
(2004) 09 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36070 of 2001

Tribhuwan Dhar Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) 5 AWC 4828

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Lalji Pandey and Vikas Budhwar, for the Appellant; S.P. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Sri Vikas Budhwar along with Sri Lalji Pandey, learned Counsels for the petitioners, and Sri S.P. Singh, learned Standing Counsel for the State respondents.

2. In this petition prayer has been made to quash the order dated 23.08.2001(Annexure-4 to the writ petition) passed by the District Magistrate, Mirzapur in compliance to the order of this Court dated 03.01.2001 passed in Writ Petition No. 29271 of 1999 (Tribhuwan Dhar Mishra and Ors. v. State of U.P. and Ors.) and also order dated 23.08.2001 (Annexure-5 to the writ petition) passed by the District Magistrate, Mirzapur in compliance to the order of this Court dated 03.01.2001 passed in Writ Petition No. 29259 of 1999.(Vijay Chand Shukla v. State of U.P. and Ors.), and further prayer has been made for issuance of writ of mandamus commanding the respondents to permit the petitioners to discharge their duties as Collection Amin and to extend the other benefits as being given to the regular Collection Amins. Petitioners have also prayed for issuance of direction restraining the respondents not to fill up the existing 10 vacancies of Collection Amins till the final decision of the present writ petition.

3. It appears that the petitioner nos. 1,2, 3, 4 and 5 were appointed as Seasonal Collection Amin with effect from 15.02.1986, 05.04.1986, 15.02.1986, 18.02.1986 and 28.12.1989 respectively and they had worked satisfactorily as Seasonal Collection Amin. According to the petitioners, a list dated 07.03.1990 was prepared and finalized by the Tehsildar and Sub Divisional Officer, in which all the petitioners were included and shown as Seasonal Collection Amin in Tehsil Sadar, District Mirzapur, however, for the reasons unknown, the petitioners were disengaged on 31.03.1994, against which they approached to the U.P. Public Services Tribunal, where the learned Tribunal by its order dated 23.03.1999 derived the irrelevant conclusions, against which two separate petitions, namely, Writ Petition No. 29271 of 1999 and Writ Petition No. 29259 of 1999, were preferred, which were clubbed together after exchange of pleadings in reference to the order of this Court (D.B.) dated 21.05.1993 passed in Writ Petition No. 29158 of 1990 (Adya Prasad v. U.P. Public Services Tribunal and Anr.), which was also affirmed by the Supreme Court, the above two writ petitions were disposed of on 03.01.2001 with direction to decide the representations of the petitioners by the District Magistrate. In compliance thereto, the representations of the petitioners were considered and illegally and erroneously were rejected on 23.08.2001 by the District Magistrate, Mirzapur. Hence the present writ petition.

4. The main ground for rejection of the representations by the impugned orders is that the petitioners were not putting sufficient number of days of service and whatever vacancy became available was to be fulfilled in view of the provisions of the Uttar Pradesh Public Services (Reservation for Schedule Castes; Schedule Tribes and Other Backward Classes) Act, 1994 (U.P. Act No. 4 of 1994), which came into effect from 11th December, 1993, and the other points for rejection of representations by impugned orders are that more than about 35% of excess vacancies were fulfilled and only 10 vacancies were available and the seniority list of Seasonal Collection Amin was got prepared, out of which three posts from reserved category i.e. one from backward class and two from schedule caste, according to their seniority were fulfilled, however, the petitioners being placed at serial nos. 41, 67, 85, 53 and 101 could not be found suitable for appointment to the post of Seasonal Collection Amin.

5. In paragraphs 9 and 10 of the writ petition it has been indicated on behalf of the petitioners, as under:-

9. That, here it would be relevant to mention here that various persons who had never performed and discharged their duties as Seasonal Collection Amin, have been extended the benefit of regularization and were given regular charge of collection Amins. The name of these persons are Ashok Kumar Pandey, Jaya Kant Deubey, Ghanshyam Pandey, Sanjeev Pandey, Ganesh Singh, Shyam Dhar Tiwari, Durga Prasad Tewari, Mishri Lal and Kailash Nath.

