

Court No. - 5

Case :- WRIT - C No. - 51120 of 2010

Petitioner :- State Of U.P. Thru Director Technical Education And Another

Respondent :- Prescribed Authority Labour Court First And Another

Counsel for Petitioner :- Amit Kumar Singh, C.S.C.

Counsel for Respondent :- Manas Bhargava

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Amit Kumar Singh, learned Chief Standing Counsel for the petitioners and Shri Manas Bhargava, learned counsel for the respondents.

2. By means of this writ petition, the petitioners have assailed the order dated 29.07.2009 passed by respondent no.1.

3. Brief facts of the case are that the respondent no.2 was appointed as clerk under the supervision of petitioner no.2 on purely temporary basis vide order passed by the Deputy Director Technical Education and he joined his duty with the conditions that services of the petitioner automatically terminates after appointment of regular candidate. Thereafter, two writ petitions were filed by the respondent no.2 before this Court. Furthermore, the respondent no.2 filed C.P. Case No.111/2004, which was rejected on 30.7.2004 against which the appeal was preferred by the respondent no.2, which was accepted on 18.05.2007 and order dated 30.07.2004 was rejected. Again, respondent no.2 filed C.P. Case No.68 of 2008 to which objections were filed by one another. Hence the present petition.

4. Learned counsel for the petitioners submitted that the respondent no.2 was employee on purely ad-hoc basis on leave vacancy from 5.01.1984 to 20.06.1998 as Junior Clerk in the office of petitioners. He further submitted that after the regular selection of the employee, the work was not taken by

the respondent no.2 to which the respondent no.2 approached this Court by way of filing Writ Petition No.15436 of 1998, which was disposed of by order dated 4.5.1998 with direction to dispose of the representation dated 26.02.1991, if not already disposed of. Thereafter, another Writ Petition No.40057 of 1998 was filed by the respondent no.2, which was dismissed by order dated 23.07.2023, being devoid of merit. He further submitted that in the aforesaid two writ petitions, the respondent no.2 was aggrieved against his wrongful termination from his services, but the Court dismissed the same as being devoid of merit.

5. He further submitted that while making the reference, the said fact was duly brought to the notice of the court below as well as the orders passed by the High Court, but without considering the same and applying its judicial mind to the effect of the orders passed by the High Court, the court below has passed the order on 04.02.2010. Counsel for the petitioners further submitted that the present proceedings have been initiated after a great delay without proper explanation. He further submitted that the labour court has no authority to review or by-pass the order of the High Court. He further submitted that the reference has been made after 23 years and without considering the lapse of time, the same has been accepted.

6. In support of his contention, learned counsel for the petitioners has relied upon the judgement of the Hon'ble Apex Court passed in the Case of **M/s. Shalimar Works Limited Vs. Their Workmen, AIR 1959 Supreme Court 1217 (V 46 C 167)**. He further submitted that respondent no.2 did not work for more than 240 days for a calender year but without any finding being recorded in favour of the respondents, the impugned award has been passed, which is bad in the eye of law in view of the judgment of this Court passed in the Case of **State of U.P. through Executive Engineer, Drainage Division, Siddharthnagar Vs. Shiv Pujan and others (Writ C No.33683 of 2001)**. He prays for allowing the writ petition.

7. *Per contra*, learned counsel for the respondents supported the impugned award and submitted that no delay is applicable in the present proceedings and therefore, the order is correct.

8. In support of his submission, he has placed reliance upon the judgment of **Ajaib Singh Vs. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. And another, 1999 (82) FLR 137**. He further submitted that as per the appointment letter, a subsequent condition was given that the services of the respondent no.2 can be terminated with a notice of one months, but the case in hand, no notice whatsoever has been given and therefore, the present proceedings is justified. He further placed reliance upon the judgment of this Court passed in the case of **State of U.P. Through Secy.... Vs. Mohd. Rais (Service Single No.2451 of 1997), 13.02.2020**. He further submitted that the aforesaid writ petitions filed before this Court, was not against the termination of the respondent no.2, but was with regard to claiming regularisation as Junior Clerk and therefore, the orders passed by this Court will not act as res-judicata. He prays for dismissal of this writ petition.

9. The Court has perused the records.

10. Admittedly, the respondent no.2-employee had approached this Court by way of filing Writ Petition No.15436 of 1998, which was disposed of vide order dated 04.05.1998 with the following observations:-

“Heard learned counsel for the parties and perused the letters dated 22.12.90 and 22.5.87 (Annexure 4 & 5). Although the petitioner’s services were terminated way back in 1984, but in view of the letters afore-stated the writ petition is disposed of with the direction that the compitant authority shall endeavour to disposed of the representations dated 26.2.91 if not already disposed of within three months from the date of receipt of a certified copy of this order.”

11. Further, again the respondent no.2 approached this Court by way of filing Writ Petition No.40057 of 1998 which was dismissed by vide order dated 23.07.2003, as being devoid of merit, which reads as follows:-

*“The petitioner had worked as Junior Clerk in the office of respondent No. 1 on adhoc basis on leave vacancy for the period from 5.1.1984 to 20.6.1984. Thereafter he claims that his services had been wrongly terminated. With regard to the said grievance the petitioner, after lapse of about 14 years, filed Writ Petition No. 15436 of 1998 which was disposed of by this Court on 4.5.1998 with a direction that the representation of the petitioner may be decided within three months. By the impugned order dated 1.9.1998, the representation of the petitioner has been decided whereby it has been held that **the petitioner worked only from 5.1.1984 to 20.6.1984 on leave vacancy and after the regular selection had been made by the District Selection Committee, the work was not taken from the petitioner.***

*Having heard the learned counsel for the parties and on perusal of the record in my view the petitioner is not entitled to any relief. The petitioner **is claiming regularization of service as Junior Clerk on the basis that he had worked on leave vacancy for a period of about five months in the year 1984. He was sitting tight over the matter for 14 years and revived his claim only in the year 1998.** The petitioner has not been able to **produce any Rules or Government Order in pursuance of which he claims to be entitled to be regularized in service. There is no infirmity in the order dated 1.9.1998 impugned in this writ petition.***

This writ petition is accordingly dismissed being devoid of merits. However, there shall be no order as to costs.

12. From perusal of the afore-quoted order dated 23.07.2003, it reveals that the respondent no.2 was aggrieved by his wrong termination with the earlier petition, which was disposed of with direction for deciding its representation and subsequently, the respondent no.2 approached this Court with same relief and the same was dismissed being devoid of merit. Once, the High Court dismissed the petition by holding that no relief can be granted against the termination to the respondent no.2, the Labour Court ought to consider the said fact, hence the counsel for the respondent no.2 could not justify that the earlier round of litigation was not against

the termination. The records further reveals that the respondent no.2 has not approached the higher court either against the order dated 4.5.1998 or against the order dated 23.7.2003 by which his writ petitions were dismissed as being devoid of merit.

13. The claim of the respondent no.2 was that his services was wrongly terminated, which was not accepted by the High Court, as mentioned above and the order passed by the High Court has neither been set aside, modified nor reversed by the competent Court, and when it has been final between the parties, the labour court ought not to have passed the impugned order.

14. In view of the facts as stated above as well as considering the orders passed by this Court, the impugned order cannot sustain in the eye of law and is hereby quashed.

15. Accordingly, the writ petition is **allowed**.

Order Date :- 11.12.2023

Pravesh Mishra/-