

Court No. - 20

Case :- WRIT - A No. - 5324 of 2023

Petitioner :- Syed Tanveer Hasan

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Lko.
And 4 Others

Counsel for Petitioner :- Zubair Hasan, Shabih Fatima

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Sandeep Dixit, learned Senior Counsel assisted by Mr. Zubair Hasan, learned counsel for petitioner and Mr. Kuldeep Pati Tripathi, learned Additional Advocate General assisted by Mr. Vivek Shukla, learned Additional Chief Standing Counsel for State opposite parties.

2. Petition has been filed challenging order dated 13.06.2023 to the extent 'who have submitted their joining by 31.12.2019' as being against the relevant Service Rules of 1966, 1991, 1994 and 2003. Further prayer to issue a direction to opposite parties to consider petitioner for promotion to the post of Tehsildar in terms of his seniority as evidenced from the substantive appointment list issued by the U.P. Public Service Commission has also been sought.

3. By means of amendment, petitioner has also sought quashing of the order dated 14.07.2023 issued by the State Government granting relaxation in eligibility as well as a direction commanding the opposite parties to consider petitioner's initial date of joining as 23.10.2019 instead of 27.02.2019 and for payment of salary with all consequential benefits for the period from 23.10.2019 to 26.02.2023.

4. It has been submitted that in pursuance to advertisement

dated 10.01.2016 for PCS examination, petitioner applied for the same and was included the select list dated 05.04.2019 for purposes of appointment on the post of Naib Tehsildar whereafter the appointment order was also issued on 03.09.2019 with his name being indicated at serial no.9 and being ranked at serial no.12 in the merit list. However, since his name in the select/appointment list was incorrectly indicated as Sayyed Tanveer Hasan instead of Syed Tanveer Hasan, petitioner while submitting his joining on 23.10.2019 indicated the aforesaid discrepancy due to which the authority concerned vide letter dated 24.10.2019 sought a clarification from the Public Service Commission regarding correct name of petitioner. It is submitted that due to aforesaid discrepancy and clarification being sought, petitioner was not permitted to join on the post on 23.10.2019.

5. Learned counsel has drawn attention to the letter dated 17.01.2020 sent by the Public Service Commission to the Commissioner, Revenue Board in which it has been indicated that the name of petitioner has been correctly indicated by the Commission in the select list which was sent to the State Government vide letter dated 05.04.2019 itself and since correct name of petitioner has already been indicated, there is no occasion for issuing any corrected select list or making any amendment therein. In pursuance of aforesaid letter, the Commissioner, Revenue Board vide letter dated 25.02.2020 directed correction of petitioner's name in the appointment list with further direction that the aforesaid list would be deemed to be corrected to the said extent. In pursuance of the said letter, petitioner was permitted to join on 27.02.2020.

6. It has been submitted that subsequently in view of the fact that there were various posts of Tehsildar lying vacant, the

Revenue Board vide letter dated 29.05.2023 sought relaxation in the eligibility for consideration of Naib Tehsildars to the post of Tehsildar. The letter specifically indicated the various vacancies as also the fact that as per Service Rules, 5 years of eligible service is required for a person holding the post of Naib Tehsildar to be considered for promotion on the post of Tehsildar but since only 15 Naib Tehsildars were coming within the zone of eligibility, relaxation of 4 years eligible service as per proviso to the amendment of 1999 was adverted to. It was also indicated that since 141 persons currently working on the post of Naib Tehsildar had put in service of 3 years and 6 months, 6 months relaxation was sought.

7. Learned counsel has also adverted to the order dated 14.08.2023 whereby such relaxation for 6 months has been granted by the State Government whereafter Departmental Promotion Committee (hereinafter referred to as 'DPC') was held and promotions have already been effected on the post of Tehsildar.

