

Neutral Citation No. - 2024:AHC-LKO:26672

Court No. - 6

Case :- WRIT - A No. - 6296 of 2014

Petitioner :- Om Diwakar Singh

Respondent :- State Of U.P. Thru Its Secy.To Govt.Revenue
Deptt.Lko.Andors.

Counsel for Petitioner :- Ritesh Kumar Singh,Atul Kumar
Srivastava,Pradeep Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard.

2. Instant writ petition has been filed praying for a mandamus commanding the respondents to pay the petitioner the arrears of salary and promotional benefits since 27.01.2004 till 29.06.2014 treating him in continuous service on the post of regular Collection Peon in accordance with law.

3. The contention of learned counsel for the petitioner is that the petitioner had been appointed as a Seasonal Collection Peon in the year 1993 and continued to work under the respondents intermittently and was given artificial breaks.

4. As the services of the petitioner were not being regularised he was constrained to approach this Court by filing Writ Petition No.1015 of 1993 (SS) in re: Om Diwakar Singh vs. State of U.P. and others. This Court vide judgment and order dated 27.01.2004, a copy of which is Annexure-1 to the writ petition, disposed of the writ petition with a direction that in case the petitioner is working as Collection Peon in ad-hoc capacity, he shall not be discontinued and shall be allowed to continue. Further, the Court commanded the respondents to fill 50% of the vacancies from the seniority list by selection on the basis of seniority subject to rejection of unfit; the respondents would not make any appointment from other source till the vacancies are filled from amongst Seasonal Collection Peons and existing

vacancies shall be filled in accordance with Notification dated 08.01.1996 within two months.

5. In pursuance thereof, the claim of the petitioner for regularisation was considered but as he was aged more than 45 years and the age specified in the Rules is 45 years consequently the matter of the petitioner for age relaxation was sent to the Government vide order dated 13.09.2005, a copy of which is Annexure-2 to the writ petition.

6. Incidentally while sending the case of the petitioner for age relaxation the District Magistrate, Sultanpur has indicated that the petitioner is suitable for being regularised as emerges from perusal of the order in this regard, a copy of which is Annexure-3 to the writ petition.

7. Subsequent thereto, the petitioner was not regularised rather his regularisation was rejected by the competent authority vide order dated 31.08.2006, a copy of which is Annexure 4 to the writ petition, on the ground that the seniority list which has been drawn up has not been drawn up in accordance with rules and the petitioner is not entitled for being regularised.

8. The petitioner was again constrained to approach this Court by filing writ petition Service Single No.666 of 2012 in re: Om Diwakar Singh vs. State of U.P. and others. During pendency of the writ petition itself, the petitioner was appointed on the post of regular Collection Peon vide order dated 30.06.2014 and considering this, the Writ Court vide order dated 03.07.2014, a copy of which is Annexure-8 to the writ petition, disposed of the writ petition finding that the petitioner has been regularly appointed.

9. As various persons junior to the petitioner had been regularised and the petitioner had only been regularised on 30.06.2014 consequently the petitioner has been constrained to file the instant writ petition with the reliefs as aforesaid.

10. Learned counsel for the petitioner states that the petitioner has also retired on attaining the age of superannuation on 31.01.2016.

11. The contention of learned counsel for the petitioner is that the petitioner has been litigating right since the year 1993 for redressal of his grievances.

He further states that the respondents themselves have found the petitioner to be eligible for regularisation and had also sent the case of the petitioner for age relaxation which was also acceded too by the Government yet the petitioner has not been regularised while various persons junior to the petitioner as per details indicated in paragraph 11 of the petition have been regularised.

12. The contention is that there cannot be any case of the respondents to regularise the junior persons from the seniority list dated 21.02.2011, a copy of which is Annexure-7 to the writ petition, wherein the name of the petitioner finds place at serial no.10 while persons junior to the petitioner whose name finds place at serial nos.11, 14, 15, 19, 20 etc. have all been regularised.

