

Court No. - 8

Case :- WRIT - A No. - 14996 of 2020

Petitioner :- Jagannath

Respondent :- State Of U.P. Thru Prin.Secy. State Planning And Ors.

Counsel for Petitioner :- Dr. V.K. Singh,Ajay Vikram,Ashwini Kumar Singh,Pradeep Tiwari,Sandeep Kumar,Satendra Jaiswal

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Dr. V.K. Singh, learned counsel for the petitioner, as well as Mr. Tushar Verma, learned Additional Chief Standing Counsel, representing the respondents-State Authorities.

2. By way of present petition under Article 226 of the Constitution of India the petitioner has impugned the order dated 03.12.2019 whereby the petitioner's joining-back in the Directorate of Economics and Statistics, Government of Uttar Pradesh on the post of Additional Statistics Officer has been cancelled pursuant to judgment and order dated 03.09.2019 passed by the Division Bench in Special Appeal (Defective) No.234 of 2019.

3. The petitioner got selected for the post of Assistant Development Officer (Statistics), Basti, and was issued appointment order dated 02.06.2000 pursuant to which he joined the said post on 08.06.2000. The petitioner was promoted to the post of Assistant Statistics Officer, Basti on 04.03.2008.

4. It appears that the petitioner applied for the post of Trained Graduate Teacher (for short "TGT"), and he

got selected for the said post to be appointed as Assistant Teacher in A.S.H.S. & G.R.S. Inter College, Basti (for short "College"). The petitioner was issued appointment order dated 09.03.2010 to join the College on the post of Assistant Teacher. The petitioner moved an application for issuing him No Objection Certificate (for short "NOC") for joining the post of TGT College. The petitioner was issued NOC, however, it was said that if he would join the post of TGT, his lien on the post of Assistant Economic and Statistics Officer would come to an end. Pursuant to the said NOC dated 31.05.2010, the petitioner joined the post of TGT on 01.07.2010 after he was relieved from the post of Assistant Statistics Officer, Basti on 30.06.2010.

5. Within five weeks from the date of his joining as TGT in the College, the petitioner moved an application on 07.08.2010 in the Directorate of Economic and Statistics, Lucknow regarding returning/rejoining on the post of Assistant Statistics Officer. On the application of the petitioner dated 07.08.2010, the Director had passed the order only on 29.07.2016, permitting the petitioner to join the post of Additional Statistics Officer, which was the changed post from the post of Assistant Statistics Officer, and he was directed to join back by 12.08.2016.

6. Pursuant to the order dated 29.07.2016 passed by the Director, the petitioner joined back the Department on the post of Additional Statistics Officer on 01.08.2016. The petitioner thereafter tendered his resignation from the post of TGT in the College on 17.10.2016, which appears to have been accepted.

7. On 22.01.2018, the new incumbent, Director passed order, saying that the petitioner's joining back on the post of Additional Statistics Officer, after six years

from the date when he was relieved from the said post, on his request, was in violation of Rule 9(13) of the U.P. Fundamental Rules, 1942 (for short "Rules, 1942") as there was no provision under Rule 9(13) of the U.P. Fundamental Rules, 1942 for taking back an employee in the Department after his lien got terminated. In view thereof, the order dated 29.07.2016 passed by the earlier Director, allowing the petitioner to join back the Department on the post of Additional Statistics Officer, was cancelled.

8. Being aggrieved by the said order dated 22.01.2018, the petitioner filed Writ Petition No.3640 (S/S) of 2018 before this Court, which was allowed by the Coordinate Bench of this Court vide judgment and order dated 05.02.2019. It was said that no opportunity of hearing was given to the petitioner before passing the order dated 22.01.2018. It was also said that two persons, namely, S/Shri Rajnish and Rajesh Kumar Chauhan, who were relieved from their respective posts, were permitted to join their respective posts in similar manner, and only the petitioner was singled out. In view thereof, the Coordinate Bench held that taking shelter of Rule 9(13) of the Rules, 1942 was not justified, and the case was also of violation of Article 14 of the Constitution of India and, therefore, the order dated 22.01.2018 was set-aside and the respondents were directed to permit the petitioner to continue on the post of Additional Statistics Officer with all consequential benefits.

9. The said order dated 05.02.2019 passed by the Coordinate Bench was challenged in intra-Court appeal (Special Appeal Defective No.234 of 2019). The Division Bench, vide judgment and order dated 09.03.2019, modified the order passed by the Coordinate Bench and granted liberty to the respondents to pass a fresh order, after giving an

appropriate notice and opportunity of hearing to the petitioner. In view of aforesaid liberty granted to the respondents, the order dated 03.12.2019 came to be passed, which is impugned in the present petition.

10. The facts are not in disputed. If the Director would not have allowed the petitioner to join back by passing the order dated 29.07.2016, there was every likelihood that the petitioner would not have resigned from the post of TGT in the College. After two years, a new incumbent (Director) has reviewed the earlier order, and cancelled the same. In the meantime, the petitioner has altered his position inasmuch he has tendered his resignation from the post of TGT of the College on 17.10.2016. Even if it is assumed that the order of the Director dated 29.07.2016 was in violation of 9(13) of the Rules, 1942, the petitioner cannot be held responsible for the order passed by the then Director. There is nothing on record to suggest that the Director and the petitioner had colluded in passing the order dated 29.07.2016. The petitioner had moved an application on 07.08.2010, which was kept pending despite various reminders sent by the petitioner and, it was ultimately allowed vide order dated 29.07.2016.

11. This Court finds that the principle of promissory estoppel would come into play in the present case, and the petitioner cannot be punished for his no fault. The petitioner's application could have been rejected, if it was not in accordance with the Rules, but the fact remains that the petitioner was allowed to join back and after more than two years, the order dated 22.01.2018 came to be passed, which was set-aside by the Coordinate Bench and in special appeal the order was modified to the extent that the petitioner would be afforded an opportunity of hearing and the respondents would pass a fresh order, the impugned order dated

03.12.2019 came to be passed on the same grounds, which were taken, while passing the order dated 22.01.2018.

12. Be that as it may, the petitioner cannot be punished, and he cannot be left in lurches inasmuch as he has not colluded with the then Director, who had passed the order dated 29.07.2016. In view thereof, I find the impugned order unsustainable and ***set-aside*** the same. The respondents are directed to allow the petitioner to join back the post of Additional Statistics Officer. The petitioner would not be entitled for the pay for the period he did not work, however, he would be given benefit of continuity in service.

13. **ALLOWED.**

[D.K. SINGH, J.]

Order Date :- 30.5.2023
MVS/-