

(2004) 11 AHC CK 0254

Allahabad High Court

Case No: Civil Misc Writ Petition No. 12110 of 2003

Prem Lal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 18, 2004

Citation: (2005) 5 AWC 4156 : (2005) 104 FLR 460 : (2005) 1 UPLBEC 613

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Advocate: K. Shahi and Krishna Kant, for the Appellant; C.S.C., for the Respondent

Judgement

Shishir Kumar, J.

By means of the present writ petition the petitioner have approached this Court for issuance of a writ of certiorari quashing the Order dated 9.12.2002 passed by the District Magistrate, Maharajganj, Annexure 11 to the writ petition and for a direction to respondent No. 2 to treat the petitioners as all the year round Collection Amins and to pay their salary.

2. It is stated that initially the petitioners No. 1 and 2 were appointed as Takabi Amin in the years 1973 and 1972 respectively. The Selection Committee prepared a select list for the post of Collection Amin, which contained the names of petitioners No. 1 and 2 at Serial Nos. 39 and 159 respectively. But the appointment, which was given to the petitioners, has wrongly been mentioned as Seasonal Collection Amin. Subsequently, in the year 1978, another list was prepared containing the names of 102 persons ignoring the seniority of the employees. The aggrieved persons approached the U.P. Public Services Tribunal and the said list dated 5.12.78 was set aside the Collector concerned was directed to prepare a fresh list and as such the petitioners were entitled to be appointed on the post of all the year round Collection Amin on the basis of the select list of 1978. The said judgment has become final, but nothing was done. Then the petitioners approached this Court by way of filing Writ Petition No. 32089 of 1991 and the same was disposed of finally by the Order dated 14.12.1998 and a direction to this effect was issued for consideration of the case of

the petitioners according to the seniority and for consideration of regularization. But inspite of the aforesaid fact, the District Magistrate without any notice and opportunity to the petitioners and considering the previous Orders and the evidence available on record, has passed the impugned Order rejecting the claim of the petitioners vide Order dated 9.12.2002. The petitioners submit that the Order passed by the respondent No. 2 is an Order without considering the fact and the Rules, which have been framed, and taking into consideration the fact that considerable period rendered by the petitioners as Seasonal Collection Amins. The basis of rejection of the candidature of the petitioners for the purposes of regularization is not correct as while considering the case of the petitioners, respondent No. 2 has held that as the recovery of revenue was not up to the mark, the petitioners have not been permitted to work, as such they are not entitled for regularization. The petitioners further submit that the petitioners have fulfilled all the criteria of the said Niyamawali of 1992 and according to the aforesaid Niyamawali 35% of the posts is to be filled up from amongst the Seasonal Collection Amins. One of the criteria is that though Seasonal Collection Amins who have at least worked satisfactorily for four Faslis and at the time of consideration, they should not be above 45 years of age. The petitioners submit that there are no criteria for the purpose of regularization that if an employee has not worked continuously, then he should not be considered. The petitioners further submit that in view of the seniority list, the petitioner is entitled for regularization. The petitioners further submit that the junior persons of the petitioners have been considered and regularized.

3. I have heard the learned Counsel for the parties. As the counter and rejoinder affidavits have already been exchanged, therefore, with the consent of the parties, I dispose of this writ petition finally at the admissible stage.

4. Taking into consideration the facts and circumstances of the case, I am of view that the Order dated 9.12.2002 passed by the respondent No. 2, which is Annexure 11 to the writ petition is illegal and based on irrelevant considerations, therefore, the same is liable to be set aside.

5. In view of the aforesaid fact, the Order dated 9.12.2002; Annexure No. 11 to the writ petition is quashed. The matter is remitted back to respondent No. 2 to consider the case of the petitioners for regularization taking into consideration the seniority list and the fact that the similarly situated junior persons to the petitioners have been considered and regularized, after giving opportunity of hearing to the petitioners.

6. With these observations the writ petition is disposed of . No Order as to costs.