
(2011) 10 AHC CK 0166
In the Allahabad High Court
Case No : Writ. A. No. 65262 of 2009

Ramanand Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Citation : (2011) 10 AHC CK 0166

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Learned Counsel for the Petitioner and the learned Standing Counsel.

2. It is the case of the Petitioner that he has worked as a Seasonal Collection Peon and is still working. He moved an application on 15.2.3.2000 for his regularisation under the Uttar Pradesh Sangrah Anusewak Sewa Niyamawali, 2004. His date of birth is 22.10.1958. By the impugned order, his claim has been rejected on the ground that his date of birth was 1.12.1948 and on the date of the application, he was more than 45 years of age and, therefore, was not eligible. It has further been stated in the order that the conditions of the Rules have not been fulfilled.

3. Learned Counsel for the Petitioner submitted that in Annexure CA-1, the order has been modified by the District Magistrate, Gorakhpur vide his order dated 1.9.2010 wherein Petitioner's date of birth has been taken as 22.10.1958. If this date is taken as the date of birth of the Petitioner, on the date of the application, his age was only 42 years and not 48 years, therefore, the earlier observation of the District Magistrate that his age was more than 45 years is patently illegal. He further submitted that the condition of 70% recovery in four Fasals is not applicable to the Petitioner as the Petitioner is working as a Seasonal Collection Peon as held by the learned Single Judge of this Court in the case of Vinay

Kumar Upadhyay v. State of U.P. and Ors. reported in 2009 (8) ADJ 465 and against this order, the Special Appeal filed by the State of U.P. has also been rejected. In the said judgment, the learned Single Judge has held that in Rule 5, the word "Fasali" should be read as "Fasal" and the condition of the recovery of 70% is not applicable to the Seasonal Collection Peon.

4. I find substance in the argument of Learned Counsel for the Petitioner.

5. By the order dated 1.9.2010, which is CA-1, the date of birth of the Petitioner has been modified. It has been taken as 22.10.1958, therefore, on the date of the application, namely, 15.3.2000, the Petitioner was 42 years of age and not more than 45 years of age. Learned Single Judge of this Court, in the case of Vinay Kumar Upadhyay v. State of U.P. and Ors. (Supra), has held that in the case of Seasonal Collection Peon, the condition of 70% recovery is not applicable and in place of word "Fasali", "Fasal" is to be considered. Therefore, the Petitioner's case is to be considered afresh in the light of the law laid down by the learned Single Judge in the aforesaid case.

6. In view of the above, the writ petition is allowed. The order dated 20th June, 2009 is set aside and the matter is remanded back to the District Magistrate, Gorakhpur to decide the claim of the Petitioner for regularisation under the Uttar Pradesh Sangrah Anusewak Sewa Niyamawali, 2004 in the light of the observations made above.

7. The Petitioner may file the certified copy of this order within two weeks and the District Magistrate, Gorakhpur is directed to pass appropriate orders within two months from the date of receipt of the certified copy of this order, in accordance to law.