

Court No. - 20

Case :- WRIT - A No. - 7068 of 2014

Petitioner :- Jitendra Singh

Respondent :- State Of U.P. Thru Prin.Secy.Of Revenue Govt.Of Up
Lko.Andors.

Counsel for Petitioner :- Pt. S. Chandra

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 had been filed challenging order dated 14th December, 2011 whereby petitioner's case for regularization was rejected. Further prayer seeking a direction to opposite parties to regularize him from the post of Collection Amin against 35% quota with effect from the date when juniors to petitioner were regularized in service on 30th May, 1996 has also been sought along with relief of benefit of seniority, arrears of salary, increment etc.

3. It has been submitted that initially petitioner was engaged in service by the opposite parties as a Seasonal Collection Amin on 1st June, 1989 whereafter his services were terminated vide order dated 5th July, 1990 which was challenged in writ petition No.6537 (S/S) of 1990 and in which interim protection was granted to petitioner vide order dated 12th July, 1990. It is submitted that aforesaid writ petition was thereafter allowed by means of judgment and order dated 4th October, 2010 quashing the termination order dated 5th July,1990. It is submitted that against aforesaid judgment and order, the opposite parties filed review petition (defective) No. 355 of 2012 which was also dismissed vide judgment and order dated 11th February, 2020. It is submitted that aforesaid judgment and order has become final since no appeal thereagainst was filed by the opposite parties.

4. Learned counsel for petitioner has further submitted that in the meantime, impugned order has been passed rejecting petitioner's claim for regularization on the ground that there was no vacancy at that time and petitioner would be considered for regularization as when vacancy arose in 35% quota reserved for regularization of Seasonal Collection Amin. It is submitted that during pendency of present petition, the petitioner has in fact been regularized vide order dated 18th January, 2016 with prospective effect ignoring his claim for regularization with

effect from the date persons junior to him were regularized in service. It is therefore submitted that although prayer No.1 has lost its efficacy but remaining prayers will survive for consideration.

5. Learned counsel has drawn attention to paragraph 12 of the writ petition to submit that names of persons who were engaged subsequent to petitioner's engagement in service have been indicated along with their date of initial engagement which is subsequent to that of petitioner. It is submitted that aforesaid persons were regularized in service on 30th May, 1996 ignoring petitioner's claim. Learned counsel has also drawn attention to paragraph 19 of the counter affidavit to submit that opposite parties have not denied the aforesaid averments made in the writ petition. It is therefore submitted that petitioner can not be discriminated against and is required to be granted parity with persons junior to him.

6. Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with submission that initially petitioner was considered for regularization which was deferred by means of impugned order dated 14th December, 2011 on the ground that at the relevant time when petitioner's case was considered, only 26 vacancies on the post of Collection Amin were required to be filled up by means of direct recruitment or promotion since they did not come within 35% quota reserved for regularization of Seasonal Collection Amines. It is submitted that impugned order correctly indicates the fact that petitioner's case for regularization would be considered as and when vacancy would arise and therefore it is in accordance with aforesaid fact that petitioner has subsequently been regularized vide order dated 18th January, 2016 when vacancy arose. It is also submitted that since petitioner was terminated from service by means of order dated 5th July 1990, which was set aside only in the year 2010, petitioner's case was liable to be considered for regularization only upon final orders having been passed in the aforesaid writ petition.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident from the impugned order itself that opposite parties have admitted the fact that petitioner was initially engaged in service as a Seasonal Collection Amin on 1st June, 1989. His services were terminated vide order dated 5th July, 1990 which was challenged before this Court and in which interim protection was granted to petitioner vide order dated 12th July, 1990. The aforesaid writ petition was thereafter allowed vide judgment and order dated 4th October, 2010 quashing the

termination order with consequential benefits. It was also directed that petitioner shall be promoted to continue in service and his case shall be considered for regularization in accordance with law forthwith. Although the aforesaid order was challenged in review proceedings but during pendency of such review, petitioner's case for regularization was initially deferred by means of impugned order dated 14th December, 2011 whereafter he has been regularized in service vide order dated 18th January, 2016 prospectively.

8. It is a relevant factor to advert to that the opposite parties have clearly admitted petition being engaged in service as a Seasonal Collection Amin on 1st June, 1989. Although he was subsequently terminated from service but such termination order has been quashed, which naturally would relate back to the date of passing of the termination order. The consequence of that judgment would in fact be that petitioner would be deemed to continue in service with effect from 1st June, 1989. It is also a relevant factor that aforesaid writ petition No. 6537 (S/S) of 1990 has been allowed with consequential benefits and for promotion to continue in service along with consideration for regularization forthwith.

9. In paragraph 13 of the writ petition, petitioner has clearly indicated the names of at least three persons namely Surya Pal Chaurasiya, Vidya Pratap Yadav and Hari Nath Singh along with the date of appointments as 20.7.1994, 8.9.1995 and 23.9.1989 respectively. The said contents of paragraph 12 of the writ petition have been blandly denied in paragraph 19 of the counter affidavit. There is no denial of the averment that aforesaid three persons were engaged in service subsequent to petitioner and were thereafter regularized on 30th May, 1996. It is trite that specific averments made in the petition which are not specifically denied would be deemed to be admitted.

10. There is absolutely no indication in the counter affidavit as to why petitioner's case could not have been considered when such an exercise took place in the year 1996. It is not the case of opposite parties that petitioner was ineligible or unqualified for being considered for regularization in the year 1996.

11. The opposite parties have in fact considered petitioner's case for regularization in the year 2011 and have found him to be duly qualified and eligible for regularization, which however was deferred only on the ground that vacancies in 35% quota fixed for regularization of Seasonal Collection Amins was unavailable and that petitioner would be regularized as and when such vacancy arose. It is in pursuance of such consideration that petitioner was in fact considered and

regularized vide order dated 18th January, 2016.

12. The aforesaid facts clearly indicate that petitioner was duly qualified and eligible for regularization, which in fact was effected subsequently in the year 2016.

13. In view of the clearly admitted fact that persons engaged subsequently in service as Seasonal Collection Amin were thereafter regularized on 30th May, 1996, there does not seem to be any reason for denying the aforesaid benefit to petitioner.

14. Considering the aforesaid facts, the case of petitioner for parity with juniors is clearly made out.

15. Consequently a writ in the nature of Mandamus is issued commanding the opposite parties to treat petitioner as having been regularized in service on the post of Collection Amin with effect from 30th May, 1996, which is the date on which persons engaged subsequent in service to petitioner were regularized. Such retrospective regularization however would be on notional basis without payment of actual salary but would be taken into account for purposes of post retiral benefits.

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

Order Date :- 28.10.2023

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