8. It has been submitted that a perusal of impugned orders will make it evident that the relaxation of 6 months has been granted with a stipulation that names of only such Naib Tehsildars would be considered who had joined on their post by 31.12.2019. It is submitted that such a cut-off date has been fixed in an arbitrary manner ignoring the fact of substantive appointment of a person and placing reliance only on the aspect of the date of joining, which has not been prescribed anywhere in the Rules.

9. In the alternative, it has been submitted that once the fault lay with opposite parties in not correcting the petitioner's name in the appointment letter subsequent to the letter issued by the Public Service Commission on 05.04.2019, excluding petitioner

from the zone of consideration for appointment for promotion on the post of Tehsildar would amount to benefit of their own wrong being granted to the opposite parties. Learned counsel has adverted to judgments rendered in the following cases :-

(i) Union of India and Others Vs. K.B. Rajoria, (2000) 3 SCC 562.

(ii) UPSRTC Vs. Shri Narain Pandey, 2010 (28) LCD 963.

10. Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with the submission that even though petitioner may have been included in the select list and the appointment order issued on 03.09.2019 but since the rules prescribed 5 years eligible service eligibility of a person having rendered service on the post in the feeding cadre, such date necessarily has to advert to the date of joining by a person, which has been correctly done in the present case and since petitioner's first joining even otherwise was on 27.02.2020, he did not come within the zone of consideration due to which he has been rightly excluded.

11. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the only question arising for determination is whether the petitioner's eligibility for consideration for promotion on the post of Tehsildar is required to be the date of substantive appointment or the date of joining?

12. With regard to aforesaid determination, it will be useful to advert to the U.P. Subordinate Revenue Executive (Tehsildar) Service Rules, 1966 in which Rule 6 prescribes eligibility for holding the post of Tehsildar. The said Rule initially prescribed a minimum period of 7 years of service having been rendered

by a person on the post in the feeding cadre of Naib Tehsildar. The said Rules were thereafter amended in the year 1999 vide notification dated 23.03.1999 whereby Rule 6 of the Rules of 1966 was amended to the extent that the period of service rendered as Naib Tehsildar was reduced from 7 years to 5 years. A proviso was also included to the effect that in case no eligible person was available for consideration for promotion as per the main Rule, such persons who had rendered at least 4 years of substantive service/ absorbed service on the feeding post could also be considered.

13. It is in terms of the aforesaid amendment that the letter dated 29.05.2023 was issued by the Revenue Board to the State Government seeking relaxation. The said letter clearly indicates the various vacancies on the post of Tehsildar which were required to be filled up on an urgent basis. The letter also indicates that even as per the proviso, only 15 Naib Tehsildars were eligible for being considered for promotion on the post of Tehsildar. It was also indicated that for the recruitment year 2023-24, 141 Naib Tehsildars had put in a minimum service of 3 years and 6 months as on 01.07.2023 and therefore recommendation was made for relaxation of 6 months in order to enable such 141 Naib Tehsildars to come within the zone of eligibility.

14. By means of impugned letter dated 13.06.2023, the Commissioner, Revenue Board sent reminder to the State Government with regard to such relaxation as sought vide letter dated 29.05.2023 whereafter such relaxation has been granted vide impugned order dated 14.08.2023 by the State Government and recommendations for such promotion of 141 Naib Tehsildars was made and effected ignoring the name of petitioner.

15. A perusal of the Rule 6 of the Rules of 1966, which admittedly are applicable on petitioner indicates eligibility of a minimum of 7 years for a person working on the feeding post of Naib Tehsildar. The said provision clearly indicates that for a Naib Tehsildar to come within the zone of eligibility, it is essential that he should have completed 7 years of substantive or absorbed service in the feeding post. The said Rule 6 of the Rules of 1966 have thereafter been amended in 1999 as indicated here-in-above. However, the aspect of a Naib Tehsildar being required to complete at least 5 or 4 years of substantive/absorbed service in the feeding post is maintained.

