
(2005) 11 AHC CK 0032
In the Allahabad High Court
Case No : Writ Petition No. 3129 (S/S) of 2005

Ram Briksh Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Collection Amins Services Rules, 1974 — Rule 17, 20, 3, 3(1), 4

Citation : (2006) 3 AWC 2452 : (2006) 1 UPLBEC 406

Hon'ble Judges : R.P. Yadav, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; S.C. Yadav, for the Respondent

Judgement

R.P. Yadav, J.—By means of this writ petition under Article 226 of the Constitution of India, the petitioners have sought the quashing of the order dated 16.2.2005, passed by Collector. Maharajganj (Annexure-1) pursuant to the order dated 22nd July, 2004, passed by this Court in Writ Petition No. 709 (SS) of 1991 and also for a direction to the opposite parties to allow the petitioners to continue in service with all consequential benefits.

2. Petitioners 1 to 5 were appointed as Seasonal Collection Amins in Tahsil Sadar of District Maharajganj on different dates between 27th July, 1988 and 27.1.1989, respectively and they have been working as such. It would be significant to note that there are two categories of Seasonal Collection Amins, one regular collection amins and the other seasonal collection amins. The services of Collection Amins are required for recovering the various Government dues. Regular Collection Amins are appointed on the basis of the test in accordance with the provisions contained in U.P. Collection Amins" Services Rules, 1974 (hereinafter referred to as the "Rules"). There are sanctioned posts under Rule 4 of the Rules for the regular collection amins, whereas vacancies for Seasonal Collection Amins are created by the Commissioner of the Division according to the need. Some amendment was introduced in the U.P. Collection

Amins Service Rules in the year 1992, whereby the provisions of Rule 5 and Rule 17 were amended. The provisions were introduced in Rule 5 that 35% vacancies of the regular collection amins shall be filled in from Seasonal Collection Amins, who have worked satisfactorily for not less than 4 faslies and who have not crossed the age of 45 years. An Explanation has been added defining the satisfactory work as inclusive of good conduct and recovery during the 4 faslies not being less than 70%. Rule also provides that a list of such Seasonal Collection Amins shall be prepared, who are eligible according to Rule 5(1) and shall appoint them in the required number against the available vacancies on the basis of their service period (seniority) and subject to satisfactory work. Later on, the aforesaid service rules were further amended by 6th Amendment of 2004, whereby the Explanation added to Rule 5 was amended and the minimum 70% recovery in the preceding 4 faslies were substituted by the words an average of 70% recovery during the 4 fasals."

3. It may also be noted that the Seasonal Collection Amins do not work for the whole year. They are appointed for Rabi or Kharlf Crop (Fasal) or for both Jasals (crops) as provided in Rule 3 (Jha) of the Rules when the recovery work remains postponed between the two crops, their services are not utilized. It appears that the petitioners, apprehending that their services are likely to be dispensed with, filed a Writ Petition No. 709 (SS) of 1991, wherein an interim order was passed on 5.2.1991, which is as follows:

List and connect with Writ Petition No. 9052 of 1990.

Until further orders, the opposite parties shall not terminate the services of the petitioners only to create artificial break....

4. This petition was finally disposed of on 22.7.2004 and the following directions were issued:

In view of the above, the opposite parties are directed to consider the petitioner's case for regularisation in accordance to provision contained in U.P. Collection Amin Service (Fifth Amendment) Rules, 1992, expeditiously and preferably within a period of six months from the date of receipt of certified copy of this order. While considering the petitioner's case for regularisaion and continuance in service, the opposite parties shall tike into account the fact that the petitioner has been continuing in service since 1978 (wrongly mentioned 1978, it is 1989).

Till the petitioners case is not considered for regularization and decision is taken thereof, the petitioner's services shall not be dispensed with by the authorities.

Learned Counsel for the petitioner further submits that since petitioner is working on ad hoc basis against regular vacancy, petitioner is also entitled for regularization in accordance to regulation of ad hoc appointees. It shall be open for the petitioner to represent the opposite parties, in case, he is entitled for regularization under Rules applicable to ad hoc employees also.

Subject to above, writ petition is disposed of finally.

5. In compliance of the orders of this Court, the Collector considered the case of the petitioners and held that their recovery has been less than 70% during the preceding 4 fasals, therefore, they were not eligible for being considered for appointment and secondly, they were not entitled to regularization in accordance with the provisions of the Uttar Pradesh Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001.

