

Court No. - 20

Case :- WRIT - A No. - 3560 of 2011

Petitioner :- Mohammad Israr

Respondent :- Board Of Revenue. Thru Its Secy. U.P Lucknow
And Ors.

Counsel for Petitioner :- Vidya Bhushan Pandey

Counsel for Respondent :- C.S.C

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 08.06.2011 whereby earlier order dated 19.07.1988 granting promotion to petitioner on the post of Accounts Clerk has been cancelled reverting petitioner to the post of Ahalmad purportedly in compliance of direction issued by this Court in earlier writ petition.

3. It has been submitted that petitioner while working on the post of Ahalmad was promoted by means of order dated 19.07.1988 to the post of Accounts Clerk. It is submitted that vide order dated 26.12.1989 several employees including petitioner were transferred to Lucknow but the same was cancelled vide order dated 27.02.1990 requiring petitioner to remain posted in his original post of Ahalmad in District Sultanpur. Since the order dated 27.02.1990 indicated petitioner's posting as Ahalmad and not Accounts Clerk, the said order was challenged by petitioner in Writ Petition No. 2593 of 1990 (S/S) and interim protection was provided to petitioner. The said writ petition was thereafter allowed by means of judgment and order dated 28.05.2007 granting liberty to opposite parties to pass a fresh order in case advised to do so.

4. It is submitted that impugned order has been passed in pursuance of aforesaid order.

5. It is submitted that once petitioner was promoted on the post of Accounts Clerk, the same could not have been rescinded without affording any opportunity of hearing to petitioner as was done. It is also submitted that by means of judgment and order dated 28.05.2007, this Court has clearly recorded a subjective satisfaction that petitioner was in fact promoted on the post of Accounts Clerk and that it was a case of promotion from one post to another post and not of a transfer from one

place to another. The order dated 27.02.1990 was set aside on the ground of non-application of mind to the fact that petitioner was in fact promoted and not transferred.

6. It has also been submitted that petitioner was confirmed on the post of Ahalmad by means of order dated 04.01.1999 w.e.f. 24.04.1988 and therefore such confirmation would relate back to the date indicated in the order itself due to which petitioner was duly accorded promotion in view of his seniority as has been indicated in the promotion order itself. Learned counsel has cited the case of Shamsheer Singh Sandhu versus Union of India (2020) 17 Supreme Court Cases 125 to buttress his submission. It is also submitted that in view of interim protection granted to petitioner in the earlier writ petition as well as in the present writ petition, petitioner continued on the post of Accounts Clerk and has subsequently superannuated from the said post on 31.12.2019.

7. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with the submission that as would be evident from the promotion order dated 01.07.1988 itself that petitioner was promoted purely on ad hoc basis with stipulation that he would be reverted in case of selection and joining by an employee selected by the Revenue Board/Commissioner. It is also submitted that the very fact that petitioner was confirmed on the post of Ahalmad on 04.01.1999 itself is indicative of the fact that at the time of petitioner's promotion, he was not confirmed on the post of Ahalmad and therefore was not eligible for any further promotion till his confirmation on the post of Ahalmad. It is also submitted that impugned order has been passed in view of liberty granted to the opposite parties by means of order dated 28.05.2007. It is also submitted that in fact the petitioner was not eligible for promotion in view of the notification dated 13.07.1993 which in paragraph 16 clearly indicated the mode and method of promotion, which was admittedly not followed in the case of petitioner.

8. Upon consideration of submissions advanced by learned Counsel for parties and perusal of material on record, it is admitted fact that petitioner was initially appointed on the post of Ahalmad but was confirmed on the said post vide order dated 04.01.1999 w.e.f. 24.04.1988. Prior thereto, petitioner while still being unconfirmed on the post of Ahalmad was promoted on ad hoc basis on the post Accounts Clerk vide order dated 01.07.1988 with stipulation that he would be reverted in case any employees selected by the Revenue Board/Commissioner would join.

