

Court No. - 33

Case :- WRIT - A No. - 23969 of 2015

Petitioner :- Mangla Prasad Srivastava

Respondent :- State of U.P. and others

Counsel for Petitioner :- Sudhakar Pandey, Arvind Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

This writ petition is directed against an order dated 18.03.2015 passed by the Sub-Divisional Magistrate, Bansdih, District Ballia, declining to grant the petitioner second promotional pay scale, determining it in the pay-scale of ₹8000-275-13500, pre-revised from the date that the petitioner completed 24 years of service as a Collection *Amin*.

2. The petitioner was a seasonal Collection *Amin* from 24.03.1976 and worked as such up to June, 1985 in Tehsil Bansdih, District Ballia. The petitioner's services were regularized as a Collection *Amin* with effect from 21.07.1985. The petitioner retired from service, upon attaining the age of superannuation, on 31.12.2011. He completed 16 years of satisfactory service in the regular cadre, and by an order dated 06.09.1997, he was granted the first promotional pay-scale, as in force at the time, that is, the pay-scale of ₹5500-175-9000.

3. The case of the petitioner is that in terms of the Government Order dated 02.12.2000, an employee of the petitioner's cadre was entitled to grant of second promotional pay-scale, on completion of 24 years of satisfactory service. The second promotional pay-scale, as in force at the relevant time, was ₹8000-275-13500. The petitioner, upon completion of 24 years of satisfactory service, submitted a representation, seeking award of the second promotional pay-scale. It may be remarked here that the first promotional pay-scale is that which is admissible to a Naib Tehsildar

and the second promotional pay-scale is the one that is admissible to a Tehsildar.

4. The petitioner's grievance is that his representation was not considered initially and then rejected in manifest error. It is also said that the other Collection *Amins* in the regular establishment, upon completion of 24 years of satisfactory service, were awarded the second promotional pay-scale of ₹8000-275-13500, according to the Government Order dated 02.12.2000, but the petitioner has been discriminated in the matter by the respondents, first by inaction, and then by their action.

5. It is pointed out that the Uttar Pradesh Rajasva Sangrah Karmchhari Sangh approached the Lucknow Bench of this Court for considering the case of its eligible members for the grant of second promotional pay-scale, by means of Writ Petition No. 4964 (SS) of 1990. This writ petition was tagged along with Writ Petition No. 5763 (SS) of 1998 and Writ Petition No. 5064 (SS) of 1990, with Writ Petition No. 5763 (SS) of 1998 being heard and decided as the leading case. It was decided by a learned Single Judge *vide* judgment and order dated 09.08.2000, where an order of 12.04.1990 passed by a Deputy Secretary in the Department of Revenue, Government of U.P., denying the second promotional pay-scale was quashed, and a *mandamus* issued to the Government to pay the Collection *Amin* pay-scale that was recommended in terms of the Second Pay Commission, as modified *vide* order dated 17.10.1985.

6. Aggrieved by the aforesaid judgment of the learned Single Judge, the State carried Special Appeal No. 83 (S/B) of 2001, wherein an *ex parte* interim order was passed, but ultimately, this appeal came to be dismissed by a Division Bench *vide* judgment and order dated 29.08.2014. A further challenge to the Supreme Court by the State of Uttar Pradesh failed, with the dismissal of Petition for Special Leave (C) No. 5908 of 2015 *vide* order dated 10.04.2015.

7. The submission of learned Counsel for the petitioner is that with all this done, the position is well settled that upon completion of 24 years of satisfactory service governing rights of the petitioner at the relevant time, he was entitled to the award of second promotional pay-scale. The petitioner says that when his efforts to convince the respondents failed, he approached this Court by means of Writ - A No. 54946 of 2014, which this Court disposed of by means of an order dated 13.10.2014 in terms of the following order :

In view thereof, the writ petition is being disposed of with a direction to the District Magistrate /Collector Ballia to consider the claim of the petitioner for grant of promotional pay scale pursuant to Government Order dated 2.12.2000 keeping in view the judgment and order passed by this court on 9.8.2000 in writ petition no. 4969 of 1990 and pass a reasoned and speaking order in accordance with law at the earliest preferably within a period of three months from the date a certified copy of this order is produced.

8. In compliance with this Court's order, the Sub-Divisional Magistrate, Bansdih, Ballia before whom the petitioner's case for award of second promotional pay-scale came up, rejected it *vide* order dated 18.03.2015.