6. The petitioners have challenged the aforesaid order as contained in Annexure-1 to this writ petition.

7. It is submitted by the learned Counsel that the petitioners have not been found eligible for consideration for appointment as regular collection amins only on the ground that their recovery has been less than 70% during the preceding 4 faslies, which is totally incorrect and while recording such a finding, the Collector has failed to consider that during the said 4 faslies, the recovery was stayed and that rules were amended in the year 2004 providing for an average of 70% of the 4 faslies, whereas the Collector has considered the recovery of 70% necessary in all the 4 fasals preceding the year of consideration. He referred to a chart incorporated in the order of the Collector (Annexure-1), which shows that the following period was taken for consideration as preceding 4 fasals" recovery:

(i) 16.11.2002 to 31.3.2003

(ii) 16.4.2003 to 30.4.2003

(ii) 16.11.2003 to 31.3.2004

(iv) 16.4.2004 to 30.9.2004

8. It is further submitted by the learned Counsel that not only the recovery during the aforesaid faslies has been stayed by the Government, recovery of one of the petitioners, namely, Shri Ved Prakash Tiwari has been much above the prescribed average of 70%. He has referred to the radiogram dated 19th August, 2002, staying the recovery of irrigation and revenue dues and also not for resorting to any coercive method in recovering the other misc. dues for the period 8th August, 2002 to 31.3.2003 and the other Government order dated 13th September, 2004, staying the recovery from 13.9.2004 to 31.3.2005 (vide Annexures-11 and 12 to the writ petition).

9. The further contention of the learned Counsel is that when the recovery for at least two faslies had been stayed, the Collector while considering the average of recovery made by the petitioners should have taken another period of 2 or 4 faslies for consideration either preceding or succeeding the said period. His further contention is that when the rules were amended on 17.12.2004 by making amendment in the U.P. Collection Amins Service Rules, 2004 then the case of the petitioners ought to have been considered in accordance with the

amended rules.

10. From a perusal of the chart incorporated in the impugned order (Annexure-1), It is clear that the period from 16.11.2002 to 30.9.2004 were taken into consideration for finding out the recovery percentage of the petitioners, whereas it is abundantly clear from the Government order that the recovery for the total first fasal and partly for the fourth "fasal" had been stayed by the Government, so, the petitioners could not have achieved the required target of more than 70% recovery. It being so, the Collector ought to have taken subsequent two fasals for finding out the recovery percentage of the petitioners. Moreover, the Collector did not take into consideration the Amended Rules of 2004, which came into force on 17.12.2004 and which provide that the average of 4 faslies has to be worked out for finding out the recovery percentage. Since the amended rules were not followed and the consideration was made on the basis of each fasals and also the period for which the recovery has been stayed by the Government has not been excluded, this order is obviously bad and unsustainable in the eyes of law. The matter has therefore to go back to the Collector for afresh consideration of the case of the petitioners in accordance with the amended provisions of Rule 5 and Rule 17 of the Rules. In case, it is found that the petitioners' recovery on an average during the preceding 4 faslies (excluding the period for which the recovery has been stayed) has been above 70% and they fulfil the other requisites prescribed for under the rules and the vacancy is available for them within 35% quota, their case will be considered for appointment under Rule 20 on the post of regular collection amins after preparing an eligibility list under Rule 17 of the Rules.

11. It has vehemently been contended by the learned Counsel for the petitioners that they have been continuing in service without any break ever since their appointment on 10.2.1994, in compliance of the order of this Hon"ble Court dated 5.2.1991 and that by Uttar Pradesh Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001, the rules have been amended and that the petitioners are entitled for regularization under the amended Rules and, therefore, the petitioners' services deserve to be regularised.

12. The Uttar Pradesh Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001, were amended on 20th December, 2001 and Rule 4 thereof was amended as follows:

(1) Any person who:

(i) was directly appointed on ad hoc basis on or before June 30, 1998 and is continuing in service as such on the date of commencement of the Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001;

(ii) possessed requisite qualifications prescribed for regular appointment at the

time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years service shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.

