

A.F.R.

Court No. - 10

Case :- SERVICE SINGLE No. - 24928 of 2019

Petitioner :- Shivnandan Prasad Pandey & 2 Others

**Respondent :- State Of U.P. Thru. Secretary Revenue Deptt.
& 2 Others**

Counsel for Petitioner :- Manish Singh

Counsel for Respondent :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.

Heard Shri Manish Singh, learned counsel for the petitioners and learned Additional Chief Standing Counsel representing the State-respondents.

At the outset, it has been informed by the learned counsel for the petitioners that petitioner No. 3-Ravindra Nath has passed away without leaving any heir or legal representative to pursue this writ petition or in whose favour right to sue can be said to survive. Accordingly, the writ petition in respect of petitioner No. 3-Ravindra Nath is hereby abated.

The petitioners, who are said to have been initially appointed on the post of Seasonal Assistant Wasil Baqi Nawis (hereinafter referred to as, 'AWBN') district Sultanpur, have invoked the jurisdiction of this Court under Article 226 of the Constitution of India to challenge the decision taken by the respondents whereby their claim for regular appointment on the post of AWBN has been rejected. The petitioners had earlier filed a writ petition bearing No. 8063 (S/S) of 2011 claiming that they should be regularly appointed on the post in question. The said writ petition was finally disposed of by this Court, vide its order dated 08.11.2011 with the direction to the District

Magistrate to consider the representation to be preferred by the petitioners in respect of their grievances taking into account the relevant rules and materials as also the judgment dated 26.08.2011 rendered by this Court in **Writ A No. 68698 of 2006 (Jiv Kumar Tiwari Vs. State of U.P. and others)**.

In compliance of the said order dated 08.11.2011, the claim of the petitioner for regular appointment was considered by the District Magistrate, who vide his order dated 31.12.2011 rejected the same. The aforesaid order dated 31.12.2011 passed by the District Magistrate Sultanpur came to be challenged by the petitioners in Writ Petition No.749 (S/S) of 2012. The said writ petition was allowed by this Court vide its judgment and order dated 12.09.2014 whereby the order impugned in the said writ petition was quashed and the District Magistrate was directed to examine the case of the petitioners afresh for regular appointment in terms of the order passed by this Court in **Jiv Kumar Tiwari's case (supra)**.

Since in compliance of the said order dated 12.09.2014, the decision was not being taken by the authority concerned, contempt proceedings were initiated by the petitioners by filing Contempt Petition No.93(C) of 2015. It is only once the contempt petition was filed that the matter was considered by the authorities in compliance of the order dated 12.09.2014 passed by this Court, not once but thrice. The first consideration appears to have been made in a meeting held on 03.11.2018 under the chairmanship of Additional District Magistrate (Finance and Revenue). The said committee considered the claim of the petitioners for regular appointment and rejected the same. The minutes of the said meeting held on 03.11.2018 have

been annexed as Annexure No.1 to the writ petition. The authorities again considered the matter relating to claim of the petitioners for regular appointment in a meeting of the officers held on 30.11.2018. The second consideration made for ensuring compliance of the judgment and order dated 12.09.2014, however, also resulted in rejection of the claim of the petitioners. Minutes of the said meeting dated 30.11.2018 are also on record as Annexure No.2 to the writ petition. In the meantime, the Special Appeal preferred by the State Government against the judgment and order dated 12.09.2014 namely, Special Appeal Defective No. 621 of 2018 was dismissed by a Division Bench of this Court, vide its judgment and order dated 27.11.2018. It, thus, appears that matter thereafter was again considered by the Committee headed by the Additional District Magistrate (Finance and Revenue). It is relevant to point out that the said meeting was held on 18.01.2019 after dismissal of the Special Appeal by the Division Bench of this Court on 27.11.2018 whereby the judgment and order dated 12.09.2014 passed by Hon'ble Single Judge in Writ Petition No.749 (S/S) of 2012 was affirmed.

Based on the minutes of the meeting comprising of the officers headed by Additional District Magistrate (Finance and Revenue), dated 18.01.2019 the District Magistrate again rejected the claim of the petitioners. The minutes of the said meeting dated 18.01.2019 are on record at page No. 42 as part of the Annexure No. 3 appended to the writ petition. On the basis of the said minutes dated 18.01.2019, an order was passed by the District Magistrate, Sultanpur on 25.05.2019 whereby one of the writ petitioners in the earlier writ petition, namely,

Surendra Bahadur Singh was given regular appointment, whereas claim of the other persons, who are the petitioners in the present writ petition, namely, Shiv Nandan Prasad Pandey, Musheer Ahmad and Ravindra Nath has been rejected.

