

Court No. - 7

Case :- WRIT - A No. - 6498 of 2020

Petitioner :- Ramdeen Gautam

Respondent :- State Of U.P.Thru Secy.Nagar Vikas Vibhag Lucknow And Ors.

Counsel for Petitioner :- Manish Mani Sharma,Brijesh Kumar Kuldeep

Counsel for Respondent :- C.S.C.,Arvind Kumar Tiwari,Dileep Kumar Pandey

Hon'ble Abdul Moin,J.

1. Heard.

2. List revised.

3. None appears on behalf of the respondents no. 4 & 5 despite the name of Shri Arvind Kumar Tiwari being indicated in the cause list from the side of respondents.

4. The instant writ petition has been filed challenging the order dated 11.05.2017, a copy of which is annexure 1 to the petition, passed by the respondent 5 whereby it has been indicated that as the promotion of the petitioner has not been made as per Rules on a class III post consequently he is not entitled for salary of the said post.

5. The contention of learned counsel or the petitioner is that the petitioner while working on a class IV post staked his claim for promotion to a class 3 post. Subsequent thereto he filed a writ petition bearing Writ Petition No. 11518 (SS) of 2016 in re: Ram Deen Gautam vs State of U.P. and others and this Court vide judgement and order dated 23.05.2016, a copy of which is annexure 4 to the petition, directed the competent authority to look into the matter, ascertain the applicability of government order dated 04.12.2001 for promotion from class IV to class III post in the Nagar Palika considering the strength of the cadre and take a decision with regard to the claim of the petitioner within two months. In pursuance thereof vide the order dated

30.06.2016, a copy of which is annexure 5 to the petition, the competent authority promoted the petitioner on a class III post in clerical cadre. In pursuance thereof the petitioner joined the said post on 02.07.2016 as per the joining report, a copy of which is annexure 6 to the writ petition.

6. The petitioner claims that salary for the promoted post was paid to him right till October 2016 when his salary for the promotional post was stopped. Upon raising grievance the order impugned dated 11.05.2017, a copy of which is annexure 1 to the petition, has been passed by which it has been indicated that the promotion of the petitioner was made without constituting of committee which cannot be said to be in accordance with law and as such it is indicated that petitioner is not entitled for the salary of the promoted post.

7. Despite vakalatnama having been filed on behalf of respondents no. 4 and 5 by Shri Arvind Kumar Tiwari and his name being indicated in the cause list from the side of respondents nobody has put in appearance on behalf of Nagar Palika nor any counter affidavit is on record. There is also no request from the side of Shri Arvind Kumar Tiwari for adjournment of the matter.

8. Perusal of the order impugned dated 11.05.2017 would indicate that the respondent no. 5 has indicated that the promotion of the petitioner made in the clerical cadre is not in accordance with Rules as no selection committee was constituted for the same and thus it has been indicated that the petitioner would not be entitled for salary for the promoted post which reason though attractive on the face of records merits outright rejection in as much as while passing the order impugned the respondent no. 5 has not set aside the order of promotion of the petitioner dated 30.06.2016. Even though the

promotion of the petitioner may not be in accordance with Rules as emerges from a perusal of the order impugned dated 11.05.2017 but considering that till such time the promotion order of the petitioner itself is not cancelled consequently there cannot be any occasion for the respondents to not pay salary to the petitioner of the promoted post.

9. In this view of the matter, the writ petition is **allowed**. The order impugned dated 11.05.2017, a copy of which is annexure 1 to the petition, is quashed. The matter is remitted to the respondent no. 5 i.e. the Executive Officer, Nagar Palika Parishad, District Shrawasti who is required to pass a fresh order pertaining to the claim of the petitioner for payment of salary from November 2016 till date considering that his order of promotion dated 30.06.2016 still stands.

10. Let such an order in this regard be passed within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 2.12.2023

J.K. Dinkar