

Jai Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Aug-05-1997

Reported in : 1998(2)AWC992

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Collection Amins Rules, 1974; [Constitution of India](#) - Articles 14 and 16

Appeal No. : C.M.W.P. No. 28988 of 1995

Appellant : Jai Singh

Respondent : State of U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Y.D. Sharma, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner was appointed as Seasonal Assistant Wasil Vaki Navis in Talisil Amipshahar on 1.7.1989 and had worked till 30.7.1993 as is apparent from Annexures-1 and 2. Selection for filling up of vacant post of Assistant Wasil Vaki Navls (hereinafter called as the A.W.V.N.) was held through a selection committee

by respondent No. 2. The petitioner appeared in the selection and having been found successful in the written examination was called for interview by the selection committee which prepared a panel of the successful candidates wherein the petitioner's name was placed at Sl. No. 11. Though the persons placed at Sl. Nos. 1 to 10 and at Sl. No. 12 were given appointment in the post of A.W.V.N. in different Tahsils but the petitioner has been overlooked in the matter of appointment. It is alleged that there are 10 posts of A.W.V.N. still vacant in the office of respondent No. 2 and its subordinates. Despite such vacancy, instead of giving appointment, the respondents are going to fill up those vacancies through open advertisement without absorbing the candidates selected by the selection committee, hence this writ petition.

2. Mr. Y. D. Sharma, learned counsel for the petitioner contends that though there is no rule governing the selection or recruitment of A.W.V.N. but by reason of different pronouncements of this Court, a rule similar to those for recruitment of seasonal collection Amin is required to be followed, i.e., 50% of the posts should be filled up from among the seasonal A.W.V.N. He relies on the decision in the case of *Veerendra Singh v. Collector, Kanpur Dehat and others*, 1995 AWC 397, in support of his contention.

3. Learned standing counsel, on the other hand, contends that the petitioner cannot claim benefit of the said judgment inasmuch as the learned single Judge had in fact indirectly ventured to intrude upon the field of legislation which the Court cannot do.

4. I have heard Mr. Y. D. Sharma, learned counsel for the petitioner and Shri Sabajit Yadav, learned standing counsel.

5. The judgment in the case of *Veerendra Singh (supra)* was rendered relying upon the decision of the Apex Court in the case of *Maharashtra State Cooperative Cotton Growers Marketing Association Ltd. and another v. Maharashtra State Cooperative Cotton Growers Workers Federation Employees Union and another*. AIR 1994 SC 1046, as well as the judgment of this Court in the case of *Rajesh Kumar Khare and another v. State of U. P. and others*, 1993 (1) UPLBEC 729. In the said case, it was found that there existed no service rules governing the services or

appointments of A.W.V.N. whereas the provisions relating to appointment of Collection Amin was directed to be adopted on the analogy that seasonal Collection Amins were treated to be a feeder group for the post of Collection Amin inasmuch as under the U. P. Collection Amins Rules, 1974. 50% vacancies in the post of Collection Amins are to be filled by direct recruitment; 15% by way of promotion from the Seasonal Collection Peons and remaining 35% by promotion from the Seasonal Collection Amins. Whereas there being no feeder group in the A. W. V. N. in the absence of any rule, it was directed that 50% of the vacancies are to be filled up by promotion from the seasonal A. W. V. N. through selection while leaving the balance 50% to direct recruitment. The same view was taken in the case of Smt. Sudha Srivastava v. State of U. P. and others, decided on 16.1.1996, Writ Petition No. 3762 of 1994. In the case of Km. Rozleen Mery Benjamin v. State of U. P. and others, 1996 (I) UPLBEC 7, the ratio was directed at 60 : 40 for promotion and direct recruitment. However, the Division Bench had modified the said ratio to 50% each on an appeal. All these cases were taken note of in the judgment dated 24.3.97 in the case of Thakur Doss Gautam a. State of U. P. and others, Civil Misc. Writ Petition No. 16761 of 1992.

6. Thus, it appears that the question was gone into and dealt with in all the said judgments but the learned standing counsel contends that the question whether the said judgments tend to legislate was not considered or gone into in any of the said judgments.