16. Although, the word substantive service has not been defined in either the Rules of 1966 or even in the amendment in 1999 but it would be useful to advert to the U.P. Government Servant Seniority Rules, 1991 for examining the definition of such a word since admittedly, the aforesaid Seniority Rules of 1991 are also applicable on petitioner. Rule 4 (h) of the Rules of 1991 define substantive appointment as follows:-

"Rule 4 (h)- 'substantive appointment' means an appointment, not being an ad hoc appointment, on a post in the cadre of the Service, made after selection in accordance with the service rules relating to that service."

17. The aforesaid definition of '*substantive appointment*' would therefore mean an appointment which is not in the nature of ad hoc appointment but is to be on a post in the cadre of the service made after selection in accordance with service rules relating to that service.

18. In the present case, admittedly, petitioner has been appointed in the cadre of service after selection in accordance with the service rules relating to the post of Naib Tehsildar and therefore, in the considered opinion of this Court, the initial appointment of petitioner on the post of Naib Tehsildar as on

03.09.2019 would come within definition of substantive appointment. Vide letter dated 29.05.2023, the Revenue Board had sought relaxation of 6 months in service rendered by 141 Naib Tehsildars. The said letter also clearly indicates relaxation to be granted in the eligibility which would be referable to the service rules applicable upon petitioner. Even in the impugned letter dated 13.06.2023, relaxation has been sought with regard to aforesaid eligibility condition. However, in all the letters as well as in the impugned order dated 14.08.2023, the cut off date of 31.12.2019 has been fixed for eligibility purposes which as per the letters should be the date by which a Naib Tehsildar had joined the post.

19. From the aforesaid letters as well as the impugned orders, it is thus evident that relaxation in eligibility criteria has been based on the date of joining of a selected candidate on the post of Naib Tehsildar.

20. The Rules of 1996 as they were initially or even after amendment in 1999, therefore, clearly advert to minimum service rendered by a person to be substantive/absorbed service. There is no provision in the rules that eligibility for consideration for promotion is to be on the basis of date of joining of a person or that substantive service is to be treated to be service rendered only after joining of an employee. The fact that opposite parties themselves are treating the aforesaid eligibility on the basis of initial date of appointment and not on the date of joining is quite evident from the letter dated 29.05.2023 seeking relaxation in eligibility while indicating that 141 persons currently working on the post of Naib Tehsildar have put in 3 years and 6 months and due to which 6 months relaxation was required. The said fact clearly indicates that 3 years and 6 months have been counted by the opposite parties

themselves from the date of initial appointment in pursuance of select list and not from the date of joining of every individual person, which may be different for each one of them.

21. In the counter affidavit filed by the opposite parties, no rule, circular or notification has been indicated whereby the date of substantive appointment can be taken to the date of joining of a person. On the contrary, a plain reading of the Rules of 1966 as amended in the year 1999 read with Rules of 1991 clearly indicate the fact that substantive appointment is the date on which a person has been selected after following the due process of selection as per Service Rules applicable upon him. The said aspect has also been dealt with by a Supreme Court in the case of ***Union of India and Others Vs. K.B. Rajoria, (2000) 3 SCC 562***, in the following paragraphs :-

"9. Third, the High Court erred in construing the words "regular service in the grade" as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that "ad hoc service rendered by any of the parties would not count towards eligibility".

10. Finally, while considering the definition of the word "regular" in the Concise Oxford Dictionary, Ninth Edition, the High Court noted that it meant:

(1) conforming to a rule or principle; systematic. (2) harmonious, symmetrical. (3) acting or done or recurring uniformly or calculably in time or manner, habitual, constant, orderly; (4) conforming to a standard of etiquette or procedure, correct, according to convention; (5) properly constituted or qualified, not defective or amateur, pursuing an occupation as one's main pursuit."

11. The word "regular" therefore does not mean "actual" and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or was it irregular in the sense that it was contrary to any principle of law.

