

**(2012) 12 AHC CK 0193**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 59570 of 2009

Shyam Manohar Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Dec. 6, 2012

**Citation:** (2013) 2 ADJ 328

**Hon'ble Judges:** Tarun Agarwala, J

**Bench:** Single Bench

**Advocate:** Vinod Sinha and Mahesh Sharma, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

Tarun Agarwala, J.

Heard the learned counsel for the parties.

The petitioner is working as a Seasonal Collection Amin in Tehsil Salempur, District Deoria since February, 1985. The petitioner applied for regularization of his services under the U.P. Collection Amin Service Rules 1974. When his claim was not considered, he preferred Writ Petition No. 17935 of 1996 which was dismissed against which a Special Appeal No. 378 of 1997 was filed which was allowed by a judgment dated 29th December, 2001. The Division Bench held that Rule 5(1) of the Rules of 1974 was not considered by the learned Single Judge nor by the authority and consequently, the Court remitted the matter to the authority to reconsider the matter afresh. The Court also observed that the petitioner cannot be non suited on the ground that he had become overage and consequently, if the age comes in the way of the regularization, the same shall be deemed to have been waived.

Pursuant to the said order, the District Magistrate again passed an order dated 24th May, 2004 rejecting the claim of the petitioner on the ground that no recovery was made by the petitioner in the last four faslis and that it was not upto 70%. The petitioner, being aggrieved, filed Writ Petition No. 50758 of 2004 which was again allowed and, the Collector was directed to decide the matter afresh. The Court

found that the petitioner had made, more than 70% recovery and was categorised in "A" category and, in the absence of any counter-affidavit being filed, the impugned order could not be sustained and was quashed.

2. Pursuant to the direction of the Writ Court, the District Magistrate has again passed the impugned order dated 31st March, 2009 rejecting the claim of the petitioner on the ground that for the years 2006-09, the petitioner has made a recovery of less than 70% and therefore, he has not entitled to be regularised under Rule 5(1) of the Rules. The petitioner, being aggrieved, by the aforesaid order, has filed the present writ petition.

3. From the aforesaid, it is clear that this is the fourth round of litigation and that the petitioner's claim is being rejected for one reason or the other, basically on the ground that he has made a recovery of less than 70%. The Court fails to understand as to how the recovery of the years 2006-2009 is now being taken into consideration. The petitioner had made a claim for regularization of the services as far back in the early 1990s which claim was rejected. The Writ Court allowed the petition and remanded the matter back. Consequently, the claim of the petitioner for regularization was required to be considered in respect of the earlier faslis and the present years was not required to be considered.

4. The Court further finds that persons similarly situated to the petitioner whose claim was earlier rejected were granted the relief and were regularised with retrospective effect, but in the petitioner's case the relief has been denied. The Court gets a feeling that the respondents are deliberately denying the relief to the petitioner and consequently, for the aforesaid reasons, the impugned order cannot be sustained and is quashed. The writ petition is allowed. No useful purpose would be served in remitting matter back to the authority to decide the matter afresh since the Court finds that this is the fourth round of litigation and that there is a deliberate attempt on the part of the respondents to deny the claim for one reason or the other. The fact remains that in the judgment of the Court dated 28th July, 2008 passed in Writ Petition No. 50758 of 2004, the petitioner had been categorised in "A" category and had made a recovery of more than 70% which had never been disputed by the respondents and consequently, the Court is of the opinion, that no useful purpose would be served in remitting the matter to the respondents to decide the matter afresh. The Court is of the opinion, that the time has come to issue a positive mandamus, The Court, consequently, issues a writ of mandamus commanding the respondents to issue an order of regularization of the service of the petitioner under the Rules of 1974 on the post of Seasonal Collection Amin. This order is required to be passed within four weeks from the date of production of a certified copy of this order. In view of the fact that the petitioner is fighting for his right for the past 16 years, the Court directs that he is entitled for cost which the Court computes at Rs. 16,000/- which shall also be paid by the respondents to the petitioner within the aforesaid period.