9. Aggrieved, the petitioner has instituted this writ petition under Article 226 of the Constitution.

10. In the counter affidavit dated 31.03.2016 filed on behalf of respondent Nos. 3 and 4, it is averred in paragraph No. 14 that the first promotional pay-scale was granted to the petitioner in due time, but the right to award of the second promotional pay-scale was subject matter of litigation, inasmuch as against the judgment of the learned Single Judge in the writ petition, that included the writ petition by the Karmchari Sangh, Special Appeal No. 83 of 2001 preferred by the State was pending. The stand is that the Special Appeal preferred by the State was dismissed by

the Division Bench, and the order has been affirmed by the Supreme Court. It is also averred in paragraph No. 14 that the State of Uttar Pradesh, thereafter, have issued a Government Order, sanctioning grant of second promotional pay-scale on 13.05.2015. It is also acknowledged that according to the Government Order dated 13.05.2015, the petitioner is eligible for the award of second promotional pay-scale as admissible in terms of the Government Order aforesaid.

11. Heard Mr. Sudhakar Pandey, learned Counsel for the petitioner in support of this petition and Ms. Monika Arya, learned Additional Chief Standing Counsel appearing for the respondents.

12. Upon hearing learned Counsel for the petitioner and the learned Additional Chief Standing Counsel for the State, this Court finds that what is said in the impugned order is now out of context, because the impugned order has denied the petitioner his rights, largely on account of the pendency of the State's challenge to the judgment of the learned Single Judge, already referred to, regarding the entitlement of similarly circumstanced employees to receive their second promotional pay-scale, upon completion of 24 years of service. Now, the dispute appears to be what would be the precise pay-scale (pre-revised) at the relevant time, to which the petitioner would be entitled upon award of second promotional pay-scale. While the petitioner says that it ought to be the pay-scale of ₹8000-13500, according to the State's stand, it is ₹6500-10500.

13. In the supplementary affidavit dated 05.12.2022, it is pointed out that the issue was examined by the Government themselves *vide* Government Order dated 17.10.2018 issued by the Principal Secretary, Department of Revenue, Government of U.P. addressed to the District Magistrate, Deoria, while seized of the same issue as that involved in the present petition. The Government in that case took note of certain orders passed by this Court on the writ side, in appeal and also in Contempt

Application (Civil) No. 1924 of 2015 on 27.06.2018, and then decided in the following terms :

अवमानना वाद सं० - 1924/215 जयनरायन यादव व अन्य बनाम श्री सुरेश चंद्रा प्रमुख सचिव राजस्व विभाग में मा० उच्च न्यायालय लखनऊ बेच, लखनऊ द्वारा पारित निर्णय दिनांक 27/09/2018 के अनपालन में श्री जयनरायन यादव श्री समअवध सिंह, एवं श्री हृदयानाथ राव की 24 वर्ष की संतोषजनक सेवा के कम में द्वितीय पदोन्नति वेतनमान के रूप में तहसीलदार के पद का वेतनमान रुपये 8000-13500 दिये जाने की स्वीकृति इस शर्त के साथ प्रदान की जा रही है कि उन्हें पूर्व में 24 वर्ष सेवा पर वित्तीय पदोन्नति के यप में प्रदान किये गये वेतनमान रुपये 6500-10500 में किये गये भुगतान को समायोजित तहसीलदार पद के वेतनमान 8000-13500 में बढ़े हुए वेतनमान के अवशेष देयकों का भुगतान सुनिश्चित कराने का कष्ट करें।

14. Be that as it may, once it is conceded and ordered by the Government *vide* order dated 27.10.2018 in case of three similarly circumstanced Collection *Amins* that they are entitled to second promotional pay-scale in the grade of ₹8000-13500, upon completion of 24 years of service, there is no reason to deprive the petitioner of the same pay-scale. As already held, it is no longer in dispute that the petitioner is entitled to second promotional pay-scale, upon completion of 24 years of satisfactory service. He is entitled to receive this pay-scale in the scale of ₹8000-13500.

15. In the circumstances, this writ petition **succeeds** and shall stand **allowed**. The impugned order dated 18.03.2015 passed by the Sub-Divisional Magistrate, Bansdih, District Ballia is hereby **quashed**. A *mandamus* is issued to each of the respondents, ordering them to pay the petitioner second promotional pay-scale with effect from the date of completion of his 24 years of service, placing him in the pay-scale of ₹8000-275-13500. The petitioner shall be entitled to revision of his pay and paid arrears on that score accordingly. All post-retiral benefits too shall be revised and paid accordingly. This order shall be carried out by the respondents within six weeks of date.

16. There shall be no order as to costs.

17. The Registrar (Compliance) is directed to communicate this order to the Chairman, Board of Revenue, U.P. at Lucknow, the Collector, Ballia and the Sub-Divisional Magistrate, Tehsil Bansdih, District Ballia.

Order Date :- November 23, 2023

I. Batabyal

(J.J. Munir, J.)