10. That, all these persons whose name has been indicated in the preceding paragraphs have been appointed as regular Collection Amins without undertaking any selection process whatsoever and at no point of time any written,

examination, any interview whatsoever was held before offering appointment to all these incumbents.

6. According to the petitioners, such persons as shown in the paragraph 9 of the writ petition without having worked in the department and without being reflecting their names in the list, enclosed as C.A.-1 to the counter affidavit, were appointed.

7. In response to this in the counter affidavit sworn by Sri S.P. Vishwakarma, the averments made in the paragraph-9 of the writ petition have not been denied. In respect of one Sri Ganesh Singh, who has been appointed in the year 1990, has been given regular status, whereas, the petitioners were appointed way back in the year 1986. but they have been denied for the same.

8. According to Para-12 of the writ petition, Sri Ganesh Singh, who was initially appointed as Seasonal Collection Amin in the year 1990, has been given regular status. Para-12 of the writ petition reads as under:-

12. That, one of the incumbents whose name has been referred to in the preceding paragraphs, namely, Ganesh Singh had performed as Seasonal Collection Amin and his appointment as Seasonal Collection Amin was made in the year 1990 i.e. after the appointment of each and every petitioner and the said Ganesh Singh has been extended the benefit of regularization.

9. In response thereto the regularization of Sri Ganesh Singh has not been denied by the respondents in the counter affidavit.

10. Counter affidavit has been filed by Sri S.P. Vishwakarma, Tehsildar, enclosing the seniority list of the candidates of Seasonal Collection Amin, who have worked as Seasonal Collection Amin, upto 1992.

11. Affidavit of Sri Ram Singh Gautam, Tehsildar, Sadar has also been filed as well as the supplementary affidavit by Sri Amrit Abhijit. the then District Magistrate, Mirzapur has also been filed.

12. The paragraph-3 of the affidavit of Sri Ram Singh Gautam, which has been filed in compliance to the order of this Court dated 16.09.2003, reveals as under:

-

Before bifurcation of district Mirzapur there were 214 sanctioned post of regular Collection Amins and after creation of district Sonbhadra in the year 1989 out of 214 post 56 posts of regular Collection Amins was transferred to district Sonbhadra and at present are only 158 sanctioned post of regular Collection Amins in district Mirzapur. It is further stated that in August, 2002 in pursuance of the Gout. Order issued by the State Govt. 19 Grams of district Mirzapur have been included in district Sonbhadra and as such at present there is only 154 sanctioned post of regular Collection Amins in district Mirzapur out of which only 6 posts are lying vacant and out of rest 148 posts, 13 posts have been filled up by direct recruitment and for the last 15 years number of Seasonal Collection

Amins have been appointed on regular basis against 74 post on the basis of their eligibility and seniority. Apart from this 32 persons have been appointed as Collection Amins pursuant to the orders passed by the Hon''ble Supreme Court/ Hon''ble High Court and Hon''ble Tribunal from time to time. It is also relevant to mention here that 13 retrenched employees of Agriculture Deptt. And 1 employee of Chal Chitra Nigam, have also been appointed as Collection Amins against 14 posts much less sanctioned post. Apart from this 3 seasonal Collection Peons have been promoted in accordance with law on the post of Collection Amins. Further 12 persons have also been appointed as Collection Amins under Dying in Harness Rules and in this way at present out of total sanctioned post, number of seasonal Collection Amins have been appointed as Collection Amins on regular basis under more than 35% prescribed quota.

