

(2002) 04 AHC CK 0118

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36888 of 2001

Sudhir Kumar Srivastava

APPELLANT

Vs

Maha-Nideshak, Prantiya Rakshak Dal/Vikas Dal Avam Yuwa
Kalyan U.P. Lucknow and Others

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Uttar Pradesh Pradesik Vikas Dal Subordinate Service Rules, 1980 — Rule 5

Citation : (2002) 04 AHC CK 0118

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Counsel for the petitioner and the learned standing Counsel. Counter and rejoinder affidavits have been exchanged and with the consent of the parties the writ petition is being finally decided.

2. Petitioner is a graduate and trained Swayam Sewak Prantiya Vikas Dal. Vide order dated 661989 an appointment letter was issued by the Director, Yuva Kalyan Avam Pradesik Samadesta, Pradesik Vikas Dal, U.P. Lucknow. The petitioner was directed to discharge duties on the vacant post of Block Organiser/Kshetriya Yuva Kalyan Adhikari. The order further directed that the petitioner be paid Rs. 15 per day as duty allowance. The order that one post of Block Organiser/Kshetriya Yuva Kalyan Adhikari is lying vacant due to which the work is being affected. By a subsequent letter dated 2361989 of the Director, permission was granted to pay duty allowance to the petitioner from the Head of Samaj Sewa Karya under District Sector Yojna. Posting order dated 1771989 was issued to the petitioner by the Chief Development Officer, Gorakhpur. The Block in which the petitioner was working came to be included in the newly created District Maharajganj hence an order was issued on 1411990 on behalf of the Director directing that the petitioner be posted in District Gorakhpur. Petitioner continued to work on daily wages in District Gorakhpur. An order was passed on 3081991/1101991 reverting the petitioner as Swayam Sewak. The petitioner

filed writ petition No. 5898 of 1992 challenging the aforesaid order in which an interim order was passed on 24/2/1992 directing that until further orders of this Court the petitioner shall not be reverted. The petitioner has stated that since from the date of joining petitioner continued to work as Block Organiser/ Kshetriya Yuva Kalyan Adhikari, the Writ Petition No. 5898 of 1992 was finally decided by this Court by order dated 9/2/2000 a copy of which has been annexed as Annexure 6 to the writ petition. This Court taking into consideration of the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998 finally disposed of the writ petition with following directions:

?The writ petition is disposed of finally with the direction that in case there is vacancy, temporary or permanent, petitioner shall be considered for regularisation on Group 'C' post which he is holding i.e. the post of Block Organiser in Prantiya Rakshak Dal/Prantiya Vikas Dal within three months from the date of production of certified copy of this order.?

3. After the aforesaid direction of this Court when the petitioner's case was not considered, contempt proceedings were initiated by the petitioner being Contempt Petition No. 325 of 2001. An order dated 30/5/2000 has been passed rejecting the claim of the petitioner for regularisation under the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998. The reasons were given in the order dated 30/5/2000 i.e. the petitioner is only Swayam Sewak and he was never appointed on daily wages, secondly the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari is post within the purview of the U.P. Public Service Commission hence the Rules namely the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998 are not attracted. Petitioner thereafter submitted a representation praying that he is entitled to be regularised. An order dated 29/3/2001 was issued by the Zila Yuva Kalyan Avam Pradeshik Vikas Dal Adhikari, Gorakhpur that duty of the petitioner is terminated due to lack of funds. In view of the aforesaid the petitioner has filed the present writ petition challenging the orders dated 30/5/2000 and 29/3/2001 and also seeking mandamus directing the respondents to regularise the services of the petitioner on the post of Block Organiser/Kshetriya Yuva Adhikari in accordance with 1998 Rules and also prayed for direction to allow the duties and service of the petitioner on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari with full wages and service benefits. A counter affidavit has been filed by the respondents in which it has been stated that the petitioner was Swayam Sewak and he was engaged on Rs. 15 per day as duty allowance. The petitioner is not entitled for any appointment on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari. It was admitted that the petitioner is pursuance of the order dated 23/6/1989 was posted by the order dated 17/7/1989. It was denied that the petitioner was engaged on daily wages basis on the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari. It was stated that the petitioner's case is not

