

Court No. - 35

Case :- WRIT - A No. - 60476 of 2017

Petitioner :- Ghanshyam Dubey

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jai Prakash Mishra,Ashok Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Ashok Srivastava, learned counsel for the petitioner and Sri Santosh Kumar Shukla, learned Additional Chief Standing Counsel, who appears for respondents 1 to 5.

Since affidavits have been exchanged between the parties and they do not propose to file any further affidavits, thus the writ petition is being decided at the fresh stage.

The case of the writ petitioner is that he was engaged as a Senior Collection Amin in district Sant Kabir Nagar on 1.6.1983, however his engagement was sought to be disengaged on 10.9.1991 which compelled the writ petitioner to prefer Writ Petition No.26368 of 1991, Madan Pratap Pandey and others vs. State of U.P. and others in which there was an interim order accorded to the writ petitioners on 17.9.1991 whereby the writ petitioners in the said writ petition inclusive of the present writ petitioners were permitted to continue in service and ultimately the said writ petition came to be disposed of on 29.3.2010 with a direction to the competent authority to decide the claim of the writ petitioners therein.

The claim of the writ petitioner for being absorbed/regularised came to be negated as there was no post of Collection Amin which was vacant under 35% of the quota by virtue of the order dated 29.6.2010 of the District Magistrate, Sant Kabir Nagar against which the writ petitioner preferred Writ-A No.58587 of 2010, Ghanshaym Dubey and others vs. State of U.P. which came to be dismissed on 23.9.2010 and in the meantime an amendment was made in the Uttar Pradesh Collection Amin Service Rules, 1974 by the name of Uttar Pradesh Collection Amin Service (17 Amendment) Rules, 2015 whereby the quota stood enhanced to 85%.

Questioning the order of the learned Single Judge the writ

petitioner preferred Special Appeal No.2043 of 2010, Ghanshaym Dubey and others vs. State of U.P. and others which came to be disposed of on 30.3.2016 requiring the writ petitioner to approach the competent authority for regularisation in the wake of 2015 Amendment Rules.

As per the writ petitioner he represented his cause and there happens to be a decision dated 25.6.2016 whereby the District Magistrate, Sant Kabir Nagar had required the matter to be placed before a Selection Committee who is to accord consideration to the claim. In the meantime the writ petitioner superannuated on 31.7.2016, however there happened to be a letter dated 9.2.2014 of the Officer Incharge (Collection) Collectorate, Sant Kabir Nagar along with the report of the Committee dated 23.7.2016 and thereafter a communication of the Additional District Magistrate, Sant Kabir Nagar to the Chairman and Secretary, Board of Revenue dated 15.2.2017 reciting the fact that since the writ petitioner has crossed the upper age limit, thus his case cannot be considered for regularisation.

Being aggrieved against non consideration for regularisation and payment of pension the present writ petition has been preferred.

This Court entertained the writ petition and sought reply from the respondents to which a counter affidavit has been filed by the Naib Tehsildar, Khalilabad, District Sant Kabir Nagar dated 17.4.2018 to which a rejoinder affidavit has been filed.

Learned counsel for the writ petitioner has invited the attention of the Court towards annexure-S.A.-1 at page 13 of the supplementary affidavit reference whereof has been made in para 8 of the writ petition so as to contend that on 5.10.2016 in the wake of an amendment made in the year 2015, in 1974 Rules, the State Government has accorded relaxation to the claim of the writ petitioner with respect to the age while issuing a communication to the District Magistrate and in the chart the name of the writ petitioner finds place at serial no.12.

According to the writ petitioner, the said exercise has been undertaken in terms of the 2015 Rules, thus merely because the writ petitioner stood retired on 31.7.2016 would not dilute the claim of the writ petitioner for regularisation particularly when posthumous regularisation is permissible under law.

At this juncture, learned Standing Counsel submits that let a decision be taken by the District Magistrate, Sant Kabir Nagar who

shall accord consideration of the claim of the writ petitioner.

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed of granting liberty to the writ petitioner to prefer a comprehensive representation along with the self-attested copy of the writ petition before the third respondent, District Magistrate, Sant Kabir Nagar, who shall thereafter consider the claim of the petitioner for regularisation in terms of the Rules which are applicable and in vogue in the light of the communication order dated 5.10.2016 which has been annexed with the supplementary affidavit within a period of two months from the date of production of the certified copy of the order by either of the parties and also take a follow up action with regard to the payment of pensionary benefits in that regard.

With the aforesaid observation, the writ petition is **disposed of**.

Order Date :- 11.12.2023

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