13. In paragraphs-8, 9 and 9 of the affidavit of Sri Ram Singh Gautam it has been indicated as under:-

8. ...due to suspension of one Shri Kamla Kant working as Collection Amin in Tehsil Sadar, Mirzapur one post of Collection Amin temporarily fell vacant upon which one Jaya Kant Dube was appointed as Collection Amin vide order dated 18.8.1993 by the S.D.M. concerned. After the reinstatement of Shri Kamla Kant, the services of Shri Dubey automatically came to an end, against which he filed a writ petition No. 44450 of 1993, in which an interim stay order was passed on 26.9.1995 and in pursuance thereof, he is still working.

9. ...Shri Ghanshyam Pandey was appointed in stop gap arrangement in leave vacancy by the then S.D.M. Marihan vide his order dated 20.8.1990 and thereafter, his services were terminated vide an order dated 30.3.1991, against which he filed a writ petition No. 13942 of 1991 in the Hon''ble Court in which he obtained an interim stay order dated 21.5.1993 and in compliance of which he has been permitted to work. However, prior to this he has also worked in stop gap arrangement as Collection Amins from 20.8.1990 to 30.9.1990, 1.10.1990 to 31.1.1991 and from 7.2.1991 to 30.3.1991.

9. ...in pursuance of the order passed by this Hon''ble Court dated 24.8.1999 passed in Writ Petition No. 22765 of 1993 filed by one Shri Veer Pratap Singh, the services of Shri Ganesh Singh have been terminated by the then D.M. Mirzapur vide his order dated 12.7.200, against which Shri Ganesh Prasad filed a writ petition No. 31995 of 2000 in which an interim stay order dated 2.8.2000 has been passed by the Hon''ble Court and in pursuance thereof, Ganesh Singh is still working. However, at present Shri Veer Pratap is not working in the Deptt.

14. In paragraphs-4 and 5 of the supplementary counter affidavit filed by Sri Amrit Abhijit, District Magistrate. Mirzapur in has been indicated as under:-

4...the persons whose name is mentioned at Sl. No. 154 and 171, namely, Sri Noor Mohd. As, well as Sri Indra Mani Tiwari, are not Seasonal Collection Amin. From the records, it was further revealed that Sri Noor Mohd. Khan who is at Sl. No. 154 and related to Tehsil Marihan, Mirzapur, has been temporarily appointed

as Collection Amin vide an order dated 2.7.1993 by the then S.D.M. Marihan. So far as Sri Indra Mani Tiwari whose name is at Sl. No. 171 and is related to Tehsil Sadar, district Mirzapur, has also been temporarily appointed as Collection Amin by means of an order dated 4.1.1993 by the then S.D.M. Sadar. From the records it also transpired that since these two persons are not working as Seasonal Collection Amins rather they have been temporarily appointed as Collection Amin in the year 1993, therefore, their names should not have been mentioned in the gradation list finalized in the 2001 which is meant for Seasonal Collection Amins but due to inadvertence, names of these two persons namely, Noor Mohd. Khan as well as Indra Mani Tiwari were wrongly mentioned in the gradation list of Seasonal Collection Amins whereas their names should have been mentioned in the list of temporary Collection Amins.

5... it is relevant to mention here that when the above mistake regarding mentioning the names of Sri Noor Mohd. Khan at Sl. No. 154 as well as name of Sri Indramani Tiwari at Sl. No. 171 in the gradation list of Seasonal Collection Amins, was detected then the deponent on 4.9.2003 passed an order in this regard whereby it has been ordered that since Sri Noor Mohd. Khan as well as Sh. Indra Mam Tiwari are not working as Seasonal Collection Amins rather they are working as temporary Collection Amins since 1993 and are getting their salary accordingly and as such their names are deleted from the gradation list of Seasonal Collection Amins so that their names may be mentioned in the gradation/seniority list of Temporary Collection Amins.