covered under the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts. (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998. It has been admitted in paragraph 25 of the counter affidavit that earlier the aforesaid post was within the purview of the U.P. Public Service Commission but at present it is not within the purview of U.P. Public Service Commission and for filling 423 posts of Block Organiser/Kshetriya Yuva Kalyan Adhikari advertisement for direct recruitment has been issued on 792001. It was stated that in pursuance of the interim order dated 2421992 passed in Writ Petition No. 5898 of 1992 the petitioner continued to discharge his duties and since the said writ petition has been finally disposed of, there is no question of taking the petitioner on duty. Petitioner filed a rejoinder affidavit in which he filed various certificates and the letters of the Chief Development Officer and Zila Yuva Kalyan Avam Pradeshik Vikas Dal Adhikari certifying the working of the petitioner and various letters referring the petitioner as daily wage Kshetriya Yuva Kalyan Adhikari. The aforesaid letters were even upto the date 1962001.

4. Counsel for the petitioner contended that the petitioner's appointment was on daily wage basis and the petitioner has been discharging the duties of group "C" post, Block Organiser/ Kshetriya Yuva Kalyan Adhikari with effect from 2761989 and he is fully entitled to be regularised under the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998. It has been further contended that the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari is a group "C" post not within the purview of the U.P. Public Service Commission. The Counsel for the petitioner further contended that the respondents have not considered the claim of the petitioner in accordance with the final judgment of this Court passed in Writ Petition No. 5898 of 1992 on 922000 in which the petitioner's case was directed to be considered in accordance with the said 1998 Rules in case there are vacancies temporary or permanent in existence. The vacancies are in existence is apparent from the advertisement of direct recruitment issued with regard to 423 posts dated 792000 filed as Annexure13 to the writ petition. The petitioner is fully entitled for regularisation under the aforesaid 1998 Rules. It has been further contended that the order impugned dated 3052000 is not in accordance with the final judgment of this Court dated 922000 and it is not open to the respondents to give fresh reasons for rejecting the claim of the petitioner.

5. Learned standing Counsel refuting the submissions of the Counsel for the petitioner stated that the petitioner's appointment is not on daily wage basis but his appointment was as Swayam Sewak. It has been further stated that the petitioner was reverted in 1991 and which reversion order was challenged by the petitioner in Writ Petition No. 5898 of 1992 and the petitioner was allowed to continue to discharge his duties as Block Organiser/Kshetriya Yuva Kalyan Adhikari only due to the interim order and since in the final order dated 922000 of this Court there was no direction for continuing the petitioner on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari, the petitioner has no right to

claim working on the said post.

6. I have heard Counsel for the parties and perused the record. The post of Block Organiser/Kshetriya Yuva Kalyan Adhikari is a group "C" post which is governed by the Uttar Pradesh Pradeshik Vikas Dal Subordinate Service Rules, 1980. Rule 5 of the aforesaid 1980 Rules provides for source of recruitment. The rules provides for recruitment to different posts namely District Officer, Additional District Officer, Block Organiser/Kshetriya Yuva Kalyan Adhikari. The post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari is to be filled 85% by direct recruitment and 15% by promotion. Rule 8 of the aforesaid 1980 Rules lays down the qualification. Rule 8 of the aforesaid 1980 Rules is quoted below:

?Rule 8. Academic qualifications and experience, (1) A candidate for direct recruitment to the various posts in the service must possess the following qualifications,

(1) District Organiser

Bachelor's degree from a recognised University or qualifications recognised by the Government as equivalent thereto.

