

Court No. - 5

Case :- WRIT - A No. - 1024 of 2002

Petitioner :- Om Prakash

Respondent :- Chairman Nagar Palika Parishad And 4 Ors

Counsel for Petitioner :- Ram Kumar

Counsel for Respondent :- C.S.C.,R.D.Shahi

Hon'ble Irshad Ali,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for respondent-State and Sri R.D. Shahi, learned counsel for respondent.

2. By means of the present writ petition, the petitioner has prayed as under :-

"a) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay the arrears of salary of the petitioner since June, 2000 to till date in pursuance of order dated 13.11.2001 and 2.11.2001, passed by State Government and opposite party No.2.

b) issue any other suitable order or direction which this Hon'ble Court may deem fit, just and proper under the circumstances of the case in favour of the petitioner.

c) issue writ order or direction in the nature of certiorari to quash the order dated 24.7.2001 and 28.8.2001 contained as annexures No 14 and 16 to this writ petition.

d) ..."

3. While entertaining the writ petition, this Court passed the following order on 6.2.2002 :-

"In the meantime, if the petitioner is in service, he shall be paid his salary regularly with effect from the current month. So far the arrears of salary is concerned, the same shall also be paid to the petitioner within a period of one month, from the date a certified copy of this order is produced before the authority concerned, in case he has been working throughout the period for which he is claiming salary."

4. In compliance of the aforesaid order of this Court, the petitioner is continuously discharging his duties and has been paid regular monthly salary month by month.

5. Factual matrix of the case is that the petitioner was granted appointment on the post of Haimer as daily wager. He applied for regular appointment against sanctioned post and in this regard, the report of the Executive Officer has been annexed as Annexure-2 to the writ petition that the post is vacant and is duly sanctioned. Thereafter, the petitioner was appointed on

2.11.1999 and in pursuance thereof, he joined on the post on 2.11.1999 itself. The initial appointment of the petitioner was on probation period of one year and his service was confirmed by the respondent Nos.3 and 4 on 30.3.2003 and since then, the petitioner has been discharging his duties. The work and conduct of the petitioner has also been found satisfactory.

6. All of a sudden, the salary of the petitioner was stopped from the month of June, 2000 and thereafter, the petitioner made several representations and he also met with respondent Nos.3 and 4 personally and apprised them of the situation, but to no avail.

7. The power to appoint vests under Section 50 of the U.P. Municipalities Act, 1916 with the President and read with Section 71, the power is vested in the Municipalities to determine the permanent staff for proper running of the Municipality. In view of the provision contained under the aforesaid Sections, the Chairman should determine the strength and to make appointment and payment to such persons. The appointment of the petitioner was made against the sanctioned post by the Chairman on the post of Haimer on probation period of one year and subsequently, he was confirmed on the said post by the Executive Officer, therefore, there is no justification for stopping the salary of the petitioner from the month of June, 2000. The petitioner is getting salary since 21 years and is no the verge of retirement.

8. Sri R.D. Shahi, learned counsel for the respondents submits that in the counter affidavit, there is a statement of fact that the post was not sanctioned against which the appointment of the petitioner was made.

9. In case the submission of Sri R.D. Shahi, Advocate is accepted, the fact remains that the petitioner continued for more than 21 years and was paid salary in pursuance to the interim order.

10. In view of the above, there is no justification to keep the writ petition pending anymore.

11. Accordingly, the writ petition succeeds and is **allowed**.

12. The respondents are directed to permit the petitioner to continue his service on the post of Haimer and to pay regular monthly salary month by month.

Order Date :- 30.10.2023
Gautam