15. According to the petitioners, when correspondences have revealed that 10 posts are lying vacant and same could not be fulfilled in time by the general candidates in the light of the provisions of Act No. 4 of 1994, therefore, the stand of the respondents are misleading, as according to the petitioners 9 persons, who are not at all named in the seniority list of Seasonal Collection Amin updated upto the year 1992, could be said to be much juniors, who have not even worked but were given regular appointment as Seasonal Collection Amin and for which no relevant reply has been given in the affidavit of S.P. Vishwakarma. According to the petitioners, it is very strange while giving appointment to the persons named in paragraph-9 of the writ petition how the reservation quota, as indicated in the Act No. 4 of 1994, was not applicable. Since the above Act No. 4 of 1994 came into operation w.e.f. 11th December, 1993, the same was to be equally applicable to the persons named in paragraph-9 of the writ petition, whereas, the petitioners were engaged way back in the year 1986 and large number of vacancies were available, but their case were not considered for regularisation, therefore, the respondents cannot be spare TO argue that because of Act No. 4 of 1994, which is undisputedly not of retrospective effect, can not apply to the earlier vacancies in view of the decision of the supreme Court in B.L. Gupta and Another Vs. M.C.D., .

16. According to the petitioners, giving of appointment to the persons, who have subsequently been engaged namely juniors to them, is discriminatory and in

total disregard to the provisions of Article 14 of the Constitution.

17. According to the learned Counsel for the petitioners, in paras-3 and 4 of the supplementary counter affidavit of Sri Amrit Abhijit, the District Magistrate, Mirzapur, two persons, namely Noor Mohd, shown at serial No. 154 and Sri Indra Mani Tiwari shown at serial No. 171, are said to be regularized as Collection Amins on temporary capacity, whereas, no post of temporary Collection Amin has been provided as conceived in U.P. Collection Amin Rules, 1974. Further, six following persons were also granted absorption as regular appointment as Seasonal Collection Amin, namely:-

Name Position From (i) Ashok Kumar Pandey Outsider 06.12.1988 (ii) Sanjeev Kumar Pandey Junior 13.04.1993 (iii) Ganesh Singh Junior 26.08.1993 (iv) Ghanshyam Pandey Junior 30.07.1996 (v) Jaya Kant Dubey Outsider --- (vi) Shyamdhar Tiwari. Outsider ---

18. Even as disclosed in the affidavit of Sri Ram Singh Gautam six posts are still in existence. According to the petitioners, different stands in respect of giving appointment to the different persons have been taken by the respondents in different counter affidavits and without any rhyme or reason and without any proper justification the appointment of outsiders have been made and the services of the petitioner have completely been ignored and the interim order dated 21.04.2004 passed by this Court has not been complied with.

19. I have heard learned Counsels for the parties. I find that according to own disclosure of the respondents six vacancies are still available and many of the persons have been given appointment on the strength of the interim order or on compassionate ground or on the closures of other units, whereas, the petitioners' long standing experience and services have been ignored without any justification and also without any justification the persons not even named in the list, enclosed as Annexure-CA-1 to the counter affidavit, being juniors to the petitioners or being outsiders have been given appointment, such action of the respondents is hostile discrimination on the part of the respondents. The appointment of Sri Ganesh Singh also is giving occasion of discrimination vis-a-vis the petitioners. The respondents being State authorities have not acted in all fairness as they are expected to do. Even the records, which were produced before this Court for perusal were not systematic and are creating doubt/suspicion. The attempt of the respondents is not fair and much could be desired to be commented upon, however, giving of comment on this occasion is not relevant, only suffice to say that the petitioners have been treated discriminatorily and they have been ignored from being considered for appointment to the post of Seasonal Collection Amins. There is complete non-application of mind on the part of the District Magistrate, Mirzapur and completely on irrelevant points the orders dated 23.08.2001, the impugned in the present writ petition, have been passed, which are not legally sustained, therefore, these are set aside and the writ petition deserves to be allowed. The writ of mandamus is issued to the respondents to consider the case of the

petitioners and pass appropriate reasoned and speaking, order in respect of giving appointment to the petitioners to the post of Seasonal Collection Amin within a period of two months from the date of production of certified copy of this order.

20. In view of the above observations/directions, the writ petitioned is allowed.

21. No order as to cost.