(2) Block Organiser

(I) Intermediate Examination of the Board of High School

(3) Vyayamshala Prashikshak and Intermediate Education Uttar Pradesh or an Examination conducted by the Government as equivalent and

(ii) Diploma of Vyayam Visharad or any other recognised equivalent certificate
Diploma

(2) A candidate who has

(i) in respect of any post experience of youth work and has attained proficiency in games and sports.

(ii) In respect of the post of Block Organiser who has put in at least three years honorary service as Block Commanders, Halqa Sardar or Dalpatis in the Organisation of July 1 of the year of recruitment shall other things being equal, be given preference in the matter of direct recruitment.?

7. Part V of the Rules deal with procedure for recruitment. Rule 15 provides that the post of District Organiser shall be filled by direct recruitment by means of competitive examination held by the U.P. Public Service Commission. Rule 17 provides for direct recruitment to the post of Block Organiser and Vyayamshala Prashikshak by the Selection Committee whose constitution is mentioned under Rule 17. Rule 18 provides for combined select list. Rule 19 provides for appointment. Rule 19 is quoted below:

?19. Appointment,: (1) On the occurrence of substantive vacancies, the appointing authority shall make appointments by taking candidates in the order

in which they stand in the list prepared under Rules 15, 16, 17 or 18 as the case may be.

(2) The appointing authority may make appointments in temporary and officiating vacancies also from the lists, referred, referred to in subrule (1). If no candidate borne on these lists is available, it may make appointments in such vacancies on ad hoc basis from persons eligible for appointment under these rules for a period not exceeding one year or till the next selection which ever be earlier.?

8. From the perusal of the aforesaid Rules it is clear that the appointing authority is the administrative Commandant and the appointing authority under Rule 19(2) of the said Rules has power to make appointment on ad hoc basis from persons eligible for appointment. Thus if no select list is available for direct recruitment under the Rules, the power to make ad hoc appointment is vested in the appointing authority from amongst the persons eligible for appointment. From the pleadings in the writ petition the petitioner fulfils the qualification for appointment on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari and the aforesaid eligibility has not been disputed by the respondents. The petitioner was engaged under the order issued by the appointing authority which is apparent from Annexure1 to the writ petition that the order dated 661989 has been passed by the Administrative Commandant. The aforesaid order noticed that the petitioner is trained Swayam Sewak and is graduate and from him the work on the vacant post of Block Organiser/Kshetriya Yuva Kalyan Adhikari be taken. The order further contemplated that Rs. 15 per day be paid as duty allowance. One of the issues raised in the writ petition is as to whether the petitioner's appointment will be treated to be daily wage appointment or not? The respondents have submitted that the aforesaid appointment is not appointment on daily wage since the petitioner was only a Swayam Sewak. A perusal of the order dated 661989 Annexure1 to the writ petition reveals that the work from the petitioner was directed to be taken on the vacant post on Block Organiser/Kshetriya Yuva Kalyan Adhikari due to fact that the petitioner is a trained Swayam Sewak and graduate. The fact that the petitioner is a trained Swayam Sewak is noted in the order. Rule 8 of Uttar Pradesh Pradeshi Vikas Dal Subordinate Service Rules, 1980 provides that with regard to Block Organiser/Kshetriya Yuva Kalyan Adhikari a person who has three years honorary service, shall be given preference. Thus the fact that the petitioner was Swayam Sewak was consideration for directing the engagement of the petitioner on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari. The order dated 661989 clearly mentions that one post of Block Organiser/Kshetriya Yuva Kalyan Adhikari is vacant and regular selection is likely to take much time; hence the work should be taken from trained Swayam Sewak. Thus the aforesaid order clearly proves that the petitioner's engagement was made on daily wages basis on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari which is a group "C" post. Further the posting order which was issued by the Administrative Director clearly states that the petitioner was appointed to discharge the duties of Block

