

Court No. - 30

Case :- WRIT - A No. - 8997 of 2010

Petitioner :- Ravi Shankar

Respondent :- State Of U.P. Through The Principal Secy. Revenue
Dept.Lko.

Counsel for Petitioner :- S.K.Khare,M.K. Dixit

Counsel for Respondent :- C.S.C.

Hon'ble Om Prakash Shukla,J.

- (1) This writ petition under Article 226 of the Constitution of India assails the order dated 15th June, 2010 passed by the District Magistrate/Collector, Hamirpur (respondent No.3), whereby the claim of the petitioner for regular appointment/ regularisation on the post of Collection Amin under Rule 5 of the U.P. Collection Amin Rules, 1974, as amended and applicable at the relevant time, was considered and was declined on the ground that the recovery for the last four faslis was not 70%, as was required under the Rules.
- (2) The salient and necessary facts of the case are that the petitioner was initially engaged as a Seasonal Collection Amin in Sadar Tahsil, District Hamirpur in the year 1995. He had worked as Collection Amin from 1995 upto 31.03.2021, however, his regularization under 35% quota in terms of the Uttar Pradesh Collection Amins Service Rules, 1974 (for short, "the Rules, 1974") was not considered, hence the petitioner instituted Writ

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Petition No. 2348 (S/S) of 2010 before this Court for a direction upon the respondents to consider him for regularization on the post of Collection Amin under 35% quota of available vacancies in the district. This writ petition was disposed of finally vide judgment/order dated 04.05.2010 with a direction to the District Magistrate/Collector, Hamirpur to consider and decide the representation of the petitioner.

- (3) Apparently, pursuant to the aforesaid judgment/order dated 04.05.2010, the petitioner moved a fresh representation dated 03.06.2010 in the light of the directions of this Court in the aforementioned writ petition. The said representation was considered and rejected by the District Magistrate/Collector, Hamirpur vide order dated 15.06.2010 on the ground that the petitioner does not fulfill the requisite recovery of 70 per cent, therefore, he was not found eligible for regularization. It is this order dated 15.06.2010, which has been assailed in the present writ petition.
- (4) Heard Shri M.K. Dixit, learned Counsel representing the petitioner, learned Standing Counsel representing the respondents and perused the record.
- (5) Learned Counsel for the petitioner has contended that the impugned dated 15.06.2010 came to be passed rejecting the case of the petitioner on the ground that the petitioner has failed

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to achieve 70% target of recovery and his recovery was merely 63.37% hence he is not entitled for regularization. According to the learned Counsel, the said view taken by the authority concerned is contrary to the law laid down by this Court. He has placed reliance on the following judgments :-

“(i) Suresh Chand Mishra Vs. State of U.P. and others : Service Single No. 2751 of 2014, decided on 21.10.2016;

(ii) Arvind Kumar Shukla Vs. State of U.P. and others : Service Single No. 31133 of 2016, decided on 20.04.2018; and

(iii) State of U.P. and others vs. Sri Surendra Singh : Special Appeal No. 518 of 2000, decided on 15.09.2009.”

(6) Learned counsel for the petitioner has further contended that at that point of time, the average of recovery percentage of the petitioner was 69.74%, which is read as 70%. Learned Counsel has drawn attention to a chart prepared in 2009, wherein the average recovery of Seasonal Collection Amins is recorded. In the said chart, the petitioner's average recovery is 69.74%. This fact is also stated by the petitioner in paragraph-17 of the petition.

(7) Learned counsel for the petitioner has further invited attention of the Court to the reply of the statement of fact made in paragraph-17 of the writ petition, in paragraph-6 of the counter affidavit, the said fact has not been specifically denied, only a general and evasive reply is given therein.

- (8) Learned Standing Counsel, on the other hand, has submitted that the respondent no.3 has not committed illegality in passing the impugned order dated 15.06.2010. The respondent no.3 has considered all aspects of the matter and thereafter has passed the impugned order, therefore, no interference is called for in exercise of power under Article 226 of the Constitution of India.
- (9) Concededly, the petitioner is working since 1995. Rule-5 of the Uttar Pradesh Collection Amins Service Rules, 1974 provides that 35% appointment on the post of Collection Amins shall be made from the Seasonal Collection Amins. The petitioner has brought on record his previous recovery percentage as Annexure No.4 which indicates that his average recovery percentage was 69.74%. Rule-5 of the Rules, 1974 is in the following terms :-

“प्रतिबन्ध यह है कि पैंतीस प्रतिशत रिक्तियों ऐसे सीजनल कलेक्शन अमीनों में से चयन द्वारा भरी जायेंगी—

(क) जिन्होंने कम से कम चार फसलों तक सन्तोषजनक रूप से कार्य किया हो;

(ख) जिनकी आयु उस वर्ष की पहली जुलाई को, जिस वर्ष चयन किया जाय, 45 वर्ष से अधिक न हो:

प्रतिबन्ध यह भी है कि यदि उपयुक्त अभ्यर्थी उपलब्ध न हों तो शेष रिक्तियों सीधी भर्ती के माध्यम से सामान्य अभ्यर्थियों द्वारा भरी जायेंगी।

स्पष्टीकरण— सन्तोषजनक कार्य का तात्पर्य होगा शुरू से अन्त तक अच्छे आचरण को सम्मिलित करते हुए

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अन्तिम चार फसलों के दौरान विहित स्तर के अनुसार
कम से कम सत्तर प्रतिशत वसूली।

(10) The aforesaid Rule provides the regularization of Seasonal Collection Amins against 35% of vacancies. It contemplates following conditions :-

“(i) The seasonal collection amin must have rendered services in at least four fasli;

(ii) He should not be above 45 years by the first July of the relevant year.”

