

Court No. - 39

Case :- WRIT - A No. - 17556 of 2023

Petitioner :- State Of U.P. Through Additional Chief Secretary/Principal Secretary And Another

Respondent :- Rajiv Kumar Saxena And Another

Counsel for Petitioner :- C.S.C.,Ratan Deep Mishra

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Syed Aftab Husain Rizvi,J.

1. Having heard Shri Ratan Deep Mishra, learned Standing Counsel for the petitioner and having perused the record, we find no good ground to interfere in the order of the State Public Services Tribunal, Lucknow dated 9.5.2023 passed in *Claim Petition No 1011/2011 (Rajiv Kumar Saxena vs State of U.P. & 2 Ors.)*.

2. For ready reference, the operative portion of the impugned order reads as below:

*"On going through the record it is crystal clear that prosecution sanction as per Annexure-3 has been given by the competent authority in the year 2007 and that criminal case which was pending against petitioner is still pending and there is no hope that it will be decided very soon in future. Hence in this circumstance after going through the G.O. dated 28-05-1997 and observation made by the Hon'ble High Court in **Writ-A- 8151 of 2022 Neeraj Kumar Pandey Vs State of U.P. and 05 others** dated 26-05-2022, we are of the considered view that respondents should be directed in the light of G.O. dated 28-05-1997 for considering the adhoc promotion of petitioner after opening his scaled-cover envelope within stipulated period. Consequently the respondents are directed to consider the case of petitioner for adhoc promotion in the light of G.O. dated 28-05-1997 within a period of 03 months from the date of production of certified copy of this judgment/order. The claim petition is disposed off accordingly."*

3. The submission of learned Standing Counsel that the criminal prosecution has not proceeded in view of the interim order dated 13.11.2007 passed by this Court in **Criminal Misc. Application u/s 482 Cr.P.C. No. 25703 of 2007** carries less weight inasmuch as in light of the decision of the Supreme Court in **Asian**

Resurfacing of Road Agency (P) Ltd. vs CBI, (2018) 16 SCC 299, that interim decision does not survive, on its own beyond the period of six months. It is not the case of the State that despite the order of the Supreme Court in **Asian Resurfacing of Road Agency (P) Ltd. (supra)**, the interim order dated 13.11.2007 has been extended by this Court. In that light, we further enquired from the learned Standing Counsel the status of the departmental proceedings that may have arisen against the delinquent.

4. Learned Standing Counsel fairly states that the punishment order dated 27.4.2012 was challenged by means of **Claim Petition No. 287 of 2014, Rajeev Kumar Saxena vs State of U.P. & Ors.** It was allowed by State Public Services Tribunal vide order dated 1.7.2014. That order was confirmed by this Court vide order dated 27.11.2014 in **Writ Petition No. 1667 (SB) of 2014 (State of U.P. vs Rajeev Kumar Saxena & Ors.)**. That order of the writ court was maintained by the Supreme Court upon dismissal of the **Special Leave Petition No. 16604 of 2015 (State of U.P. vs Rajeev Kumar Saxena)**

5. In view of the facts noted above, we find no good ground to interfere in the order of the Tribunal providing for adhoc promotion pending final outcome of the criminal proceedings.

6. Accordingly, the petition lacks merit and is **dismissed**.

Order Date :- 28.10.2023
Prakhar

(S.A.H. Rizvi, J.)

(S.D. Singh, J.)