
(2009) 04 AHC CK 0239

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43539 of 2008

Vipin Kumar Saini and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0239

Hon'ble Judges : Sunil Ambwani, J

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri S.P. Pandey, learned counsel for the petitioners. Learned Standing Counsel appears for the respondents. With the consent of parties the writ petition was heard.

2. All the four petitioners had worked in census operations in the year 2000 for a short period of six months. Their appointment letters dated 14.7.2000 provided that their services were purely adhoc and temporary and could be terminated at any time.

3. The petitioners had earlier filed a Writ Petition No. 22228 of 2001 which was disposed of on 12.6.2001 with directions to respondents to consider their representations for their reengagement. It is contended that the District Magistrate decided and rejected the representations on the ground that there was no vacancies on Class III post and that there was a ban on appointment of Class IV posts.

4. By this writ petition, the petitioners have challenged the advertisement dated 16.7.2008, by which the District Magistrate, Saharanpur has advertised four vacancies of Junior Clerk, one vacancy of Stenographer, two vacancies of driver, one vacancy of Chawkidar and three vacancies of Peon for appointments in the newly created Tehsil Rampur Maniharin in the District by Government Order dated 2.5.2008, and have prayed for their absorption.

5. Learned counsel for the petitioners has relied upon the orders passed by the District Magistrate, J.P. Nagar by which some absorptions of census employees were allowed and that they were appointed as Assistant Wasil Waki Navis, a, ministerial post in the Collectorate.

6. The question, whether the employees engaged in census on adhoc or temporary basis and had worked for few months can be absorbed in Government service, had engaged attention of this Court and Supreme Court. In *Union of India v. Dinesh Kumar Saxena*, AIR 1995 SC 1565, the Supreme Court held that the census employees of 1981/1992, do not have any rights flowing from their engagement, on contract basis for a fixed duration, on a fixed pay to be absorbed in any other department. At best they can be considered for regular appointment in the Directorate of Census Operations, U.P., if there are any vacancies and they are eligible by relaxation of age.

7. It appears that a large number of writ petitions were filed in which directions were issued to consider census employees for absorption. The State Government took a policy decision and issued a Government Order on 21.8.2007, that all those persons, who had worked in census in the year 1991 and in the year 2001 for more than six months, will be provided maximum benefit of three years relaxation in age in appointments of Group "C" and "D1 posts, outside the purview of the U.P. Public Service Commission. For the Census employees of 1991, the calculation of the age, from the period 31.5.1991 to the date when the vacancies are notified, shall not be counted, and for the census employees of 2001 the period between 31.5.2001 and the date of advertisement of vacancies shall not be counted for the purposes of determining the maximum age for appointment. The Government Order dated 21.8.2007, further provided that there shall be no relaxation so far as educational qualifications are concerned and that no preference will be given in such appointments. The Government Orders were applicable for a period of three years.

8. Learned counsel for the petitioner contends that the High Court was not satisfied with the decision taken by the State Government and that directions were given on 18.9.2007 in *Sanjai Kumar Panday and another v. ShriSambhu Nath*, Contempt Petition No. 1383 (C) of 2007 to prepare a new scheme and to produce the same in the Court on 12.10.2007. It is contended that in pursuance of these directions, a scheme was framed on 9.10.2007 providing that all those employees, who have not been adjusted, will be adjusted by the State Government in the vacancies, which are available in different departments, local bodies, and institutions of Panchayati Raj, but that all the appointments will be subject to the result of the writ petitions referred to in the Government Order, namely Writ Petition No. 12171 of 2002, *Subodh Kumar Kaushik v. State of U.P.* and others and Writ Petition No. 2905 (SS) of 2006, *San/ay Kumar Pandey v. State of U.P.* and others.

9. It is contended by learned counsel for the petitioners that the Government Order dated 9.10.2007, providing for scheme framed in pursuance of the

directions issued by the High Court clearly provided that the census employees were to be adjusted in the available vacancies and if necessary the scheduled caste and scheduled tribe candidates, who had worked in census, were also required to be considered for appointments in the special drive for filling up backlog vacancies.

10. The background, in which the Government Order dated 9.10.2007 was issued, does not require to be examined by the Court. The employment in the State Government is offered under the relevant statutory rules. The State Government has framed various set of rules for selections and appointments in the departments of the State Government under Article 309 of the Constitution of India. All these rules are for the purposes of giving equal opportunities to all the persons, who are eligible for appointment to subserve Articles 14 and 16 of the Constitution of India. The State Government may provide relaxation and may also provide for a scheme, which can only be referred under Article 309 of the Constitution of India for absorption of such employees.

11. In case of census employees the State Government has not decided to make any rules under Article 309 of the Constitution of India, for the absorption of these employees. In fact no such rules were required to be framed as these persons were appointed in the year 1991 and 2001 for fixed period on a fixed pay for census operations, with a clear stipulation in their appointment orders that they shall be appointed for a period of one year or until the census is concluded and will have no right to appointment to the post.

12. The absorption is by way of an exception to the sections. Wherever the rules for selections to Government employment is provided, there has to be separate set of rules to grant exemption to those who are sought to be absorbed. No such rules for absorption were framed for such census employees. The State Government had only provided relaxation in age for a maximum of three years. It further provided in the Government Order dated 21.8.2007 that the period from 1991 to the date of notification in case of census employees of 1991, and the period from 31.5.2001 to the date of notification of vacancies in case of employees of 2001, census shall not be counted. There was no other relaxation given to these persons in appointment under the statutory service rules.

13. The Supreme Court had very clearly laid down the law in regard in Dinesh Chandra Saxena's case, and that there was no occasion what soever for this Court to persuade the State Government to prepare a scheme for the purposes of absorption. The State Government rightly did not issue any such rules for absorption and made it very clear that any appointment made by the State in pursuance of the directions issued by this Court, which were sought to be implemented by the contempt proceedings will be subject to the result of the writ petition and which further shows that these appointments were made under the interim orders.

14. In the counter affidavit it is stated in paragraph 15 that the petitioner had

applied against selections advertised to be filled up backlog vacancies under the other backward caste category. They appeared in the selections and could not pass the type test. There was no relaxation or exemption of type test for census employees for appointment on the post of Junior Clerk. In paragraph 18 of the counter affidavit, it is stated that there is no notification or Government order for absorption on temporary employees engaged for the census work of 2001 and as such the petitioners cannot claim absorption as a matter of right.

15. The petitioners do not have any enforceable rights based upon any service rules, Government orders or scheme which may require the Court to issue a writ of mandamus to the District Magistrate to appoint the petitioners on the vacancies on the posts in the Collectorate.

16. The petitioners were given relaxation in age. They had appeared in the selections but did not qualify. The writ petition is dismissed.