Organiser/Kshetriya Yuva Kalyan Adhikari and duty allowance be paid from the Head of Samaj Sewa Karya of Zila Sector Yojna. The appointment and posting order demonstrate that the petitioner was appointed against the post. Further the subsequent order dated 14111990 issued on behalf of the Director and Administrative Commandant uses the words "Dainik Vetan". Thus the aforesaid order dated 14111990 clearly mentions that the petitioner's engagement was on daily wage basis. Further, the petitioner along with the rejoinder affidavit filed several letters of the authorities in which the petitioner was referred as daily wage worker. In this context the letters dated 13111996, 19711997 and 11211998 issued by the Chief Development Officer, Gorakhpur have been annexed as Annexure 1 to the rejoinder affidavit which clearly described the petitioner as daily wage Block Organiser/Kshetriya Yuva Kalyan Adhikari. Further the letters dated 12211997, 5811997, 27911997, 71111997, 28311998, 21111998, 10811999, 10911999, 61011999, 301211999, 2112000 and 2412000 issued by the Zila Yuva Kalyan Avam Pradeshik Vikas Dal Adhikari, Gorakhpur filed as Annexure 1 to the rejoinder affidavit also mention and describe the petitioner as daily wage Block Organiser/ Kshetriya Yuva Kalyan Adhikari. From the aforesaid material on record it is clearly established that the petitioner was appointed on daily wages basis on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari and the contention of the respondents that the petitioner's appointment was not on daily wage basis is incorrect and without any basis. The fact that the petitioner was Swayam Sewak does not in any way affect the engagement of the petitioner on daily wage basis rather the fact that the petitioner being experienced Swayam. Sewak was relevant fact to give preference for the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari as provided under Rule 8 (2) of the Uttar Pradesh Pradeshik Vikas Dal Subordinate Service Rules, 1980. In view of the above, the order dated 30th May, 2000 rejecting the claim of the petitioner for regularisation under 1998 Rules on the ground that the petitioner was not appointed on daily wage basis is erroneous and cannot be sustained.

9. The next argument raised by the learned standing Counsel is that since there was no direction in the the final Judgment of this Court dated 922000 to allow the petitioner to continue on the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari, the petitioner has no right to continue, since the interim order under which the petitioner was continuing will be deemed to have come to an end on the date of final disposal of the writ petition i.e. 922000. The aforesaid submission of the learned standing Counsel is fallacious. The petitioner was allowed to discharge duties on daily wage basis on the aforesaid group "C" post not on any interim order of this Court but the aforesaid engagement was by the order dated 661989 by the appointing authority that is the Administrative Commandant. By the interim order of this Court dated 2421992 the reversion of the petitioner from daily wage basis of group "C" post to Swayam Sewak was stayed. During the pendency of the writ petition, the Uttar Pradesh Regularisation of Daily Wages Appointment on Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998 came into

force with effect from 971998 which provided that any person who was directly appointed on daily wage post of Group "C" post in the Government service before January 29, 1991 and is continuing in service as such on the date of commencement of these Rules and possess requisite qualification prescribed for regular appointment for that post at the time of such appointment under the relevant Rules, shall be considered for regular appointment of Group "C" post in permanent or temporary vacancy as may be available on the date of commencement of these Rules. Thus the right of the petitioner to be considered for regular appointment in accordance with 1998 Rules came into existence with effect from 971998. The petitioner's appointment was admittedly prior to 2961991 and he fulfils the qualification for appointment and was also continuing on the date when the Rules was in force that is Rules of 1998. Furthermore, when the earlier Writ Petition No. 5898 of 1992 was disposed of by this Court, the only objection raised before the Court was regarding availability of the vacancy. The final direction of this Court as quoted above, was to the effect that in case there is vacancy temporary or permanent the petitioner shall be considered for regularisation of Group "C" post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari.

