

(2016) 03 AHC CK 0037

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 47748 of 2014

Ram Lakhan Pandey and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Collection Amins Rules, 1972 — Rule 17, 5(1)

Citation : (2016) 4 ADJ 46 : (2016) 2 AllWC 2077 : (2016) 115 ALR 703 :
(2016) 131 RD 672 : (2016) 2 UPLBEC 993

Hon'ble Judges : Vivek Kumar Birla, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Vivek Kumar Birla, J. - Heard Sri Siddharth Khare, learned counsel appearing for petitioners and learned Standing Counsel appearing for respondents. Pleadings have been exchanged and with consent of learned counsel for the parties, this writ petition is being disposed of at the admission stage itself.

2. Petitioners, who are working as Seasonal Collection Amin, have come up challenging the order dated 29.5.2014 whereby their claim for promotion to the post of Collection Amin has been rejected.

3. Earlier when their claim for regularisation under Rule 5 of the U.P. Collection Amin Service Rules, 1974 was not considered, the petitioners along with other persons filed Writ A No. 48283 of 2002 wherein interim order was granted in favour of the petitioners and ultimately the writ petition was disposed of vide order dated 31.3.2014 directing the District Magistrate, Mainpuri to consider the case of the petitioners for regularisation in terms of Rules of 1974. Now, by the impugned order dated 29.5.2014 the claim of the petitioner no. 1 Ram Lakhan Pandey has been rejected. The facts mentioned in the impugned order regarding petitioner no. 1 are that petitioner no. 1 stands at Serial no. 17 in the seniority list and his date of birth is 20.1.1958 and on the basis of the same he has

crossed 45 years of age on 1.1.2014. His percentage of recovery is 148% but his name stands at serial no. 35 in the order of percentage of recovery and therefore, he cannot be considered for regularisation. Regarding petitioner no. 2 Rajesh Chauhan it has been mentioned that his name stands at serial no. 02/32 in the seniority list of Seasonal Collection Amin and his date of birth is 1.10.1955. He has also crossed 45 years of age on 1.1.2014. His percentage of recovery is 119% and his name stands at serial no. 49 in the order of percentage of recovery and therefore, he is also not eligible for regularisation.

4. In the counter affidavit a stand has been taken that since names of the petitioners stand lower in merit in so far as in order of percentage of recovery, therefore, they have rightly not been found eligible for regularisation. However, this fact is admitted that the average collection for last two Fasli years is above 70% and as such they were otherwise eligible for the purpose of regularisation. The only ground taken is that since their seniority in the order of percentage of recovery was lower, therefore, they were not found eligible for regularisation.

5. For ready reference Rule 5 (1) and Rule 17 of the Rules of 1974 are quoted as under:

"5. Source of recruitment.- (1) Recruitment to posts in the ordinary grade of the service shall be made on the result of a competitive examination as provided in Part V of these rules:

Provided that subject to availability of suitable candidates, up to fifteen percent of the vacancies shall be filled by promotion from amongst such substantively appointed collection peons:-

(a) who have passed at least High School Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an Examination recognised by the Government as equivalent thereto; and

(b) who have worked in the Collection Organisation of the Revenue Department for a period of at least six Fasals:

Provided further that thirty-five per cent vacancies shall be filled by selection from amongst such Seasonal Collection Amins-

(a) who have worked satisfactorily for at least four fasals:

(b) whose age on the first day of July of the year in which selection is made does not exceed 45 years:

Provided also that if suitable candidates are not available, remaining vacancies shall be filled by general candidates through direct recruitment.

Explanation. - Satisfactory work shall mean at least seventy per cent realisation as per prescribed standard during the last four Fasals including good conduct throughout.

17-A. Procedure for selection of Seasonal Collection Amins. - The Collector shall

prepare a list of seasonal Collection Amins who are eligible for selection under the first proviso of sub-rule (1) of Rule 5 and select from amongst them, the required number of candidates on the basis of seniority or the length of their on the post of Seasonal Collection Amin in the district subject to satisfactory work."

6. Learned counsel for the petitioners has submitted that Rule 17 of the Rules of 1974 provides that Collector shall prepare a list of Seasonal Collection Amins who are eligible for selection under first proviso to sub-rule 1 of Rule 5 and shall make selection of requisite number of posts amongst them on the basis of their satisfactory work and the service period. He further submitted that satisfactory work as mentioned in the Rules is from beginning to end taking into account good conduct and minimum prescribed standard of 70% collection during last four Faslis. He, therefore, submits that in such view of the matter, seniority as per service period or length of service is to be taken into account and not as per order of percentage of recovery.

7. He has relied upon a judgment of the Hon'ble Single Judge rendered in Writ Petition No. 51286 of 2006, Prem Babu Sharma and another v. State of U.P. and others. Paragraphs 8, 9 and 10 of the judgment dated 12.12.2007 are quoted as under:

"8. Thus, it is provided under the rules that the Collector shall prepare a list of Seasonal Collection Amins who are eligible for selection under proviso to sub-rule 1 of Rule 5 and thereafter make selection of required number of posts amongst them on the basis of their seniority i.e., length of service or service period and satisfactory work.

9. Admittedly, the petitioners fulfil the requirement of eligibility as also the requirement of "satisfactory work" as explained under the Rules. Criteria for promotion is not "merit" alone. The Rules do not provide that for the purpose of selection of Collection Amin, quantum of recovery made by various Seasonal Collection Amins shall be taken into account, nor inter se merit or comparison amongst the various Seasonal Collection Amins, is the criteria prescribed therein. The Seasonal Collection Amins who have made more recovery cannot be considered to be better in comparison to others, having lesser recovery as this would have the effect of changing the very basis of selection under the rules. The only requirement under the rules is that the incumbent must have "satisfactorily worked" as explained under Rule 5 of 1974 Rules, i.e., must have effected at least 70% recovery during four faslis and the other aspect is service period, i.e., seniority. The petitioners admittedly have made collection of more than 70% and are also senior to respondents no. 5 to 7 and, therefore, in my view, they have been wrongly excluded from being selected on regular post of Collection Amin.

10. Since vacancies of Collection Amins have continuously fallen vacant from time to time, it is not necessary to quash the order of appointment impugned in this writ petition and instead the respondents can be directed to consider the petitioners in accordance with the Rules and observations made above and if

selected, to treat them as Collection Amin from the date their juniors have been so appointed."

8. Learned Standing Counsel could not dispute the aforesaid legal position.

9. In such view of the matter, when this Court has already held that length of service and satisfactory work is to be taken into account and the Rules do not provide that for the purpose of Selection of Collection Amin, quantum of recovery made by various Seasonal Collection Amins shall be taken into account, nor inter se merit or comparison amongst the various Seasonal Collection Amins, is the criteria prescribed therein and the Seasonal Collection Amins who have made more recovery cannot be considered to be better in comparison to others, having lesser recovery as this would have the effect of changing the very basis of selection under the Rules, the order dated 29.5.2014 which is based on the same reasoning as disapproved by this Court in the case of Prem Babu Sharma (Supra), in so far as it relates to petitioners no. 1 and 2 is not sustainable in the eye of law and is hereby quashed. Matter is remanded back to the District Magistrate, Mainpuri, respondent no. 3 for consideration afresh in the light of the judgment rendered by this Court in the case of Prem Babu Sharma v. State of U.P. and others as noted above. Respondent no. 3 shall take necessary decision, in accordance with law, under 35% quota, preferably within a period of three months from the date of production of a certified copy of this order before him.

10. This writ petition stands allowed to the extent indicated as above.