Amongst others, the primary ground taken by the learned counsel for the petitioners to assail the decision of the respondents in rejecting the claim of the petitioners for being given regular appointment is that the reasons indicated in the impugned decision are erroneous and hence not tenable and further that the petitioners have wrongly been held to be ineligible for being given regular appointment in terms of the provisions contained in Rule 5 of the U.P. District Offices (Collectorates) Ministerial Service Rules, 1980, amended vide Notification dated 26.05.2011 by proclaiming U.P. District Offices (Collectorates) Ministerial Service (Second Amendment) Rules, 2011 (hereinafter referred to as, the “amended Rules”).

Learned counsel for the petitioners has, thus, emphasized that if the reasons indicated by the authority concerned while rejecting the claim of the petitioners are examined in the light of the correct interpretation of the Rule 5 of the amended Rules, the same would be held to be unsustainable. His further submission is that in terms of Rule 5, the petitioners though are eligible for giving substantive/regular appointment, yet they have been denied their rightful claim even after long litigation. He has also submitted that the impugned decision, if examined carefully, is not found in conformity with the judgment dated 26.08.2011 rendered by this Court in the case of **Jiv Kumar Tiwari (supra)**

Vehemently opposing the prayer made in this writ petition, the learned Additional Chief Standing Counsel has submitted that if the amended Rule 5 is construed in correct perspective, there does appear to be any illegality in the impugned decision whereby the claim of the petitioners for being given regular appointment has been rejected. He has stated that since all the petitioners do not have requisite experience of having worked in the capacity of Seasonal AWBN for at least 4 Fasli years hence, they have rightly been rejected for being considered for substantive/regular appointment in terms of Rule 5 of the Service Rules. .

Learned State Counsel has also raised an objection which may come in the way of the petitioners being granted relief. He stated that the order dated 25.05.2019 passed by the District Magistrate, Sultanpur has not been challenged.

I have given my careful consideration to the competing arguments made by learned counsel for the respective parties and have also perused the record available on this writ petition.

What I find is that the fate of this writ petition revolves around the correct interpretation of Rule 5(ii) of the Service Rules, which was amended vide Notification dated 26.05.2011. Thus, the construction of said Rule is pivotal for decision in this case. The claim of the petitioner for being given regular appointment depends on consideration of the said issue.

The conditions of the service including recruitment/appointment against various ministerial posts in the Collectorates of U.P. including the post of AWBN are governed by U.P. District Offices (Collectorates) Ministerial Service

Rules, 1980 as amended, vide its Second Amendment promulgated on 26.05.2011.

The position which existed prior to the amendment effected on 26.05.2011 and position which emerged after the said amendment has been elaborately dealt with by this Court in the judgment dated 26.08.2011 rendered by this court in **Jiv Kumar Tiwari's case (supra)**.

As observed above, the present case concerns itself with the regular appointment on the post of AWBN from amongst Seasonal AWBN. Prior to amendment in Service Rules effected vide notification dated 26.05.2011, there was no provision of making regular appointment from amongst the Seasonal AWBN, however, by the amendment made in the year 2011 a clear provision has been made for making regular/substantive appointment against various ministerial posts in the Collectorates in the State of U.P. from amongst Seasonal AWBN. For convenience Rules 5 of the Service Rules, as amended vide notification dated 26.05.2011 is being quoted herein under:-

COLUMN-2

Rule as hereby substituted

5. Recruitment to the various categories of posts, in the Service shall be made district wise from the following sources :

Category 'A'

