Court No. - 20

Case :- WRIT - A No. - 19787 of 2016

Petitioner :- Sher Mohammad Khan And Another
Respondent :- State Of U.P. Thru Secy.Agriculture Deptt.Civil Sectt. And Ors
Counsel for Petitioner :- Prabhat Kumar
Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Prabhat Kumar learned counsel for petitioners and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 30th April, 2013 to the extent it provides only notional promotion without arrears of salary to the petitioners on the post of Subordinate Agriculture Service Group-II which is a Class III post with effect from 24th January, 1980. Further prayer for a direction to opposite parties to provide regular promotion on the aforesaid post along with arrears of salary and interest with effect from 24th January, 1980 has also been sought.

3. It has been submitted that petitioners were appointed in Subordinate Agriculture Service Group-III as Assistant Soil Conservation Inspector and were thereafter confirmed on the said post. They were subsequently promoted in Group -II whereafter they have superannuated from service. It is submitted that initially petitions were filed in 1997 regarding seniority and promotion to Group-II posts in view of dispute between those persons who had a B.Sc. degree and those who were diploma holders. It was the case of diploma holders that their qualification was ignored for the purposes of promotion viz-a-viz degree holders. Few of such diploma holders filed claim petition No. 1079 of 2012 which was allowed by means of judgment and order dated 19th October, 2012. The same was challenged before this Court in Writ No. 384 (S/B) of 2013 by the State Government and by means of judgment and order dated 18th March, 2013, the same was dismissed. In the said judgment, Division Bench of this Court clearly noticed the fact that similar dispute was earlier allowed by Services Tribunal in claim petition filed by one Shiv Shanker Tripathi and others, which was also allowed and challenge thereagainst was rejected by the High Court as well as Supreme Court. The aforesaid writ petition was also therefore dismissed on the same grounds.

4. Learned counsel for petitioner has submitted that earlier by means of judgment and order dated 19th May, 2006, a similar dispute has already been adjudicated upon in writ A No. 6368 (S/S) of 1997 which was also allowed directing the authority to consider cases of petitioners for promotion with all consequential benefits. It is submitted that in all subsequent litigations as well, directions were issued for consideration for promotion with all consequential benefits. It has been submitted that in the light of aforesaid judgments, present petitioners had also filed writ petition No. 3701(S/S) of 2013 and which was also disposed of in terms of judgment and order dated 19th May, 2006 passed in writ petition No. 6368 (S/S) of 1997. It is therefore submitted that once all consequential benefits were granted to the petitioners by means of judgment and order dated 26th August, 2014 passed in writ petition No. 3701 (S/S) of 2013, they are entitled to all consequential benefits subsequent to their promotion and the opposite parties have erred in granting only notional benefits.

5. Learned counsel has also placed reliance on judgment and order dated 17th March, 2023 passed in Writ A No. 21190 of 2016, Devi Singh versus State of U.P. and others as well as judgment and order dated Ist March, 2023 passed in Writ A No. 5944 of 2015, Agni Kumar versus State of U.P. and others to submit that petitioners are entitled for the same benefits as have been accorded in the aforesaid writ petition.

6. Learned State Counsel has however refuted submissions advanced by learned counsel for petitioner with submission that impugned order has been passed in consonance with government order dated 28th May, 1997 as well as judgment of Hon'ble Supreme court reported in 1989 (2) SLR 202 to the effect that in case promotion is granted to a senior person subsequent to promotion having been granted to a person junior to him, only notional benefit is required to be given and not all consequential benefits such as arrears of salary etc. He has also placed reliance on government orders dated 6th July, 2016 and 5th October, 2017 which define the word 'emolument' as referred to in the definition of 'pay' as defined in Rule 9(21) of U.P. Fundamental Rules. It is submitted that aforesaid government orders are also pari materia the government order dated 28th May, 1997 which have not been considered in the earlier judgments.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that aforesaid dispute has already been adjudicated upon by co-ordinate Benches of this court passed in the cases of Devi Singh (supra) and Agni Kumar (supra). In the case of Devi

Singh (supra), a coordinate Bench of this court has noticed the fact that similar dispute has already been adjudicated upon by Services Tribunal with the same being upheld right up till the Hon'ble Supreme Court. The aforesaid judgment has also placed reliance on judgments rendered by Supreme Court in the case of **Commissioner, Karnatka Housing Board versus C. Muddaiah** reported in (2007) 7 SCC 689 and **Food Corporation of India versus S.N. Nagarkar** reported in A.I.R. 2002 Supreme Court 808 as well as **State of Kerala and others versus E.K. Bhaskaran Pillai** reported in (2007) 6 SCC 524 and after considering the aforesaid judgments has clearly recorded that once a benefit has been accorded to a petitioner, it is not open for the authorities to deny the aforesaid benefit and that once direction is issued by competent courts, it should be obeyed and implemented without any reservation. The judgment also indicates that only remedy available to the party in case it is aggrieved by the order of writ court is to challenge the same by taking appropriate course under law.