9. It is not the case of opposite parties that in pursuance of conditional promotion of petitioner, any person was selected by the Revenue Board/Commissioner which would require reversion of petitioner to his original post of Ahalmad. It is in fact in pursuance of the order dated 01.07.1988 that petitioner continued on the aforesaid post till passing of the order dated 27.02.1990 which even otherwise required petitioner to be remain posted as Ahalmad ignoring the fact of ad hoc promotion granted to him earlier.

10. The judgment and order dated 28.05.2007 passed by this Court in the earlier writ petition filed by petitioner has clearly recorded a subjective satisfaction that petitioner was incorrectly treated to the transferred employee whereas he was promoted on the post of Accounts Clerk from the post of Ahalmad. It appears that liberty was granted to opposite parties to pass fresh orders only with regard to transfer and posting of petitioner on the promoted post and no such liberty was granted with regard to reversion of petitioner. It is also admitted that petitioner continued on the post of Ahalmad by virtue of interim protection granted in Writ Petition No. 2593 of 1990 (S/S) which was ultimately allowed. Even during pendency of present writ petition, petitioner was granted interim protection and has continued on the post of Accounts Clerk whereafter he has superannuated on 31.12.2019.

11. Considering the aforesaid facts, it is quite evident that petitioner was granted ad hoc promotion considering his seniority as indicated in the promotion order dated 01.07.1988 which also indicates satisfactory service.

12. It is also relevant that opposite parties have placed reliance on the notification dated 13.07.1993 to submit that petitioner was not eligible for promotion in terms thereof. However, it is evident that the aforesaid notification would not be applicable in the present facts and circumstances since it would not have retrospective operation with regard to promotion order passed regarding petitioner in the year 1988.

13. Once it is admitted by the opposite parties that petitioner was promoted even though on an ad hoc basis but the same was subject to a condition which remained unfulfilled, in the considered opinion of this Court, petitioner was entitled to continue on the promotional post till the condition indicated in his promotion order was fulfilled.

14. Hon'ble Supreme Court in the case of Shamsheer Singh Sandhu versus Union of India with regard to a similar factual situation has held as follows:-

"7. Having heard the rival submissions, the significant aspect of the case which merits emphasis is that the appellant continued to work, pursuant to the order of promotion that was granted to him to the rank of IG until he was reverted to the rank of DIG. The order of reversion was passed without the issuance of a notice to show cause and without furnishing any opportunity of being heard to the appellant. During the pendency of the proceedings before the High Court, the order of reversion was stayed. Then again, when the proceedings came before this Court upon the dismissal of the writ petition as well as the letters patent appeal, this Court directed the maintenance of status quo. The appellant, as a result of the Interim order passed by this Court, continued to work as an IG rank officer until the date of his superannuation. He did so for a period of nearly four years.

8. Having regard to the above factual position, we are of the view that the ends of justice would require a direction by this Court, in exercise of its jurisdiction under Article 142 of the Constitution, that the retiral dues of the appellant be computed and released on the basis that he has retired from service in the substantive rank of an IG. However, having perused the record, particularly the report of the Medical Board which was constituted finally in pursuance of the directions of the High Court, we are not inclined to issue any further directions for the consideration of the case of the appellant to the rank of Additional DGP and we are of the view that the matter must rest there. We have in consequence accepted the second limb of the submissions urged by Mr Lekhi, the learned ASG. The appellant's claim for promotion as Additional DGP is in consequence not accepted."

15. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is therefore admitted that petitioner although unconfirmed on the post of Ahalmad was promoted on ad hoc basis and continued as such till the date of superannuation. He has therefore rendered more than 31 years of service on the promoted post of Accounts Clerk with superannuation being allowed on the promoted post itself. It would therefore be inequitable to hold that petitioner would be deemed to have superannuated from the post of Ahalmad particularly in view of the fact that while functioning as Accounts Clerk, he has been confirmed on the post Ahalmad vide order dated 04.01.1999 with retrospective effect from the date prior to his promotion.

16. The impugned order dated 08.06.2011 having not considered these aspects is clearly vitiated and is therefore quashed by issuance of a writ in the nature of certiorari. Consequence to follow.

17. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 12.10.2023
Satish