

Court No. - 7

Case :- WRIT - A No. - 27949 of 2021

Petitioner :- Shiv Narayan Nagar And Ors.

Respondent :- State Of U.P.Thru.Prin.Secy.Pichhara Warg Kalyan
Vibhag Andors

Counsel for Petitioner :- Manoj Kumar Gupta

Counsel for Respondent :- C.S.C.,Nirankar Singh

Hon'ble Abdul Moin,J.

1. Heard Shri Manoj Kumar Gupta, learned counsel for the petitioners, learned Standing Counsel for respondent no. 1 and Shri Nirankar Singh, learned counsel for respondent nos. 2 and 3- Corporation.

2. Instant petition has been filed challenging the order dated 14.10.2020 passed by respondent no. 1, a copy of which is Annexure No. 1 to the petition. A further prayer is for a writ of mandamus commanding the respondent no. 1 to give the benefit of first A.C.P. to the petitioners which became due on 02.10.2012 (after 10 years of the regularization of their services) and the benefit of second A.C.P. which became due on 02.10.2018 (after 6 years of first A.C.P.).

3. Bereft of unnecessary details, the case set forth by the learned counsel for the petitioners is that the petitioners who were working on daily wage basis have been regularized by the respondent - Corporation vide order dated 06.06.2018, a copy of which is CA No. 7 to the counter affidavit filed by the Corporation. Regularization of the petitioners has been made with effect from 02.10.2002. The regularization has been made keeping in view directions issued by Hon'ble Supreme Court in **Civil Appeal No. 18510 of 2017 in re: Sheo Narain Nagar & Ors. Vs. State of Uttar Pradesh and Ors.** decided on **13.11.2017**, a copy of which is Annexure No. 10 to the petition

4. The petitioners staked their claim for being given the benefit of first and second A.C.P. by contending that the first A.C.P. is due after ten

years of the regularization of their services and second A.C.P. is due after six years of first A.C.P.. Specific averment has been made in para 35 of the petition that other employees namely Shiv Kumar working on the post of stenographer and Kuldeep Kumar working on the post of *Chowkidar* have been given the benefit of both first and second A.C.P. A copy of an order dated 29.02.2020 pertaining to Shiv Kumar wherein he has been given the benefit of second A.C.P. has been filed as Annexure No. 21 to the petition.

5. The contention advanced by learned counsel for the petitioners is that the Corporation has already granted the benefit of first and second A.C.P. to the other employees and consequently there cannot be any occasion of not giving the said benefit to the petitioners. It is also contended that when the petitioners staked their claim of being given the benefit of first and second A.C.P. vide the order impugned dated 14.10.2020, a copy of which is Annexure No. 1 to the petition, the order has been passed whereby placing reliance on a Government Order dated 16.03.2015 wherein it has been contended that the benefit of A.C.P. can only be given in case the additional financial burden which arises therefrom is borne by the Corporation and as the Corporation has indicated that it is not in a position to bear the burden, hence the petitioners are not entitled to the benefit of A.C.P.

6. The argument is that once the benefit of A.C.P. has been extended to other employees consequently there cannot be any occasion for the respondents to not extend the benefit of first and second A.C.P. to the petitioners also.

7. On the other hand, Shri Nirankar Singh, learned counsel appearing for respondent-Corporation argues that a perusal of the Government Order dated 16.03.2015, a copy of which is C.A. No. 2 to counter affidavit filed by the Corporation, would indicate that benefit of A.C.P. has been required to be given to the employees of the Corporation only where the additional financial burden is to be borne by the

Corporation. It is contended that Corporation is running in losses right since the year 2012 consequently there cannot be any occasion for extension of the benefit of A.C.P. to the petitioners more particularly when Government Order dated 16.03.2015 stands and as such there cannot be any occasion for the Corporation to extend the benefit of first and second A.C.P. to the petitioners.

8. Having heard the learned counsels for the parties and having perused the record what emerges it that admittedly the petitioners who were working on daily wages have been regularized by the Corporation vide order dated 06.06.2018 with effect from 02.10.2002. The said regularization retrospectively has been made in pursuance to the directions issued by Hon'ble Supreme Court in **Sheo Narain Nagar (supra)**. Obviously once the petitioners have been regularized with effect from 02.10.2002 retrospectively, their services would also be counted with effect from the said date for all practical purposes.

9. However, the same may not detain the Court inasmuch as the respondents have granted the benefit of A.C.P. to other employees namely Shri Shiv Kumar and Shri Kuldeep Kumar. A copy of order dated 29.02.2020 pertaining to Shri Shiv Kumar is filed as Annexure No. 21 to the petition, which would indicate that Shri Shiv Kumar has been granted the benefit vide order dated 29.02.2020 i.e. after the Government Order dated 16.03.2015. Consequently once the respondent-Corporation consciously granted the benefit of A.C.P. to certain of its employees despite the Government Order dated 16.03.2015 and as admittedly the petitioners have been regularized with effect from 02.10.2002 as such there cannot be any occasion for the respondent - Corporation to discriminate against the petitioners and take the plea of financial incapacity. The said plea of financial incapacity was always open to the respondent-Corporation but grant of A.C.P. benefit to one set of its employees, in this case, Shri Shiv Kumar and Shri Kuldeep Kumar and not extending the same to the

petitioners despite their retrospective regularization in the year 2002 cannot be countenanced in any manner and if permitted to continue would be discriminatory and violative of Articles 14 & 16 of the Constitution of India.

10. Keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned dated 14.10.2020, a copy of which is Annexure No. 1 to the petition, is quashed. A writ of mandamus is issued to the respondents to accord the benefit of first and second A.C.P. to the petitioners from the date the same became due to the petitioners considering their retrospective regularization with effect from 02.10.2002 in accordance with relevant governments orders.

11. Let such decision be taken within a period of three months from the date of receipt of certified copy of this order.

Order Date :- 16.11.2023

Mohit Singh/-