved by the Board. He has also prayed for quashing of the order dated 25.1.2011 passed by the Secretary, Krishi Utpadan Mandi Samiti, Bharthana, Etawah cancelling the regularization of the appellant-petitioner on the post of of Mandi Sahayak on the ground that there is no provision for change of

the post on which he was initially engaged at the time of regularization. It has also been prayed by the petitioner that mandamus be issued directing the respondents not to interfere in his functioning as Mandi Sahayak and to pay him the salary of Mandi Sahayak month to month.

2. The aforesaid writ petition was dismissed vide judgment and order dated 5.9.2014. The reasons for not granting the relief is in paragraphs 4 to 7 of the judgment which reads:

4. "It is not disputed that recruitment and appointment on the post of Mandi Assistant is governed by U.P. Agricultural Produce Market Committees (Centralised) Services Regulations, 1984 (hereinafter referred to as "Regulations, 1984") framed in exercise of power under Sections 25-A and 26X of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "Act, 1964") wherein the post of Mandi Assistant is mentioned in category of Class IV staff at item No. (a) of Regulation 4 of Regulations, 1984 and constitution of selection committee and procedure for recruitment is provided in Regulations 12 to 16 of the Regulations, 1984.

5. It has also not been disputed that procedure laid down under Regulations, 1984 has never been complied with. Learned Counsel for petitioner could not show that the procedure laid down in aforesaid Regulations has been observed and could not dispute that the procedure laid down in the said Regulations, strictly speaking, has not been observed at all.

6. The Apex Court in State of U.P. Vs. Neeraj Awasthi and Others, has said as under:

"The said Regulations provide for detailed procedure for appointment and the terms and conditions therefor. No appointment, thus, can be made in violation of the provisions of the statute and the statutory rules."

7. In view of above and considering the facts and circumstances of the case, I do not find that petitioner is entitled for any relief."

3. The judgment aforesaid is assailed by the petitioner on the ground that the Court failed to appreciate the facts in the writ petition that appellant-petitioner was initially engaged on daily wage basis on 9.4.1982 as a Class IV employee but was assigned the duties of Kamdar/Mandi Sahayak which he was performing at the time when he was considered for regularization by the Board; that the duties of the posts of Waterman and Kamdar/Mandi Sahayak are different; that the name of the appellant-petitioner was recommended for regularization on the post of Kamdar/Mandi Sahayak and not on the post of Waterman, though both are Class IV posts, hence he ought to have been appointed on the post of Kamdar/Mandi Sahayak as per the recommendation.

4. It is argued that the order impugned passed by the writ Court has dealt the matter in dispute on the assumption that the appellant-petitioner, was engaged on 9.4.1982 as a Waterman on daily wage basis, though as a matter of fact he

was required to discharge the duties of Kamdar/Mandi Sahayak from the very date of his appointment, hence on the basis of record he was entitled to be regularised on the said post of Mandi Sahayak; that, in fact, there is no evidence on record to show that the appellant-petitioner was engaged on daily wage on the post of Waterman, rather from the evidence on record it is apparent that he was engaged on daily wage basis as Class IV employee and was assigned the duties of Kamdar/Mandi Sahayak, therefore his non regularization on the post of Kamdar/Mandi Sahayak by the respondents is discriminatory, arbitrary and without any application of mind.

5. It is lastly asserted that similarly situated Class IV employee, who were performing the duties of Kamdar/Mandi Sahayak were regularized on the said post pursuant to the recommendation dated 20.6.1986 and even otherwise the finding recorded by the writ Court in determining the matter in dispute are perverse and based on no documents on record.

6. Per contra Sri Satish Madhyan submits that Centralized Service Rules, 1984 had come into effect and that recommendation by the Deputy Director to the Board made on the representation of the petitioner. Thereafter Deputy Director (Prashashan) recommended the same to the Board for regularizing the appellant-petitioner on 6.1.1995. The Board on 18.5.1995 directed the Divisional Deputy Director (Prashashan) to act in accordance with letter dated 25.11.1987 for regularization of the appellant-petitioner. Consequently vide his order dated 24.5.1995 the Divisional Deputy (Prashashan) directed to regularize the petitioner on the post of Mandi Sahayak. Pursuant to the order of the Board the order dated 9.4.1988 was rectified and the petitioner was regularized on the post of Mandi Sahayak.

7. It appears that thereafter a show cause notice has been issued on 31.5.2010 as to why the order changing the post from Waterman to the post of Mandi Sahayak be not cancelled. In response to the aforesaid show cause notice, the appellant-petitioner submitted his reply on 9.6.2010, that there was no occasion to change his regularization on the post of Mandi Sahayak as he was ordered to be regularized on the said post on which he was performing his duties.

8. On receipt of the reply the Board (Deputy Director, Administration/Marketing) vide his order dated 3.1.2011 cancelled the order dated 30.5.1995 on the ground that there is no evidence on record to show that the petitioner was ever engaged on the post of Mandi Sahayak with approval of the Board. Rather pursuant to Board's recommendation, an order dated 25.1.2011 had been passed by the Secretary, Krishi Utpadan Mandi Samiti, Bharthana cancelling the regularization of the appellant-petitioner on the post of Mandi Sahayak as there is no provision to change the post from Waterman to Mandi Sahayak at the time of regularization.

9. He further submits that about 11 to 12 persons were given wrong nomenclature which could not have been changed and in this context the writ

Court after considering the entire facts and circumstances of the case had passed the aforesaid order impugned in this appeal.

10. After hearing learned Counsel for the parties it is apparent that:

both the posts i.e. post of Waterman and Kamdar/Mandi Sahayak are class IV posts.

the petitioner-appellant was appointed as only a daily wager and not appointed on any post either as Waterman or Kamdar/Mandi Sahayak.

the work from a daily wager can be taken against any permanent post but it is immaterial that against which he has worked and what work has been taken from him.

his initial engagement as Waterman continued till the date of his regularization but due to inadvertence the names of 11-12 persons were recommended for regularization as Kamdar/Mandi Sahayak.

11. In view of the above, we do not find any illegality or infirmity in the order passed by the learned Single Judge in the writ petition. The petitioner was appointed as a daily wager and was not appointed on a permanent post. The recommendation by the Deputy Director (Administration) is only of recommendatory nature and not binding. If there is any mistake in the order, the same can be corrected by the department subject to affording opportunity to the appellant. Notice has already been given by the competent authority to the appellant-petitioner in this regard. Thus, we are of the considered view that there is no illegality or infirmity in the impugned order dated 5.9.2014 passed by the writ Court. The appeal deserves to be dismissed and is accordingly dismissed.