(11) It is true that the explanation of the Rule-5 of the Rules, 1974 refers the satisfactory services in the last four fasli with the prescribed norms of at least seventy percent. The prescribed percentage of the target of the recovery came to be considered in several cases before this Court, way back in the year 2001. A similar issue fell for consideration in the case of **Dinesh Kumar Asthana v. Collector, Azamgarh and others : (2001)** 1 UPLBEC 867. In the said case, the Court held that there may be various factors and reasons when total extent of recovery in a seasonal collection amin's area may not be achieved, such as Government itself kept the recovery in abeyance due to natural calamity. Relevant part of the judgement reads as under:

“Necessary pleadings on this aspect are wanting. Even the Counter Affidavit does not disclose that no person in the list prepared in the year 1993 has been regularised whose recovery was below the prescribed limit or that all persons above such regularized persons were inefficient and or had poor efficiency on comparison. This Court has no means to find out whether the

recovery in a particular year with respect to the petitioner was low for reason other than this own efficiency. It is very relevant circumstance while considering the efficiency of Seasonal Collection Amin. For example, recovery is not possible beyond a certain limit for various factors and reasons like-orders from Court, the total extent of recovery to be made in one's area and/or whether Government itself kept recovery in abeyance due to famine, flood, drought etc. These will be relevant consideration to be taken into account and a Seasonal Collection Amin, being put to sufferance for reasons beyond his control, cannot be non-suited for low recovery as it does not reflect at all upon his efficiency."

(12) The judgment in **Dinesh Kumar Asthana (supra)** has been consistently followed by this Court in the case of **Brijesh Kumar v. Collector/ District Magistrate, Mainpuri and others**, 2001(3) ESC 1325; **Suresh Chandra Sharma v. State of U.P. and others**, Civil Misc. Writ Petition No. 56124 of 2009; **Molhey Ram v. State of U.P. and others**, 2013(31) LCD 2367; **Ramveer Singh v. State of U.P. and others**, Writ-A No. 27358 of 2004.

(13) In the case of *State of U.P. Throu. Prin. Secy. Deptt. Of Revenue Lko. & Ors. v. Pankaj Srivastava*, Special Appeal Defective No. 845 of 2013 also the similar issue was raised. In the said case, the claim of seasonal collection amin for regularization was rejected on the ground that he failed to achieve 70% prescribed norms for recovery. The Court held that the explanation of the said Rule-5 has to be harmoniously

construed with the main provision which is made in the Rules, 1974. The principal requirement under the Rules was that a seasonal collection amin should have worked for at least four fasli and the extent of recovery needs to be assessed with reference to last four fasli during the period when he worked. The relevant part of the order reads as under:

"...However, the norms of 70% recovery, as clarified, must relate to the demand which was actually entrusted to the employee. The satisfactory performance has to be read with reference to the work, which is actually entrusted to the Seasonal Collection Amin.

Learned counsel appearing on behalf of the appellants has submitted that in the memo of appeal, the State has taken a ground that the respondent would not meet the norms of 70% with reference to the work which was entrusted to him."

- (14) The principle of law emanates from the above decision is that the recovery depends upon various factors and only recovery cannot be made sole criterion. It has to be considered along with other requirements mentioned in the Rules.
- (15) The Apex Court in the case of **M/s East India Commercial Co. Ltd. Calcutta and another v. Collector of Customs, Calcutta**, AIR 1962 SC 1893 has held that the law laid down by the High Court is binding on all authorities. The Supreme Court has also held that although there is no provision for the High Court in the constitution like Article 141 which provides

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that the judgements of the Supreme Court are binding on all authorities whether they are party or not. The Apex Court has extended principles of Article 141 of the Constitution to the High Court also. Relevant part of the judgement of the Supreme Court in M/s East India Commercial (supra) is extracted herein below:

"29...We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

- (16) In view of the above, it is clear that if the law has been laid down by the Court, the authority is bound by it whether he is party in the said writ petition or not. Since the law laid down by this Court in the aforementioned case has not been followed by the authority concerned and neither the judgements have been referred, the said order, as I find, needs to be set aside.
- (17) Accordingly, the impugned order dated 15.06.2010 is hereby quashed. The matter is remitted to the authority concerned to consider the case of the petitioner for regularisation/regular appointment afresh in the light of the law laid down by this Court in the aforementioned cases. The said exercise shall be

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completed by the Collector expeditiously, preferably within four months from the date of communication of this order.

(18) The writ petition is, accordingly, **allowed**.

(19) There shall be no order as to costs.

(Om Prakash Shukla, J.)

Order Date :- 9.1.2024

Anand/Ajit