
(1999) 03 AHC CK 0098
In the Allahabad High Court
Case No : C.M.W.P. No. 3240 of 1994

Saraswati Prasad and others

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Uttar Pradesh District Officer (Collectorates) Ministerial Services Rules, 1980 — Rule 5

Citation : (1999) 2 AWC 1448 : (1999) 3 UPLBEC 122 : (1999) 2 UPLBEC 1234

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Satish Dwivedi, for the Appellant; K.R. Singh and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—The petitioners allege to have been appointed as Assistant Vasti Baqi Navis and contend that they have not been regularised. By means of a representation contained in Annexure-6 to the writ petition, the petitioners claim that they should be confirmed in the post of clerk in the Collectorate against the existing vacancies in the post of clerk. By an order dated 3rd January, 1994, contained in Annexure-7 to the writ petition, the prayer was rejected on the ground that it was without any substance. Mr. Satish Dwivedi, learned counsel for the petitioner contends that during the pendency of the writ petition, the petitioner Nos. 1 and 2 have been given appointment in some other posts. Therefore, the writ petition as regards petitioner Nos. 1 and 2 has become infructuous. Accordingly, on the basis of his such statement, which is supported by Annexure R.A.-8 to the writ petition, this writ petition as against the petitioner Nos. 1 and 2 is dismissed as infructuous.

2. Mr. Dwivedi further contends that petitioner Nos. 3, 4 and 5 are entitled to be regularised and confirmed in the post of clerk by reason of the fact that it is in the same category as described in U. P. District Offices (Collectorates) Ministerial Service Rules, 1980, as would appear from Part 111, Rule 5. He also relies on the

decisions in the case of Mahak Singh v. Collector, Muzaffarnagar, Writ Petition No. 34470 of 1998 disposed of on 2nd February, 1998 but this Court by Hon''ble S. R. Singh J., in Virendra Singh v. Collector, Kanpur Dehat, 1994 (1) UPLBEC 625, decided by a learned single Judge of this Court in order to contend that Assistant Vasil Baqi Navis can be confirmed and regularised in the post of clerk. In the alternative, Mr. Dwivedi contends that the petitioners'' case may be considered in accordance with the schemes for regularisation in the post of Assistant Vasil Baqi Navis, which provides for recruitment through the temporary Assistant Vasil Baqi Navis to the extent of 50% quota of the vacancies in the said post.

3. Mr. K. R. Singh, learned standing counsel on the other hand contends that the post of clerk is altogether different and is a post promotional from that of Assistant Vasil Baqi Navis, which is a feeder post. Therefore, there cannot be any question for confirmation or regularisation in the post of clerk of the persons engaged as Assistant Vasil Baqi Navis on temporary basis. According to him, therefore, this writ petition should fail.

4. I have heard both the learned counsel at length.

5. Rule 5, Part III of the 1980 Rules defines the source of recruitment and it had defined categories A, B, C, D, E and F. At the present moment, we will be concerned with categories A, B and C only. Category A consists among other, Assistant Vasil Baqi Navis, which is also a post promotional from Category D employees apart from direct recruitment.

6. Admittedly, in the present case, the petitioner were appointed as Assistant Vasil Baqi Navis. These petitioners are members of Category A as mentioned in Rule 5 of the said Rules, Category B consists of clerks, which is promotional from amongst the permanent incumbent of posts mentioned in Category A, Category B consists of Vasil Baqi Navis as well. The clerks mentioned in Category A are altogether different from Vasil Baqi Navis and the nature and duties are also different and which should be filled up either by direct recruitment or by promotion from Category D. The rule does not provide that the posts of clerk in Category A could be filled up by Assistant Vasil Baqi Navis by transfer. Since the rule itself provides the mode of recruitment in respect of Category A to the extent that by direct recruitment and promotion of Group D employees in accordance with the provisions of the Subordinate Staff (Direct Recruitment) Rules, 1975, wherein it provided that if there are any apprentice enlisted before August, 1961, their case may also be considered before direct recruitment is made. The mode of recruitment to the post of Assistant Vasil Baqi Navis and the clerks have been specifically pointed out. It is not possible to transfer Assistant Vasil Baqi Navis to the post of clerk, which is to be filled up either by direct recruitment or by promotion from Group D. Thus. Assistant Vasil Baqi Navis being a different category altogether cannot be confirmed in the post of clerk. So far as the clerks in Category B is concerned, those also cannot be filled up from amongst Assistant Vasil Baqi Navis except through promotion. Therefore, there cannot be any claim for regularisation in the post of clerk mentioned in Category

B. Similarly, the clerks mentioned in Category C are posts promotional from Category B and, therefore, there cannot be any claim for regularisation in the post of clerk in Category C. Therefore, there cannot be any question of regularisation of Assistant Vasil Baqi Navis in the post of clerk. Assistant Vasil Baqi Navis can be regularised only as. Assistant Vasil Baqi Navis through the scheme for regularisation by which 50% quota is to be filled up by regularising such Assistant Vasil Baqi Navis and, the remaining 50% through direct recruitment.

7. In the present case, the petitioners could claim only regularisation within the 50% quota in the post of Assistant Vasil Baqi Navis. The petitioners cannot put the claim any higher than that. The decision in the case of Mahak Singh (supra) as well as Virendra Singh (supra) deals with the question of regularisation of Assistant Vasil Baqi Navis as Assistant Vasil Baqi Navis within the scope and ambit of 50% quota of regularisation outside the 50% quota of direct recruitment. In these two decisions, the respondents were directed to consider the case of those petitioners within the scope and ambit and regularisation of Assistant Vasil Baqi Navis against the 50% vacancies to be filled up from amongst all ad hoc Assistant Vasil Baqi Navis. Therefore, the said decisions does not help Mr. Dwivedi with regard to his contention that the petitioners are eligible for being regularised or confirmed in the post of clerk, which are vacant in the Collectorate. On the other hand, it might help them in case they claim regularisation in the post of Assistant Vasil Baqi Navis in the 50% quota according to the scheme.

8. In that view of the matter, this writ petition is disposed of by directing the respondents to consider the petitioners' case for regularisation in accordance with law and according to the scheme having regard to seniority and other eligible criterion against the 50% quota as has been held in the said two decisions in the light of the observations made therein. The respondents would decide the question on the basis of a representation that might be made by the petitioner within a period of four weeks from date as directed above. Such consideration is to be effected as early as possible, preferably within a period of three months from the date of making of such a representation along with a copy of this order. No cost.