

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2524 of 2021

Applicant :- Shashi Kant Sharma

Opposite Party :- Shri Krishna Kumar Singh, Chief Conservator Of Forest And Regional Director (Soical Forestry)

Counsel for Applicant :- Awadhesh Kumar Saxena

Hon'ble Rohit Ranjan Agarwal,J.

Heard learned counsel for the applicant and learned Standing Counsel for the State.

The writ Court on 24.03.2021 while deciding Writ-A No. 5521 of 1993 and Writ-A No. 684 of 2021 passed the following order;

"Heard Shri Avijit Saxena, learned counsel for the petitioners and Shri Devesh Vikram, learned Standing Counsel for the respondents.

In Writ A No.5521 of 1993 the petitioners have prayed for quashing the order dated 13/15.1.1993 passed by the respondent, whereby the temporary services of the petitioners were terminated under the provisions of Temporary Government Servant (Service Termination) Rules, 1975.

In Writ A No.684 of 2021 the petitioner has challenged the impugned notice dated 16.12.2020 issued by the second respondent/Chief Conservator of Forest & Regional Director (Social Forestry), Kanpur Range, Kanpur. Further request has been made to issue direction to the respondents to pay the entire retiral benefits including gratuity, pension, GPF, leave encashment, insurance etc. admissible to him forthwith.

It appears that the petitioners were appointed between the years 1980-82 on different Class-III posts in the Forest Department. Initially orders for regularization of their services were passed by this Court, which were confirmed by the Hon'ble Supreme Court. Thereafter, the petitioners were given appointments as temporary Government servants in the year 1992 and by the impugned order dated 13/15.01.1993, their service were terminated. The said order has been challenged by the petitioners in the leading Writ A No.5521 of 1993, wherein an interim order was passed by this Court on 11.2.1993, staying the operation of the impugned order dated 13/15.1.1993, and the respondents were directed to comply with the orders of the High Court dated 10.8.1992 within a period of six weeks or to show cause by filing counter affidavit from the date of receipt of a certified copy of the order. The petitioners have been made entitled to their salaries. Finally, the Court had proceeded to dismiss the writ petition on 07.12.2017 with following observations:-

"In paragraph no.38 of the Counter Affidavit filed on behalf of the

respondent, it has been stated that the petitioners were given two opportunities to appear in the regularization test but they failed to appear in the same and therefore, the respondent was left with no option except to terminate their services. In reply to the above averment, no specific reply has been given by the petitioners in their Rejoinder Affidavit except denial. Further, all the petitioners appear to have crossed the age of superannuation and therefore, no relief can be granted to them at this belated stage. A perusal of the order sheet also shows that the petitioners have not made any effort to get the petition decided earlier and therefore, they do not appear to be interested in the job.

Therefore, the writ petition fails and is accordingly dismissed. No order as to costs."

It also appears from the record that the said order has been challenged by the petitioners in Special Appeal Defective No.9 of 2018 (Shashi Kant Sharma and 3 others vs. State of UP and another) and a Division Bench of this Court vide order dated 06.2.2018 has proceeded to allow the appeal and set aside the order of learned Single Judge dated 7.12.2017, with following observations:-

"The writ petition was dismissed by an order dated 7th December, 2017. One of the ground on which the writ petition has been dismissed is that the petitioners must have crossed the age of superannuation. Therefore, no relief can be granted.

Before us a supplementary affidavit has been filed indicating that pursuant to the termination order dated 13/15th January, 1993, the writ petition was filed and an interim order dated 11th February, 1993 was passed staying the effect and operation of the termination order. As a result of the interim order, it is contended that the appellants have continued to work till the disposal of the writ petition.

It is also contended that they are still working and have not reached the age of superannuation.

In the light of the aforesaid, the order of the learned Single Judge dated 7th December, 2017 is set aside. The special appeal is allowed. The writ petition is restored to its original number. It would be heard and decided again afresh after taking into consideration all aspects of the matter.

Registry is directed to list the writ petition in the 3rd week of February, 2018 before the appropriate Court."