13. The amended rules now provide for consideration of an ad hoc employee for regularization if he has been appointed on or before 30th June, 1998 and has been continuing in service as such on the date of enforcement of the said rules and possesses the requisite qualification prescribed for regular appointment and has completed three years of satisfactory service, his services shall be considered for regular appointment in substantive vacancy, may be temporary or permanent. It is undisputed that the petitioners were appointed as Seasonal Collection Amins. It has already been mentioned above that the post of Seasonal Collection Amins are not regular posts. These posts are created by the Commissioner of the Division considering the demand and appointment is limited for either one or both the crops/fasals but it does not last for the whole year. The Seasonal Collection Amins appointed on such posts do not work throughout the year, they work only during the period, when the recovery is made during either or both the crops. It may also be noted that for some period during the year, the recovery stands stayed because during such intervening periods the papers are prepared, and the recovery made during the preceding fasal are noted in the Jamabandis (demand Registers) and fresh demand Registers are prepared.

14. Amended Regularization Rules of 2001 say that those who were appointed on ad hoc basis against regular vacancy on or before 30th June, 1998 and fulfil other requisites, they can only be considered for regularization. The petitioners were appointed as Seasonal Collection Amins initially and they have continued as such. They have worked regularly since the year 1994 under the orders of this Court, passed in the writ petition. The moot question that arises for consideration is as to whether the order of the Court enures for the benefits of the petitioners giving right to them for being considered for regularization. This Court An exercise of its powers under Article 226 of the Constitution has the powers to issue writs and directions for compliance of law. It does not make any fresh appointment. Appointment can be made only by the competent authority under the rules. If the petitioners have continued to work regularly pursuant to the orders of this Court, the nature of their service will not change and they shall be treated to have worked as a Seasonal Collection Amin only and not as ad hoc appointees against any regular post. Appointment on ad hoc basis, on a particular post and an appointment as Seasonal Collection Amins are two different things and there should be no confusion that one can be substituted for the other. Seasonal Collection Amins can only be appointed as regular Collection Amins according to the provisions of U.P. Collection Amins Service Rules, 1974 as amended from time to time. They cannot be regularised under the ad hoc

regularization rules because their services are not on ad hoc basis. Ad hoc appointments are made on or against some existing vacancies, whereas Seasonal Collection Amins are appointed under Rule 3(1)(Jha) of the Rules for one or both fasals looking to the pending recovery and the persons needed for that purposes, whereas, the regular posts are sanctioned under Rule 4 of the Rules by the Governor in accordance with the provisions of the "Rules".

15. The learned Counsel has urged that in the earlier Writ Petition No. 709 (S/S) of 1991, there was a direction that their case shall be considered for regularization in accordance with the provisions of the Regularization Rules, 2002, but I do not find any such direction having been given by this Court. The first paragraph as quoted above provides for consideration in accordance with provisions of U.P. Collection Amins Service (Fifth Amendment) Rules, 1992 and subsequent paragraph says about the submission of the petitioners and the last paragraph provides that it shall be open for the petitioners to represent the opposite parties, in case, they are entitled for regularization under the ad hoc regularization rules applicable to ad hoc employees. There was no finding recorded or the direction given by this Court to consider them for regularization under the Rules of Ad hoc Regularization Rules because no finding was at all recorded that they were ad hoc employees. As already held above, they were the Seasonal Collection Amins and not working against any regular vacancy. Their case is not covered by Uttar Pradesh Regularization of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001 and the Collector has rightly rejected their representation for regularization as they did not fall in the category of ad hoc appointees and they were Seasonal Amins and mere drawal of salary for the whole year under the orders of this Court will not alter the nature of their appointment. In fact, they succeeded in getting an order of the Court on 5.2.1991 by misrepresentation of facts. Their services as Seasonal Amins would have automatically come to an end with the end of the season (fasal) and they as seasonal amins could not continue throughout the year. I do not find any illegality in this part of the impugned order.

16. However, this writ petition succeeds on the first point alone. It is directed that the Collector shall consider the case of the petitioners for appointment against the vacancy, if available in the cadre of regular collection amins, in accordance with the amended provisions of Rule 5 as amended by the U. P. Collection Amins Service Rules, 2004 and, in case, they are eligible and the vacancies are available, necessary action for considering their appointment will be taken in accordance with the provisions of Rules 17 and 20 of the said Rules within a period of eight weeks, in the light of the observations made above.

17. Accordingly, the writ petition stands disposed of finally.