7. True, that this question does not appear to have been addressed in any of the said judgments but it does not make any difference in the facts and circumstances of the case. Inasmuch as in the said judgments, no attempt to legislate has been undertaken by the Courts as would be evident from the discussion hereinafter. Admittedly, there is no rule governing the services and appointments of A.W.V.N. The service under the State and the persons appointed as A.W.V.N. hold civil posts. In the recruitment thereof. Articles 14 and 16 of the Constitution apply in equal force. At the same time, it is the duty of the State to ensure prevention of injustice and protection from exploitation. Admittedly, the seasonal A.W.V.N. are recruited on the exigency of work for the season. Now having in its for several such seasonal A.W.V.N. working from the season to season some times

continuously for considerable long period by reason of such engagement, these groups of people definitely acquired certain amount of experience. It would be unwise if their experience is not utilised. Admittedly, in the absence of any rules, these seasonal A. W. V. Ns. are not being treated to be the feeder post for promotion to the post of A. W. V. Ns. There is a system of appointment of seasonal A.W.V.N. and again permanent A.W.V.N. Similarly, there are posts of seasonal Collection Amin and then permanent Collection Amin. By reason of U. P. Collection Amins Rules, 1974 (hereinafter called as the Rules, 1974) the Seasonal Collection Amins have been treated to be the feeder post and the appointment has been made through the said rule as indicated above. The persons posted A.W.V.N. are equally situated. A different treatment cannot be given to them from those of the fortunate brethren of these unfortunate people being the seasonal A.W.V.N. from those of seasonal Collection Amin in the matter of recruitment in the post of A.W.V.N. It is not a new system or concept being introduced. The appointment of seasonal A.W.V.N. is being carried on by the State since long before 1974. While the State could enact Collection Amin Rules, 1974. there cannot be any ostensible ground for leaving the field of A.W.V.N. in vacuum. If the State Government does not choose to introduce any rules, the Courts, cannot remain silent onlooker or. when the Government acts arbitrarily or discriminates between the people without any rational ground. In the present case, the Courts have not legislated any rule but merely directed the Government not to act arbitrarily or capriciously or effectuate discrimination. A principle akin to that of U. P. Collection Amins Rule, 1974 for filling up the post of Collection Amin having been found to be justified and which could be depended as an absorbing pad or buffer to protect these unfortunate group from arbitrariness and discrimination. It had also ensured the State's duties and functions as enshrined in Article 46 of the Constitution. Inasmuch as the seasonal A.W.V.N. if they are eased out of the selection in that event it would work a grave injustice to them when equally situated brethren as seasonal Collection Amins are given such an opportunity. While engaging such people in work and then neglecting them in the matter of appointment, surely work out an injustice which the State has responsibility to prevent. Then again by engaging people as seasonal A.W.V.N., the denial of opportunity to be recruited in permanent post by promotion through selection

would definitely mean an exploitation from which it is the duty of the State to save these unfortunate people. The Court had only reminded the State of its responsibility. The Court cannot direct the Government to legislate any law. Similarly the Court cannot encroach upon the jurisdiction of Legislature and itself legislate. The direction to follow similar provision in the same department for another group absolutely on identical pedestal having been thought to be the only mode through which the arbitrariness, the discrimination, the injustice and the exploitation could be saved. Even if the State feels that this is a kind of legislation, it is open to the State to enact a legislation. The said direction does not stand in the way of enactment of legislation by the State. But when the people come to this Court and seek justice against the highhandedness of the executives, a duty is cast on the Court to see that justice is done and to do Justice without encroaching upon the legislation which could very well issue direction to follow for the purpose of making recruitment in a manner which is free from the mischief of arbitrariness, discrimination, injustice and exploitation. Therefore. I am unable to agree with the contention of the learned standing counsel that the decision in the case of Veerendra Singh (supra) had encroached upon the jurisdiction of legislation and had ventured to legislate.

8. Then again in the present case the petitioner was selected by the selection committee and his name was placed at Sl. No. 11. Though persons at Sl. Nos. 1 to 10 and 12 were given appointment, despite having been placed at Sl. No. 11, the petitioner's case was overlooked. Therefore, now the State cannot veer round and take a contradictory stand. In case the petitioner is selected and placed at Sl. No. 11 and the person at Sl. No. 12 is given appointment, then the petitioner is definitely entitled to an appointment unless he is found otherwise unfit for appointment despite having been selected and eligible on other ground. If the petitioner's name is included in the selection list, in that event, if there is any vacancy it is incumbent upon the respondents to give appointment to the petitioners. Therefore, if the petitioner is selected and if his name finds place at Sl. No. 11 in the selection list as aforesaid and if there is any vacancy, he should immediately be absorbed in the post of A.W.V.N. and should be given all benefits of service from the date when the person at Sl. No. 12 in the same selection list was given appointment and shall be entitled to all benefits including seniority and

other service benefits. Accordingly a writ of mandamus do issue to the above extent directing the respondents to consider the petitioner's case as made out in the writ petition with reference to the relevant records and according to the observation made hereinabove subject to the condition that the petitioner was selected and placed at Sl. No. 11 in the selection list and that the person at Sl. No. 12 was already given appointment. Otherwise, the respondents shall consider the petitioner's appointment in accordance with the decision rendered in the case of Veerendra Singh (supra) as followed in the case of Thakur Dass Gautam and others, (supra).

9. In the result, the writ petition succeeds and is allowed to the extent referred to above.

10. There will, however, be no order as to cost.

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