12. The decision which is somewhat apposite is the case of K. Madhavan V. Union of India, 1987 (4) SCC 566, where the eligibility requirement was eight years in the grade "on a regular basis". In that case it was held:

"In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to

appointment on ad hoc or stopgap or purely temporary basis."

22. The said judgment has also been followed by the Division Bench of this Court in the case of ***UPSRTC Vs. Shri Narain Pandey, 2010 (28) LCD 963.***

23. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that the expression substantive appointment or regular appointment does not need actual or physical joining on the post and would in fact be referable to the appointment of a person made in pursuance of selection in accordance with service rules applicable upon him. In fact, there is no legal sanctity as per the rules applicable upon petitioner that date of joining can be considered to be the date of substantive appointment of petitioner.

24. Another interesting aspect which is required to be taken into consideration is the fact that when petitioner sought to submit his joining on 23.10.2019 in pursuance of his appointment on 03.09.2019, he merely indicated discrepancy in his name. The said discrepancy was referred to the Public Service Commission by the District Magistrate concerned on 24.10.2019 whereafter the Public Service Commission in its letter dated 05.04.2019 clarified that the Commission had always sent correct name of petitioner and discrepancy in fact has occurred at the State Government level and therefore there was no occasion for such a clarification or modification to be issued.

25. It is on the basis of the aforesaid letter dated 05.04.2019 that petitioner was subsequently permitted to join his post on 27.02.2020 after correction of his name by State Government.

26. The said facts clearly indicate that error in the name of petitioner was by the State Government itself which was

clarified by the Public Service Commission. There is no material on record to indicate any role of petitioner in such discrepancy being made by the State Government.

27. Permitting the opposite parties to assume petitioner's joining as 27.02.2020 instead of 23.10.2019 would therefore amount to permitting State Government to take benefit of its own wrong and carelessness. Such a state cannot be permitted.

28. Considering the aforesaid discussion, it is evident that petitioner was selected and appointed on 03.09.2019 in accordance with law whereafter he was not permitted to join his post on 23.10.2019 only due to an error on the part of State of Government itself, which was clarified in February, 2020 whereafter he was permitted to join. Such joining even on 27.02.2020 would definitely relate back to 23.10.2019, which was the date on which petitioner first sought his joining.

29. In view of the aforesaid, it is held that petitioner's date of joining in pursuance of his selection and appointment on 03.09.2019 would in fact be 23.10.2019 and not 27.02.2020.

30. Considering the aforesaid, it is thus not necessary for this Court to interfere with the orders impugned in any manner.

31. Earlier vide orders dated 23.08.2023 and 18.09.2023, the Commissioner and Secretary, Board of Revenue and the Chairman, Board of Revenue, respectively had appeared before this Court and had filed their personal affidavits to indicate that the figure of 141 posts sent for requisition for consideration of promotion on the post of Tehsildar is not sacrosanct and, in case, petitioner is found to be eligible, his name would also be considered. In the order dated 18.09.2023, a statement was also made that as on that date 311 vacancies still remain on the post of Tehsildar on which petitioner can be considered as per final

orders of this Court.

32. In view of aforesaid, writ in the nature of mandamus is issued commanding the opposite parties to consider petitioner's case for promotion on the post of Tehsildar by holding a review DPC within a period of three weeks from the date a certified copy of this order is produced before the concerned authority taking the petitioner to be within the cut-off date as prescribed by the opposite parties themselves. A further direction is issued that in case petitioner is found eligible and is promoted on the post of Tehsildar, he shall be provided seniority taking his date of substantive appointment as 03.09.2019 and joining as 23.10.2019. Benefits as made available to the juniors shall also be available to him. However, the period from 03.09.2019 till 27.02.2020 shall be considered for service benefits on a notional basis only.

33. Resultantly, the petition succeeds and is **allowed**. Parties to bear their on costs.

Order Date :- 16.11.2023
Mohd. Sharif