
(2010) 08 AHC CK 0319
In the Allahabad High Court
Case No : Special Appeal No. 429 of 2010

State of U.P. and Others

APPELLANT

Vs

Mewa Lal and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0319

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Disposed Of

Judgement

Pradeep Kant and Ritu Raj Awasthi, JJ.—Though there is some delay in filing the special appeal, but since the counsel for the respondents has no objection in condoning the delay, we condone the delay.

2. The writ petition has been disposed of, by the learned Single Judge issuing a direction to the District Magistrate, Barabanki to consider the respondents' case for absorption, keeping in view the Government Order against the vacant post of Lekhpal and Collection Amins or against other vacant posts, expeditiously and preferably within a period of three months. A direction was also issued that while considering the respondents' case, the appellants (respondents in the writ petition) shall also provide age relaxation in accordance with rules/Government Orders.

3. In short, the controversy has arisen, as the respondents (petitioners in the writ petition) claim that they had worked for some time in the Census Department and on being retrenched from the department, they are to be absorbed and appointed on regular basis, by the District Magistrate, in any service under his control.

4. The learned Single Judge did not enter into the aforesaid plea as to whether the employees of the Census Department have any right to be absorbed in any other department of the government or can claim regular appointment, but on asking the District Magistrate, Barabanki to appear in person before the Court,

on whose behalf, the Deputy Collector appeared and gave a statement that there are six posts in Collectorate, Barabanki reserved in pursuance of the order passed by this Court in pending writ petition and that there are 36 posts of Collection Amin and 86 posts of Lekhpal to be filled up through direct recruitment, whereas the appointment on the vacant post of Lekhpal has been stayed by the State Government, the learned Single Judge observed that there appears to be no hurdle to consider the case of the respondents against 86 posts of Lekhpal, the appointment on which has been stayed by the State Government.

5. It was further observed that since the respondents are retrenched employees of the Census Department and are running from pillar to post since 1991, they are entitled for absorption on appropriate post in view of the Government Orders dated 21.8.2007 and 9.10.2007.

6. At this juncture, Sri A.M. Tripathi appearing for the respondents, says that in view of the order passed by the District Magistrate on 8.12.2009, which has been brought on record of this special appeal, rejecting the representation of the respondents, the present special appeal has become infructuous, as the respondents seek liberty to challenge the aforesaid order by filing a fresh petition.

7. True, after rejection of the representation, the respondents may have a right to challenge the same, if they feel aggrieved, but we take notice of the fact that the writ petition required an answer as to whether the employees of the Census Department can be absorbed or they have a right to be regularly appointed in any other government service. The aforesaid issue has not been discussed by the learned Single Judge, but a finding has been recorded that the respondents are entitled for absorption on appropriate post in view of the Government Orders dated 21.8.2007 and 9.10.2007.

8. Sri Mukund Tiwari, learned counsel for the State has relied upon the judgement of the apex court in the case of Union of India vs. Dinesh Kumar Saxena (1995) 3 SCC 401, where the plea of regularization of the employees of the Census Department was rejected by the apex court.

The apex court in the aforesaid case observed as under:

".....Whatever may be the difficulties in giving regular appointments to such retrenched employees in the past, the appellants, namely, the Union of India and the Directorate of Census Operations, U.P. are directed to consider these retrenched employees for direct recruitment to regular posts in the Directorate of Census Operations, U.P. in the manner hereinabove stated. The retrenched employees will, however, have a right to be considered only if they fulfil all other norms laid down in connection with the posts in question under the recruitment rules and/or in other departmental regulations/circulars in that behalf."

9. Since the representation of the respondents has been rejected by the District Magistrate, we do not find it necessary to enter into the question aforesaid and the same is left open to be argued and pressed whenever such a plea is raised

and the observation made by the learned Single Judge in this regard, shall not be taken as final. No orders need be passed in this special appeal.

10. The special appeal is accordingly dismissed.

11. To allay the apprehension of the counsel for the appellants that the appellants may be punished in contempt petition filed by the respondents, Sri A.M. Tripathi says that when the order of rejection has been passed by the District Magistrate, there would be no occasion to press the contempt petition, which proceedings have also become infructuous.