<i>Junior Assistant which term includes Assistant Bill clerk, Ahalmad, Naib Nazir (Grade II), Library Clerk, Assistant Routine Clerk, Assistant Revenue Clerk, Assistant</i>	<i>(I) Fifty percent by direct recruitment. (ii) Thirty percent by selection through the Selection Committee from amongst Seasonal Assistant Wasil Baqi</i>
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<p>Revenue Assistant (Grade III), Assistant English Record Keeper, Assistant Judicial Assistant (Grade-III), Arms Forms-Keeper, Appeal Ahalmad, Assistant Record Keeper, Arrangers, Weeders, Copyist, Assistant Local Bodies, Syaha Naweess,, Suits clerk, Judicial Moharrir, Revenue Moharir, Kurk Ameen, Assistant Record Keeper (Indexer), Town Clerk, Typist, Land Acquisition clerk, Assistant Excise Clerk, Stamp Clerk, Assistant Record Keeper (Revenue), Assistant Record Keeper (Judicial), Despatcher, Assistant Record Keeper (Lekhpal), Political Pension clerk, Local Bodies Clerk, Assistant Commissioner's clerk, Cell Clerk, Junior clerk, Assistant Session Clerk, Nazul clerk, Assistant Moharrier judicial), Embossing Clerk, Junior Clerk, Freedom fighters Clerk, Complaints Clerk, Assistant General Clerk, Small Saving Clerk, Honorary Court Clerk, Auction Clerk, Suits Clerk (Grade-II), Mutation Clerk, Assistant Record Keeper, Assistant Wasil Baqi Navis, Ceiling Clerk, Assistant Chief Revenue Accountant, Agriculture Income Tax Clerk, government Estate Clerk, Money Lending Clerk, Finance and Revenue Clerk, Mela Clerk, Assistant Suits</p>	<p>Navises who have worked satisfactorily for at least four fasli years on the first day of the year in which the selection is made: Provided that the upper age limit for such candidates shall be relaxable by such number of years for which they have worked as Seasonal Assistant Wasil Baqi Navis in Fasli years : Provided further that if sufficient number of eligible and suitable candidates are not available for selection, the remaining posts shall be filled by direct recruitment. (iii) Twenty percent by promotion from amongst substantively appointed Group 'D' employees in accordance with the Uttar Pradesh Subordinate Offices Ministerial Group 'C' Posts of the Lowest Grade (Recruitment by Promotion) Rules, 2001, as amended for time to time.</p>
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<i>Clerk, Ziladar government Estate and any other ministerial posts in the scale of pay Rs. 5200-20200 (Pay Band-1) with Grade Pay Rs.1900.</i>	
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A perusal of the aforequoted amended Rule 5 of the Service Rules shows that in the Collectorates in the State of U.P., there are various posts in the ministerial cadre including the post of AWBN which are described as category 'A' posts in the Service Rules. The provision as contained in Rule 5 provides that 50% appointments against all category 'A' Posts shall be made by way of direct recruitment and 30% category 'A' posts shall be filled in by way of selection through the Selection Committee from amongst Seasonal AWBN, who have worked satisfactorily for at least 4 fasli years on the first day of the year in which the selection is made. It is, thus, clear that Seasonal AWBN are entitled to be considered for their regular appointment not only against the posts of AWBN but also against the various other category 'A' posts, which are all ministerial in nature. (Emphasis by the Court)

It is thus explicit that the scope of regular appointment of Seasonal AWBN is not confined to the post of AWBN alone. Seasonal AWBN, thus, are to be considered for their regular appointment against various posts other than the posts of AWBN as well. In a way, the scope of substantive/regular appointment from amongst Seasonal AWBN gets enlarged by making Seasonal AWBN eligible for being given regular appointment in their 30% quota against the vacancies in various posts including the posts of AWBN. As observed above, it,

thus, does not need any elaboration that the Seasonal AWBN are entitled to be considered for regular/ substantive appointment against various ministerial posts as given and defined in Rule 5 as category 'A' posts.

Coming to the reasons indicated by the District Magistrate, Sultanpur in his order dated 25.05.2019 rejecting the claim of the petitioner for regular appointment, it is found that they have been held to be ineligible for the only reason that they had not rendered their services in the capacity of Seasonal AWBN for at least four fasli years as is the requirement under the amended Rules 5. No other reason has been indicated in the said order. The Committee in its meeting held on 18.01.2019 also does not give any reason other than that the petitioners had not worked for at least 4 fasli years in the capacity of Seasonal AWBN hence, they have been held to be ineligible for being considered for regular appointment.

It is, thus, apparent that the petitioners in the impugned decision have been found to be ineligible not on account of any other reason including the reason of the petitioners being over age etc. It is to be noticed, as submitted by learned counsel for the petitioner, that the petitioners were initially appointed as Seasonal AWBN pursuant to the selection held for the said purpose, which is clear from the interview letter issued to one of the petitioners namely, Shivnandan Pandey, dated 01.08.1986 which has been annexed as Annexure no. 5 to the writ petition whereby the petitioner No.1 was required to appear in interview on 09.08.1986. By such interview letters, the petitioners were required to undergo interview and after being subjected to selection/interview, the petitioners were appointed as Seasonal

AWBN. Annexure no. 6 appended to the writ petition is the select list in which name of the petitioners also figure. Thereafter petitioners were appointed vide order dated 12.08.1986, which has been annexed as Annexure no. 7 to the writ petition. Similarly, the petitioner no. 2 was appointed, vide order dated 22.10.1988, which has been annexed at page 56 of the writ petition. Pursuant to their selection and appointment orders, the petitioners submitted their joining on the post of Seasonal AWBN.

Learned counsel appearing for the petitioners has taken the Court to various orders whereby from time to time additional works have been assigned to the petitioners. These orders are available at page 56, 58 and 60 to the writ petition. Having worked as Seasonal AWBN on their appointment on the basis of selection held, the petitioners, depending on the exigencies which arose in the Collectorate and other related offices under the District Magistrate, Sultanpur, were assigned the work related to various other posts i.e. the posts other than the post of Seasonal AWBN. The work assigned to the petitioners included the work of copyist, bidder, additional copyist and election clerk. These facts are not in dispute. Learned counsel for the petitioners' contention is that having been appointed on the basis of selection held for the post of seasonal AWBN, the petitioners initially worked in the capacity of Seasonal AWBN, however, depending on the exigencies which might have arisen, these petitioners were assigned the work relating to other posts as well. In this view, his submission is that even if the petitioners had not worked for at least 4 fasli years in the capacity of Seasonal AWBN, still they are entitled

to be considered for regular / substantive appointment against one or the other category 'A' posts in terms of the provisions contained in the amended Rule 5 of the Service Rules. Rule 5 (ii) of the Service Rules as has been quoted in the earlier part of the judgment according to which, 30% category 'A' posts are to be filled in by way of selection to be made by the Selection Committee from amongst the Seasonal AWBN.

According to the said Rule, those Seasonal AWBN are eligible for being considered for regular appointment who have worked for at least four fasli years.

The question which falls for consideration of this Court at this juncture is as to whether an employee, initially appointed on the basis of the selection held for the said purposes on the post of Seasonal AWBN and has worked against the said post but subsequently has been assigned the works relating to other posts, will be eligible for being considered for regular appointment in terms of Rule 5(ii) of the amended Service Rules or not.

It is trite in law that court while interpreting any statutory provision cannot either interpolate or intrapolate or substitute or insert any word which is not available in the statutory provisions. However, the Court while giving a correct construction to any statutory provision can always look into the purpose for which such statutory rule is made. It is to be noticed in this case that prior to the amendment in the Service Rules effected on 28.05.2011, there was no provision for making any regular appointment from amongst the Seasonal AWBN, however, after the said amendment came into force, Rule 5 provides that 30% of category 'A' posts given in the said Rule

are to be filled in by way of selection through the Selection Committee from amongst the Seasonal AWBN. It is observed, at the cost of repetition, that the provisions contained in Rule 5 of the amended Service Rules do not confine the regular appointment of Seasonal AWBN only against the posts of Assistant Wasil Baqi Nawis; rather it expands the scope of regular appointment of Seasonal Assistant Wasil Baqi Nawis against various posts which are ministerial in nature other than the post of AWBN. Had the Rule confined regular appointment of Seasonal AWBN against the posts of AWBN alone, it could have been said in Rule 5 of the Service Rules that for regular appointment as AWBN, a candidate should have four years service to his credit in the capacity of Seasonal AWBN. The scope in Rule 5 for regular appointment of Seasonal AWBN stands enlarged and in its fold it encompasses various posts for which experience of having worked as Seasonal AWBN may not be relevant. For example, for the purpose of making appointment on regular basis against the posts of Junior Assistant, Assistant Bill Clerk, Ahalmad and various other category 'A' posts experience of having worked as Seasonal AWBN will not be relevant. This experience of having worked as Seasonal AWBN can be said to be relevant only for the purpose of making regular appointment against the posts of AWBN. Thus, if the provision contained in Rule 5 (ii) is construed to mean that only those Seasonal AWBN will be eligible for regular appointment against category 'A' posts as detailed in Rule 5 itself, who have at least four fasli years experience in the capacity of Seasonal AWBN, the same would not go in tune with the purpose for which amended Rule 5

appears to have been framed. The experience of work in the capacity of Seasonal AWBN can be said to have the nexus with the object of making regular appointment only against the posts of AWBN and not against other posts which have been detailed as category 'A' posts in Rule 5 of the Service Rules.

Experience of having worked as Seasonal AWBN for four fasli years does not carry any rationale or nexus with the object of making regular appointment on category 'A' posts other than the post of AWBN. In the other words, in case any Seasonal AWBN is to be considered for regular appointment within the 30% quota against the posts mentioned as category 'A' posts, the services rendered by a person who is initially appointed as Seasonal AWBN but subsequently has been assigned the work relating to other posts, will also be eligible for being considered for regular appointment.

So far as the facts of instant case are concerned, there is no denial of the fact that all the petitioners were initially subjected to a selection for the purpose of their appointment as Seasonal AWBN. It is also not in dispute that these petitioners, initially, were assigned the work of the post of Seasonal AWBN, however, depending on the exigencies which arose in the office concerned, they performed their duties relating to other posts such as the post of copyist, additional copyist and election elerk etc. It is also noticeable that before assigning these petitioners the work relating to other posts, no new selection had taken place. The petitioners continued to discharge the functions of other posts as assigned to them from time to time though they were initially appointed as Seasonal AWBN on the basis of a selection held for the said purpose.

Accordingly, I have no hesitation to hold that for the purpose of regular appointment against category 'A' posts other than the posts of AWBN insistence of the authority concerned for a candidate on having worked for at least four fasli years in the capacity of Seasonal AWBN is legally not tenable. Rule 5(ii) of the Service Rules as amended vide Notification dated 26.05.2011, in my considered opinion, is thus to be given this interpretation as the purpose of said Rules was to make the Seasonal AWBN eligible for regular appointment not only against the posts of AWBN but against various other ministerial posts as have been given in detail as category 'A' posts in Rule 5 itself.

It is needless to say that this Court as also Hon'ble Supreme Court in various pronouncements have held that any interpretation of any statutory Rule may depend upon the purpose for which the statutory rule is made. The regard can be had in this respect to the judgment rendered by Hon'ble Supreme Court in the case of **Grid Corporation of Orissa Limited and others Vs. Eastern Metals and Ferro Alloys and others, reported in 2011 (11) SCC, 334**. Para 25 of the judgment in the case of **Grid Corporation of Orissa Limited (supra)** is extracted herein below:

“25. This takes us to the correct interpretation of clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made?(ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an

absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See Bengal Immunity Co. Ltd. v. State of Bihar – AIR 1955 SC 661 and Kanailal Sur v. Paramnidhi Sadhukhan AIR 1957 SC 907 and generally Justice G.P.Singh's Principles of Statutory Interpretation, 12th Edition, published by Lexis Nexis - pp 124 to 131, dealing with the rule in Haydon's case (1584) 3 Co Rep 7a: 76 ER 637)".

In view of forgoing discussions made herein above and on the basis of doctrine of purposive interpretation, it is held that what flows from Rule 5(ii) of the Service Rules is that an employee initially appointed as Seasonal AWBN having been subjected to a selection for the said purpose will be eligible to be considered for regular appointment against category 'A' posts as given in Rule 5 provided he has worked satisfactorily for at least four fasli years. However, his work experience cannot be confined to working only against the post of Seasonal AWBN. If such a person is initially appointed as Seasonal AWBN but is subsequently assigned the work relating to other posts, his work experience on other posts for the purpose of regular appointment under Rule 5 of the Service Rules shall also be counted.

As regards the objection raised by the learned counsel for the State that the petitioners have not challenged the order dated 25.05.2019, passed by the District Magistrate, Sultanpur, it may only be observed that said decision is based on the minutes of

the meeting of the Selection Committee held on 18.01.2019. The order dated 25.05.2019 by the District Magistrate has been passed on the basis of minutes of meeting of the said Larger Committee held on 18.01.2019 and these minutes of the meeting held on 18.01.2019 are under challenge in this writ petition. Merely because formal prayer for quashing of the order dated 25.05.2019, passed by the District Magistrate has not been made, will not come in the way of the petitioners being granted relief to which they are otherwise entitled to. Moreover the court in exercise of its jurisdiction under Article 226 of the Constitution of India can always mold the relief in the interest of justice. Thus, the said objection is overruled.

Resultantly, the writ petition is **allowed**. The order dated 25.05.2019, passed by the District Magistrate, minutes of the meeting dated 18.01.2019, minutes of the meeting dated 30.11.2018 and the minutes of the meeting dated 03.11.2011 are hereby quashed.

The Selection Committee/District Magistrate, Sultanpur is directed to consider the case of the petitioner Nos. 1 and 2 for their regular appointment in terms of Rule 5 of the Service Rules as amended, vide Notification dated 26.05.2011 taking into consideration the observations made and the principles laid down hereinabove. The consideration for regular appointment of the petitioners shall be made within a period of two months from the date of production of a copy of this order. The District Magistrate/Members of the Selection Committee is/are also directed to be mindful of the fact that it is the third round of litigation which has arisen out of denial of rightful claim of the petitioners and dispute is now to be given quietus.

The Court expects and hopes that District Magistrate/Members of the Selection Committee shall abide by the observations made in this judgment and take a lawful decision within the time which has been stipulated herein above.

In the facts of the case, there will be no orders as to costs.

Order Date :- 22.9.2020

Sanjay