

**(2008) 08 AHC CK 0145**

**Allahabad High Court (Lucknow Bench)**

**Case No:** W P. No. 8282(S/S) of 2006

Angad Verma & Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

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**Date of Decision:** Aug. 27, 2008

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** Devi Prasad Singh, J

**Final Decision:** Disposed Of

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### **Judgement**

1. Heard Sri A. R. Masoodi, learned counsel for the petitioners and Sri R. D. Sahi, learned Standing Counsel for the opposite parties.

2. The petitioners, who are Seasonal Collection Amin working in District Ambedkar Nagar, have filed the present writ petition being not satisfied with the decision taken by the respondents for the purposes of regularisation of their services in pursuance to the regularisation rules. The petitioners have discharged duty as Seasonal Collection Amin since between 1985 to 1999. According to the petitioners' counsel, from the date of their initial engagement they have been continuously discharging duty on the post of Seasonal Collection Amin. The dates of their appointment have been given in paragraph 4 of the writ petition, which have not been disputed.

3. Earlier, the petitioners had filed a bunch of writ petitions along with others, which was finally disposed of vide judgment and order dated 732006, a copy of which has been filed as Annexure No. 1 to the writ petition. The operative portion of the judgment and order dated 732006 is reproduced as under:

The petitioners cases are covered by the judgment of this Court as reported in (1996) 3 UPLBEC 2227; Mata Deen and others v. State of U. P. and others.

In view of the facts and circumstances of the case, the writ petitions are finally disposed of with a direction to the appropriate authorities, District Magistrates to consider the cases of the petitioners in the light of the relevant U. P. Collection Amins Rules, 1992 as amended up to date. The opposite parties, the appropriate authorities shall take into account the relevant Government Orders, policy of the State Government and the guidelines and the directions/observations made by this Court in the case of Mata Deen (supra). The appropriate authorities shall also take into account the respective places of the petitioners in the seniority list of Collection Amins maintained in the districts. This exercise shall be completed within five months from the date of production of a certified copy of this order."

4. A plain reading of the aforesaid judgment shows that this Court had directed the respondents to consider the case of the petitioners for regularisation in the light of the case of Mata Deen and others v. State of U. P. and others reported in (1996) 3 UPLBEC 2227. The operative portion from the judgment of Mata Deen's (supra) case is reproduced as under:

"7. Considering the facts and circumstances of the case as discussed above, a writ in the nature of mandamus is issued commanding the opposite parties as under:

(i) An eligibility list of seasonal collection Amins, who are found eligible under Rule 5 (1) of the amended rules shall be prepared by the concerned Collector of the district in the basis of seniority (service period) at the district level in accordance with Rule 17Ka.

(ii) 35 per cent of the total vacancies shall be filled from amongst seasonal collection amins in accordance with Rule 5 and 17Ka of the amended rules and also in accordance with other provisions of the Rules.

(iii) A select list shall be published of the candidates so selected and they shall be allocated to different Tahsils of the District according to the vacancies at Tahsil level and then the concerned Sub Divisional Officer shall issue appointment orders of the selected candidates so allocated to their respective Tahsils.

(iv) Till the availability of the selected candidates in accordance with law, the petitioners shall not be disturbed from their respective posts."

5. Thus, a plain reading of the case of Mata Deen (supra) shows that this Court had directed the respondent State to consider all the petitioners for regularisation, who are found eligible under the Regularisation Rules. This Court had further provided that all the incumbents shall continue in service until and unless their cases for regularisation are considered. However, in compliance of the judgment dated 732006, while considering the petitioners' cases for regularisation the respondents have recorded a finding that in the absence of regular vacancies their cases cannot be considered for regularisation. Whenever vacancies will arise, they shall consider the cases of the petitioners for regularisation. A copy of the order dated 3182006

has been filed as Annexure No. 5 to the writ petition.

6. While assailing the decision taken by the respondents, the submission of the learned counsel for the petitioners is that virtually the district authorities have tried to circumvent the earlier judgment of this Court. Learned counsel for the petitioners has invited attention of this Court towards the letter dated 1532005 sent by District Magistrate to the Commissioner, Faizabad Region, Faizabad, a copy of which has been filed as Annexure No. 6 to the writ petition. A perusal of the aforesaid letter shows that the District Magistrate, Ambedkar Nagar had requested to the Commissioner, Faizabad Region, Faizabad for increasing the strength of the Collection Amins, Collection Peons, Sahayak Wasil Waki Nabis as well as Naib Tahsildars. The letter reveals that keeping in view the work load of the district, the District Magistrate was of the opinion that the strength of the Collection Amins, Collection Peons, Sahayak Wasil Waki Nabis as well as Naib Tahsildars should be increased. Accordingly, he recommended for the increase of following strength:

Collection Amins 60

Collection Peons 60

Sahayak Wasil Waki Nabis 10

Naib Tahsildars 02

7. The submission of the learned counsel for the petitioners is that while complying with the judgment of this Court, it was incumbent upon the opposite parties to regularise the services of the petitioners and in case no vacancy exists, by creation of vacancies. Learned counsel for the petitioners has invited attention of this Court towards the judgment of Hon'ble Supreme Court reported in 2001 (2) SCC 118 : (2000 AIR SCW 4549) S. Ramanathan v. Union of India and others and proceeded to submit that in case there is no vacancy and there is stagnation in service then it shall be incumbent upon the State or its competent authority to increase the strength to absorb the services of the government employees against regular vacancies:

8. On the other hand, learned Standing Counsel submits that no mandamus may be issued by this Court for increase of cadre strength for the purposes of regularisation of services. It has also been submitted that the District Magistrate has not violated the judgment of this Court rather decided that whenever the vacancies will arise, the cases of the petitioners shall be considered for regularisation.

9. I have given my anxious consideration to the argument advanced by the learned counsel for the parties.

10. The service condition of the Collection Amins is governed by U. P. Collection Amin's Service Rules, 1974 (in short "rules"), as amended from time to time. Rule 4 of the Rules deals with the cadre strength and Rule 5 of the Rules deals with the source of recruitment. For convenience, Rules 4 & 5 of the Rules are reproduced as

under:

"4. Strength of the service.(1) The strength of the service shall be such as may be determined by the Governor from time to time.

(2) The permanent strength of the service shall, until orders varying the same have been passed under subrule (1), be as given below:

Collection Amins (Ordinary grade) 5341.

Collection Amins (Selection grade) 593:

Provided that

(a) the Collector may leave unfilled or the Governor may hold in abeyance any vacant post without thereby entitling any person to compensation; and

(b) the Governor may create such additional permanent or temporary posts as may be considered necessary.

5. Source of recruitment.(1) Recruitment to posts in the Ordinary grade of the Service shall be made on the result of competitive examination as provided in Part V of these rules;

Provided that subject to availability of suitable candidates, up to 10 per cent of the vacancies shall be filled by promotion from amongst such permanent collection peons

(a) who have passed at least High School Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an examination recognised by the Government as equivalent thereto; and

(b) who have worked in the Collection Organisation of the Revenue Department for at least 6 Fasals; and

(c) whose age on the first day of January of the year in which recruitment is made, does not exceed 45 years.

(2) Appointment to the Selection grade of the Service shall be made by promotion from amongst permanent Collection Amins in the Ordinary grade as provided in Part VI of these rules."

11. While inviting attention of this Court towards Rule 4 of the Service Rules, the learned counsel for the petitioners submitted that it is the obligatory on the part of the State to undertake the revision of the cadre strength at reasonable intervals to meet out the requirement of the services. Learned counsel for the petitioners has vehemently relied upon the judgment of S. Ramanathan (supra) of Hon"ble Supreme Court. He has invited attention of this Court towards paragraph 6 of the judgment. In the case of S. Ramanathan: (2000 AIR SCW 4549)(supra), it appears that the cadre strength of I.A.S services has already been increased in the year 1991 but

the same was not taken into account for the purposes of promotion. Hence, the Hon"ble Supreme Court had directed to consider the case of the promotees keeping in view the enhanced cadre strength. Relevant portion from the judgment of S. Ramanathan (supra) is reproduced as under:

"But it cannot be denied that if there has been an infraction of the provisions and no explanation is forthcoming from the Central Government, indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a Court and a Court in its turn would be well within its jurisdiction to issue appropriate directions, depending upon the circumstances of the case. When certain power has been conferred upon the Central Government for examining the cadre strength, necessarily the same is coupled with a duty to comply with the requirements of the law and any infraction on that score cannot be whittled down on the hypothesis that no vested right of any employee is being jeopardised. The learned Additional Solicitor General is not in a position to refute the fact that in the event, the cadre strength, which has in fact increased in the year 1991 is taken into account, then in the matter of determination on the question of promotion, some additional advantage could be available to the employees in the erstwhile State Cadre, who have been considered for promotion to the Indian Police Service. That apart when Rules and Regulations provide for certain things to be done at a certain period, the same should normally be observed and if there has been a failure, the Court should compel the performance of that duty. In the case of Syed Khalid Rizvi and Ors. v. Union of India and Ors., 1993 Supp.(3) SCC 575, a three Judge Bench of this Court had examined the provisions of the IPS (Regulations of Seniority) Rules, 1994 and other provisions of the Recruitment Rules, Cadre Rules and Appointment by Promotion Regulation and it was observed:

The leeway and liberty given to the State Government under Regulation 8 of Promotion Regulations read with Rule 9 of the Cadre Rules is only to cope up with administrative exigencies but it became a breeding ground to distort the operation of the Rules which should scrupulously be eschewed and avoided."

12. Thus, the case of S. Ramanathan: (2000 AIR SCW 4549)(supra) does not seem to be applicable under the facts and circumstances of the present case. In the present case, the cadre strength of Collection Amins has not been increased. Only the District Magistrate has forwarded a recommendation to the Commissioner, Faizabad Region, Faizabad, which, according to the petitioners' counsel is still pending. It has also been submitted by the learned counsel for the petitioners that recommendation sent by the District Magistrate is preceded by Government Order. However, in the case of S. Ramanathan (supra), Hon"ble Supreme Court ruled that where the government is conferred with certain power, it is coupled with a duty to comply with the requirements of the law. However, increase of cadre strength falls within the administrative domain of the State Government and what should be the number of vacancies or cadre strength in the particular government services, is a

question, which falls within the administrative domain of the State Government, and unless there appears to be high handedness and arbitrariness on the part of the State Government, ordinarily, no mandamus may be issued by this Court for the purposes.

13. However, there is one another aspect of the matter. The District Magistrate while forwarding the recommendation vide his letter (supra) assessed the work load of the district and found that the present staff is not sufficient to meet out the exigencies of services i.e. why he recommended that the additional strength to the tune of 60 Collection Amins, 60 Collection Peons, 10 Sahayak Wasil Waki Nabis and 02 Naib Tahsildars may be increased. The letter was sent on 1532005 and according to the learned counsel for the petitioners in spite of lapse of almost more than three years it is short of progress. The 35% vacancies against which the petitioners are entitled to be considered for absorption is to be done before they attain the age of 45 years. In case, a belated decision is taken by the State Government for the increase of the cadre strength that shall jeopardise the service career of the petitioners. Hence, it shall be appropriate that the opposite parties should take appropriate decision with regard to enhancement of cadre strength in the light of the recommendation sent by the District Magistrate (supra) on an early date and in terms of the judgment passed earlier by this Court. The petitioners shall be permitted to continue on the post of Collection Amin and their services shall not be dispensed with.

14. So far as the submission of the learned counsel for the petitioners with regard to issuance of mandamus for increase of cadre strength is concerned, fails. However, a writ in the nature of mandamus is issued directing the respondents to take a decision for the increase of cadre strength in the light of the recommendation sent by the District Magistrate vide his letter 1532005 (Annexure No. 6 to the writ petition) on an early date expeditiously, say within a period of six months from the date of receipt of a certified copy of this order and reconsider the petitioners' case for regularisation in accordance with service rules.

15. The writ petition is disposed of finally. No order as to costs.