
Tribhuwan Dhar Mishra and Others Vs State of U.P. and Others

Civil Miscellaneous Writ Petition No. 36070 of 2001

Court: Allahabad High Court

Date of Decision: Sept. 16, 2001

Acts Referred:

Constitution of India, 1950 – Article 14

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

Bench: Single Bench

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 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-J 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 Govt. 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 tine 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 Shre Veer Pratap is not working in the Deptt.

15. 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 71, 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 Sri Indra Mani 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.

16. 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 cases were not

considered for regularisation, therefore, the Respondents cannot legally 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.,

17. 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.

18. 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 06.12.88

(ii) Sanjeev Kumar Pandey Junior 13.04.93

(iii) Ganesh Singh Junior 26.08.93

(iv) Ghanshyam Pandey Junior 30.07.96

(v) Jaya Kant Dubey Outsider 1.12.92

(vi) Shyamdhar Tiwari. Outsider 1.12.92

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 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.

18. 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-avis the Petitioners. The Respondents being State authorities have not acted in all fairness and the

way 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 are 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.

19. In view of the above observations/directions, the writ petition is allowed.

No order as to cost.