13. The argument is that once the respondents have proceeded to consider the seniority list dated 21.02.2011 as sacrosanct for the purpose of regularisation of various persons including the persons whose names are borne lower down than the petitioner in the said seniority list consequently there cannot be any occasion for the respondents to have sat over the regularisation of the petitioner and to have not regularised the services of the petitioner on the one hand and to have regularised the services of the juniors of the petitioner as find place in the said seniority list dated 21.02.2011 at an earlier stretch of time and hence the petitioner is also entitled for the benefit of being regularised w.e.f. the date his juniors have been regularised with all consequential benefits.

14. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit has stated that it is only when the claim of the petitioner was found to be in accordance with rules that his services have been regularised vide order dated 30.06.2014 and hence the petitioner is not entitled for any relief.

15. Heard learned counsels for the contesting parties and perused the records.

16. From a perusal of the record, it emerges that the petitioner had initially been appointed as a Seasonal Collection Peon in the year 1993. He had approached this Court praying for regularisation by filing Writ Petition No.1015 of 1993 (SS) which was decided vide order dated 27.01.2004 whereby this Court had required the respondents to fill in 50% of the vacancies from the seniority list by selection on the basis of seniority subject to rejection of unfit and further directed that the petitioner would be allowed to continue to work on ad-hoc capacity. The claim of the petitioner for regularisation was found to be in accordance with rules and the competent authority had referred the matter of the petitioner for age relaxation beyond the age of 45 years to the Government which was duly acceded too. A seniority list was also issued by the respondents on 21.02.2011 in which the name of the petitioner finds place at serial no.10. However, for reason best known to the respondents which is also not apparent from perusal of the counter affidavit which has been filed by the respondents, the claim of the petitioner was not considered for regularisation which constrained him to approach this Court again by filing a writ petition in the year 2012 namely writ petition Service Single No.666 of 2012 which thus entailed the respondents to regularise the services of the petitioner vide order dated 30.06.2014. The petitioner retired on attaining the age of superannuation on 31.01.2016.

17. The grievance of the petitioner is that when the seniority list which has been issued by the respondents on 21.02.2011 has been followed while making regularisation of various persons including the petitioner and the name of the petitioner finds place at serial no.10 vis-a-vis the other persons whose names find place lower down in the said seniority list and the said persons junior in the seniority list have been regularised at an earlier date to that of the petitioner, consequently there cannot be any occasion for the respondents to have not regularised the services of the petitioner at the time of regularisation of services of his juniors which would also tantamount to an action being patently violative of Articles 14 and 16 of the Constitution.

18. A specific averment has been made in paragraph 11 of the petition indicating the juniors to have been regularised from the said seniority list. Incidentally the averments made in paragraph 11 of the writ petition have been replied in paragraph 8 of the counter affidavit wherein the respondents have indicated that the persons mentioned in para under reply were found eligible by the Selection Committee and their age was within the prescribed limit. Thereafter they have been appointed on the basis of recommendation of the Selection Committee whereas the petitioner being overaged, his matter was forwarded to the State Government for relaxation of age.

19. Even if the averments made in the said paragraph of the counter affidavit are taken at their face value yet from a perusal of record it emerges that the case of the petitioner for age relaxation was forwarded by the competent authority vide order dated 13.09.2005 while the seniority list has been issued on 21.02.2011 i.e. after a period of six years. Thus, it is apparent that no satisfactory explanation/reply has been given by the respondents as to why the said said seniority list dated 21.02.2011 in which the name of the petitioner finds place over and above various persons who have been regularised at an earlier stretch of time has not been strictly adhered to.

20. Keeping in view the aforesaid discussion, the writ petition is **disposed of** with a direction to District Magistrate, Sultanpur i.e. respondent no.2 to consider the claim of the petitioner for regularisation w.e.f. the date the persons lower down in the seniority list dated 21.02.2011 were regularised.

21. Let such consideration be done within a period of two months from the date of receipt of a certified copy of this order.

22. Needless to mention that in case the petitioner is regularised from a date prior to his actual date of regularisation i.e. 30.06.2014 then consequences of such regularisation would follow.

Order Date :- 1.4.2024

A. Katiyar