8. The aforesaid judgment has thereafter also been followed in the case of Agni Kumar (supra).

9. In the present case the only distinguishing feature indicated by learned State Counsel is reliance placed on the government orders dated 6th July, 2016 and 5th October, 2017. A perusal of aforesaid government order makes it quite evident that same are pari materia to the government order dated 28th May, 1997 which has already been considered by coordinate Benches of this Court as indicated herein above. The earlier ruling of Hon'ble Supreme Court indicated in the impugned order has also been dealt with by referring to at least three subsequent Supreme Court judgments which have been indicated herein above. It is also noticeable that in the case of S.N.Nagarkar (surpa), the judgment rendered by Supreme Court in 1989 in the case of Paluru Ramkrishnaiah and others versus Union of India and others reported in (1989) 2 SCC 541 has also been dealt with. Relevant portion of the judgment rendered in the case of S.N. Nagarkar (supra) is as follows:-

"Learned counsel appearing on behalf of the appellant submitted that this was a case where notional promotion and seniority was given to the respondent. In such a case the concerned employee is entitled to the pay scale of the promotional post only with effect from the date he joins the post and not from the date of his promotion. He sought to rely on two judgments of this Court reported in : (1996) 7 SCC 533, State of Haryana and others vs. O.P. Gupta and others and (1989) 2 SCC 541, Paluru Ramkrishnajah and others etc. vs. Union of India and another. On the other hand counsel for the

respondent submitted that this is not a case where this Court is called upon to consider the submission urged on behalf of the appellant. In the instant case, the writ petition filed by the respondent was allowed by judgment and order dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993. That order attained finality as it was not appealed from. In execution proceedings, the appellant cannot go beyond the order passed by the Court in the writ petition and, therefore, what has to be considered is whether the High Court was right in holding that in terms of the order of the Court dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993, the respondent is entitled to the arrears of pay and allowances with effect from the date of promotions. If the answer is in the affirmative, the question whether such relief ought to have been granted cannot be agitated in execution proceeding. We find considerable force in the submission urged on behalf of the respondent. In these proceedings it is not permissible to go beyond the order of the learned Judge dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993. The execution application giving rise to the instant appeal was filed for implementing the order dated 6th May, 1994 and in such proceeding, it was not open to the appellant either to contend that the judgment and order dated 6th May, 1994 was erroneous or that it required modification. The judgment and order aforesaid having attained finality, has to be implemented without questioning its correctness. The appellant therefore, cannot be permitted to contend in these proceedings that the judgment and order dated 6th May, 1994 was erroneous in as much as it directed the appellant to pay to the respondent arrears of salary with effect from the dates of promotion, and not from the dates the respondent actually joined the promotional posts."

10. All the three judgments referred to in the case of Devi Singh (supra) are clearly an exposition on the law that once benefit has been granted by a court of competent jurisdiction then the same is required to be disbursed in toto without any reservation on the part of authorities concerned. The case of E.K. Bhaskaran Pillai (supra) also indicates the situation where persons who have been superseded and are subsequently granted promotion can be granted full benefits with retrospective effect and it has been held that principle of 'no work no pay' can not be accepted as a rule of thumb and there are exceptions where courts have granted mandatory benefits also. Relevant paragraph of the judgment is as follows:-

"Learned counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from

15.6.1972. In support thereof, the learned counsel invited our attention to the decisions of this Court in Paluru Ramkrishnaiah & Ors. Vs. Union of India & Anr. [(1989) 2 SCC 541], Virender Kumar, G.M., Northern Railways Vs. Avinash Chandra Chadha & Ors.[(1990) 3 SCC 472] , State of Haryana & Ors. Vs. O.P. Gupta & Ors. [(1996) 7 SCC 533], A.K. Soumini Vs. State Bank of Travancore & Anr.[(2003) 7 SCC 238] and Union of India & Anr. Vs. Tarsem Lal & Ors. [(2006) 10 SCC 145]. As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors.[(1991) 4 SCC 109], State of A.P. Vs. K.V.L. Narasimha Rao & Ors.[(1999) 4 SCC 181], Vasant Rao Roman Vs. Union of India & Ors. [1993 Supp. (2) SCC 324] and State of U.P. & Anr. Vs. Vinod Kumar Srivastava [(2006) 9 SCC 621]. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

11. So far as the government orders dated 6th July, 2016 and 5th October, 2017 are concerned, it is evident that same are pari materia to the government order dated 28th May, 1997 which has already been considered by coordinate Benches of this Court and the rationale therein has already been negatived. Furthermore impugned orders in the present case has been passed much prior to the advent of the aforesaid government orders, which can not be applied retrospectively without any such specific stipulation in the aforesaid government orders. For the said reason also, the said government orders would have

no applicability in the present facts and circumstances of the case.

12. Considering the fact that in earlier round of litigation by the petitioners, all consequential benefits have been granted to them following their promotion, it was not open to the opposite parties to have granted them only notional benefits. The impugned order dated 30th April, 2013 being against law enunciated by Hon'ble Supreme Court is therefore vitiated and is quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite parties to provide arrears of salary to the petitioners for promotional post of Subordinate Agriculture Group-II with effect from 24th January, 1980, which is the date on which such benefit was granted to persons junior to petitioners.

13. This court does not find any occasion therefore to take a divergent view from judgments rendered by Coordinate Bench of this court in the cases referred to herein above.

14. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 26.10.2023
prabhat

Digitally signed by :-
PRABHAT KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench