

Court No. - 39

Case :- SPECIAL APPEAL No. - 348 of 2018

Appellant :- Uma Kant Dikshit

Respondent :- Administrator, Nagar Panchayat And 3 Ors

Counsel for Appellant :- Sudhir Dixit, Beerendra Singh Pal

Counsel for Respondent :- C.S.C., Upendra Kumar

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Nitin Kumar Agarwal, learned counsel for the petitioner-appellant, Sri Upendra Kumar, learned counsel for the respondent Nos. 2 and 3 and learned Standing Counsel for the State.

2. Present intra court appeal is directed against the order of learned single judge dated 15.12.2017 passed in Writ-A No. 47621 of 2003 (Uma Kant Dikshit Vs. Administrator, Nagar Panchayat Jhinhak, Kanpur Dehat & others). For ready reference the order dated 15.12.2017 passed by learned single judge is quoted below:-

"1. Pursuant to order of date passed on Restoration Application, writ petition is restored to its original number.

2. Sri B.S. Pal, Advocate appears for the petitioner and learned Standing Counsel is present for respondent. As requested and agreed by learned counsel for parties, I proceed to hear and decide this case at this stage.

3. Petitioner was a daily wage Tax Collector. Referring to Government Order dated 9.7.1998 the then Adhyaksh Nagar Panchayat Jhinhak, District Kanpur Dehat regularized petitioner on the post of Clerk on 01.01.1999, though the aforesaid Government Order was not applicable to local bodies. Therefore, by impugned order dated 02.09.2003, the Administrator, Nagar Panchayat, Jhinhak, Kanpur Dehat cancelled regularization of the petitioner and directed petitioner to be treated as daily wage employee from the date of impugned order.

4. When questioned learned counsel for the petitioner could not dispute that Government Order dated 9.7.1998 was not applicable to local bodies and it was applicable to State Government employees only. In that view of the matter, order of the Administrator impugned in the writ petition cannot be

faulted.

5. Writ Petition lacks merit and is accordingly, dismissed."

3. Upon hearing learned counsel for parties, it transpires that the regularisation rules namely उत्तर प्रदेश (उत्तर प्रदेश लोक सेवा आयोग के क्षेत्र के बाहर) समुह "ग" के पदों पर दैनिक वेतन नियुक्तियों का विनियमितीकरण नियमावली, 1998 dated 9th July, 1998 notified by the State Government were in the first place not applicable to employees of local bodies. At the same time, it is also undisputed between the parties that the State Government issued Government Order dated 29.8.1998 and thereby specifically made applicable the above described rules to local bodies for the purpose of grant of regularisation to the eligible category of employees.

4. That fact, though undisputed and clearly borne out from the record, has remained from being considered by the learned single judge. The learned single judge has proceeded on an assumption that the above described rules were never enforced *qua* local bodies such as Nagar Panchayat Jhinjak, Kanpur Dehat. That assumption being contrary to the law, as noted above, the reasoning adopted by the learned single judge may not be sustained. In face of the rules having been specifically adopted and made applicable to local bodies, it never became open to the learned single judge to reason that the said rules were not applicable to the case of the present petitioner-appellant.

5. The error noted above is an error on principle as may not allow us to sustain the order of the learned single judge.

6. As to the merit ground raised by petitioner-appellant against the order dated 2.9.2003 passed by the Administrator Nagar Panchayat Jhinjak, Kanpur Dehat cancelling the order of regularisation dated 1.1.1999, the learned single judge has not offered any consideration. The writ petition was dismissed on the solitary ground that the rules were not applicable to the case of the petitioner-appellant.

7. Facts are in dispute with respect to the merit ground mainly if due vacancy was available on the post of Clerk at the Nagar Panchayat Jhinjak, Kanpur Dehat under general category as may have allowed for regularisation of the petitioner-appellant and since it has been vehemently urged by the learned counsel for the

respondent that the only post available was reserved for Scheduled Caste candidates, that too to be filled through promotion, we consider it appropriate to remit the matter back to the learned single judge to pass fresh order, on merits.

8. Accordingly, the order of learned single judge dated 15.12.2017 is set aside. The writ petition is restored to its original number and status.

9. Since pleadings are complete, let the matter appear before the appropriate Court in the week commencing 08.1.2024.

10. The appeal is **disposed of**.

Order Date :- 22.11.2023

Abhishek Singh

(Shiv Shanker Prasad,J.) (Saumitra Dayal Singh,J.)