10. In view of the aforesaid, the petitioner has right to be considered for regular appointment as directed by this Court and it was implicit in the order that in case the petitioner is found fit for regular appointment he will be allowed to continue as regular employee. Thus the submission of the Counsel for the respondents that in view of the final disposal of the writ petition petitioner has no right, cannot be accepted.

11. Another ground given in the impugned order dated 3052000 for not extending the benefit of 1998 Rules to the petitioner is that the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari is post within the purview of the U.P. Public Service Commission. In paragraph 25 of the counter affidavit it now admitted that the post is not at present within the purview of the U.P. Public Service Commission. It has further been stated that the advertisement has been issued for filling up the 423 posts on 792001. Petitioner has filed a copy of the aforesaid advertisement as Annexure 13 to the writ petition which shows that the aforesaid post is group "C" post on which the recruitment is to be held in accordance with the advertisement. Perusal of 1980 Rules specially Rule 17 clearly demonstrate that the recruitment on the post is to be made by the departmental selection Committee. Thus Uttar Pradesh Pradesik Vikas Dal Subordinate Service Rules, 1980 does not contemplate filling of the post by Commission. With regard to the post of District Organiser Rule 5 (a) read with Rule 15 clearly demonstrate that the said post is to be filled by U.P. Public Service Commission but the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari is to be filled up by Selection Committee as contemplated in Rule 17.

12. In view of the above, it is apparent that the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari is not within the purview of the U.P. Public

Service Commission. In the counter affidavit also it has not been stated that as to on what date it is claimed that the post was within the purview of the Public Service Commission earlier. A Government order dated 2682000 has been filed as Annexure 8 to the writ petition in which the State Government has stated that selection on the post of Block Organiser/ Kshetriya Yuva Kalyan Adhikari be made in accordance with the U.P. Procedure for Direct Recruitment for Group "C" Post (Outside the purview of the U.P. Public Service Commission) Rules, 1998. Furthermore, no such argument was raised when the earlier writ petition was finally disposed of on 922000 that the post is within the purview of the Public Service Commission. In view of the above, it is clear that the post is out side the purview of the Public Service Commission and the petitioner's consideration under the Uttar Pradesh Procedure for Direct Recruitment for Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998 could not have been denied on that ground.

13. From the aforesaid discussion it is clear that the petitioner's case was fully covered for regular appointment in accordance with the Uttar Pradesh Procedure for Direct Recruitment for Group "C" Posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 1998 and in accordance with the earlier direction of this Court dated 922000, the petitioner was entitled to be considered subject to availability of the post. There is no such plea either in the impugned order or in the counter affidavit that the posts are not vacant rather it is admitted that requirement of 432 posts has already been notified which has still not been finalised. Said advertisement has been issued on 792001 which proves that the posts are available. Furthermore, the petitioner's engagement in the year 1989 itself was against the vacant post. The petitioner has fully made out his case for grant of the relief as prayed for in the writ petition. The petitioner being entitled to be regularised, the order dated 2932001 removing him from the duty cannot be sustained. Further, there is sufficient material on record to prove that the petitioner has been allowed to work and allocated duty after 29th March, 2001. Furthermore, the order dated 2932001 itself contemplated that after receipt of the permission/ budget, petitioner will be reengaged.

14. In view of the foregoing discussions the impugned orders dated 3052000 and 2932001 are quashed. It is further held that the petitioner is entitled to be given regular appointment on the post of Block Organiser/Kshetriya Yuva Kalyan Adhikari. In pursuance of the earlier direction of this Court dated 922000 in Writ Petition No. 5898 of 1992 the respondents are directed to issue necessary orders to the above effect within a period of one month from the date of production of a certified copy of this judgment and further to allow the petitioner to join as regular Block Organiser/ Kshetriya Yuva Kalyan Adhikari within the same period. Petitioner will be entitled to regular pay scale and other benefits of the post with effect from the date of joining.

15. The writ petition is allowed as indicated above. Parties shall bear their own

costs.