In compliance of the aforesaid order, the matter has been placed before this Court. While preferring Writ A No.684 of 2021 it is being claimed that the petitioner was initially appointed on daily wage basis as Steno/Typist (Class-III employee) in District Etawah on 20.5.1980. Thereafter, vide common order dated 05.6.1992 the petitioner and three others namely Milap Singh, Suresh Babu Chauhan and Ganesh Babu Yadav were appointed on the post of Junior Clerk/Range Lipik. By the order dated 15.1.1993 the second respondent had terminated the services of the petitioner and three others. The said order was challenged by the petitioners in leading Writ A No.5521 of 1993, wherein the

interim order was passed on 11.2.1993, staying the termination order and on the basis of the interim order, the petitioner and three others were allowed to work on their respective posts continuously. The petitioner was promoted to the post of Senior Assistant on 29.4.2016. Ultimately, the leading writ petition was dismissed on 07.12.2017. The said order was challenged in Special Appeal Defective No.9 of 2018 and the same was allowed by the Division Bench on 06.2.2018. Thereafter, the petitioner was served with the impugned notice dated 16.12.2020, which has been challenged by the petitioner in the connected Writ A No.684 of 2021. Finally, the petitioner has retired from service on 31.12.2020 after attaining the age of superannuation but his post retiral benefits have not been paid to him till date.

In this backdrop, learned counsel for the petitioner submits that the services of the petitioner alongwith other three persons were regularized and they were appointed on the post of Junior Clerk on 05.6.1992. They were working continuously on the strength of the interim order dated 11.2.1993 passed in Writ A No.5521 of 1993. Out of four persons, two persons namely Suresh Babu Chauhan and Milap Singh have already retired from service on 31.3.2019 and 29.2.2020 respectively and both the persons were paid their post retiral dues as well as regular pension but the petitioner is being deprived of his legal right of post retiral dues as well as regular pension, which is discriminatory and hit by provisions of Articles 14, 16 and 21 of Constitution of India. The petitioner had worked in the department concerned for about 40 years and the petitioner is not being paid his retiral benefits merely on the ground that the retiral benefits would be paid after decision of the leading writ petition.

On the other hand, Shri Devesh Vikram, learned Standing Counsel fairly states that no doubt, the petitioner was continued to work in the department on the strength of the interim order dated 11.2.1993 passed in the leading writ petition. Finally, the writ petition was dismissed on 07.12.2017. The said order was challenged by the petitioner in Special Appeal Defective No.9 of 2018 and the Division Bench has allowed the said appeal on 06.2.2018 and after setting aside the order of learned Single Judge dated 7.12.2017, the matter has been restored to its original number for deciding afresh taking into consideration all aspects of the matter. In case similar benefits have already been extended to other incumbents, who have joined the petitioner in the leading Writ A No.5521 of 1993 then definitely the claim of the petitioner would be remedied by the competent authority as per law.

In the facts and circumstances, since the matter is pending since the year 1993 and admittedly, the petitioner continued to work in the department concerned on the strength of the interim order dated 11.2.1993. In such situation, the claim of the petitioner for his regularization and payment of retiral benefits are to be redressed by the competent authority as similar benefit has already been extended to other two similarly situated incumbents.

Consequently, the leading Writ A No.5521 of 1993 is allowed and the impugned order dated 13/15.01.1993 is set aside. The direction is issued to the respondents to consider the claim of the petitioner strictly in accordance with law within two months from the date of receipt of certified copy of this order.

For the aforesaid reasons, the connected Writ A No.684 of 2021 is also disposed of."

Pursuant to the order of writ Court a compliance affidavit has been filed by the opposite party wherein in paragraph nos. 10 and 11 details have been given as to the retiral dues which have been extended to the applicant.

Learned Standing Counsel states that not only the gratuity, group insurance, leave encashment, provisional pension and other retiral dues have been paid to the applicant.

As the order of writ Court has been complied by the opposite party, no case for contempt is made out.

Contempt application stands dismissed. However, leaving it open to the applicant to approach the appropriate forum for redressal of his grievances, in case any short payment has been made by the opposite party.

Contempt notice stands discharged.

File consign to record.

Order Date :- 16.11.2023

Shekhar