

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 177 of 2017

Applicant :- Sanaullah Khan

Opposite Party :- Smt. Aradhna Shukla Prin.Secy.Transport Deptt. Lko.
And Anr.

Counsel for Applicant :- Manish Mani Sharma

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Manish Mani Sharma, learned counsel for the petitioner and Sri Amrendra Pratap Singh, learned Standing Counsel for the State.

2. Sri Singh has filed short counter affidavit along with an application for dismissal of contempt petition wherein the deponent is L. Venkateshwar Lu, presently serving as Principal Secretary, Transport Department, Government of U.P., Civil Secretariat, Lucknow, same is taken on record.

3. Sri Amrendra Pratap Singh has stated that the order of the writ court has been complied with in its letter and spirit way back in the year 2017 itself but on account of some objections filed by the petitioner the supplementary counter affidavit and short counter affidavit have been filed. The writ court vide order dated 31.8.2016 passed in Service Single No. 20541 of 2016 has disposed of the writ petition of the petitioner providing him the benefit of judgment and order dated 23.5.2006 passed in W.P. No. 637 (S/S) of 1997 which stands affirmed by the Apex Court by means of the judgment and order dated 8.1.2015 passed in Civil Appeal No. 183 of 2015. For the convenience the operative portion of the order dated 31.8.2016 is being reproduced as under :-

"Accordingly, in view of the aforesaid facts, this writ petition is also finally disposed of in terms of the judgment and order dated 23.05.2006 passed by this Court in Writ Petition No.637 (S/S) of 1994 which stands affirmed by Hon'ble Supreme Court by means of the judgment and order dated 08.01.2015 passed in Civil Appeal No.183 of 2015, Azharul Hasan and others vs. State of U.P. and others."

4. Further, attention has been drawn towards the order dated 23.5.2006 (supra) whereby this Court has allowed the writ petition directing the authorities to give the appointment to the petitioners on the post of Regional Transport Inspector (Technical) with effect from the date of their absorption in the Transport Department protecting their last pay as drawn in the earlier department in terms of the Government Order dated

11.11.1993 and the petitioners shall be paid their consequential benefits. The operative portion of order dated 23.5.2006 reads as under :-

"Under the circumstances, a writ of mandamus is issued to the respondents to give the appointment to the petitioners on the post of Regional Inspector (Technical) with effect from the date their absorption in the Transport Department protecting their last pay as drawn in the department in terms of the Government Order dated 11.11.1993. It is further provided that the petitioners shall also be entitled for other consequential benefits."

5. Sri Singh has drawn attention of this Court towards the affidavit of compliance dated 8.11.2017 wherein the deponent is Smt. Aradhana Shukla, the then Principal Secretary, Department of Transport, referring paragraphs no. 3 thereof and also Annexure A-1, which reads as under :

"3. That thereafter as per the statement the Transport Commissioner U.P., Lucknow passed an order on 10.3.2017 in absolute line with the directions issued by the Hon'ble Writ Court. True copy of the order dated 10.3.2017 passed by the Transport Commissioner, U.P. , Lucknow is being annexed as Annexure no.A-1 to this affidavit."

6. Sri Singh has stated that in the office order dated 10.3.2017 vide para 9 it has been specifically stated that on account of pending contempt petition and having no other option except to make compliance of the order of the writ court the present petitioner who retired from service on 29.2.2008 was promoted on the post of Assistant Regional Transport Inspector w.e.f. 1.1.1996 in the pay scale of Rs. 6500-200-10500 and the petitioner shall be paid all consequential service benefits. Sri Singh has further stated that the aforesaid fact has been made more clear by filing supplementary counter affidavit on 28.3.2018 by the same authority specifically indicating in para 7 that the order of the writ court has been complied with in its letter and spirit. Para 7 of the aforesaid affidavit reads as under :

"7. That after the exchange of affidavits, the order dated 10.03.2017 was passed complying the judgment and order dated 31.08.2016 and the petitioner was absorbed / appointed on the post of Regional Inspector (Technical) w.e.f. 01.01.1996 on the pay scale of Rs.6500-200-10500. In consequence thereto order dated 02.05.2017 was also issued fixing the seniority of the petitioner. Needless to mention that by means of order dated 28.03.2017 issued by the A.R.T.O. (Administration), Pratapgarh, the pension of the petitioner has also been revised. Thus, the order passed by the Hon'ble High Court has been complied with in its letter and spirit."

7. Learned Standing Counsel has stated that the petitioner has filed supplementary affidavit against the affidavit of compliance

and has specifically stated in para 5 and 6 of such supplementary affidavit that the petitioner has not been promoted on the next higher post i.e. Assistant Regional Transport Inspector w.e.f. 18.7.2003 when junior to the petitioner namely, Sri Santosh Kumar Singh has been promoted. He has further stated in para 6 that the identically placed employee namely, Sri Qamrul Waheed Khan has been given notional promotion vide order dated 23.5.2006 on the post of Regional Transport Inspector but the petitioner has not been given such benefit.

8. Replying the aforesaid contention of the petitioner, Sri Singh has drawn attention of this Court towards para 7,8 and 9 of the short counter affidavit which has been filed today wherein it has been categorically indicated that the Sri Santosh Kumar Singh has been given promotion on the post of A.R.T.O. as he was appointed in the Transport Department on deputation from Public Works Department where he was serving as Junior Engineer, whereas the petitioner was a retrenched employee of Auto Tractor Limited and has been absorbed under the Absorption Rules, 1991 and under the Government Order dated 11.11.1993. Therefore, as per Sri Singh the petitioner may not claim parity with Sri Santosh Kumar Singh as the Absorption Rules, 1991 and Government Order dated 11.11.1993 does not permit for the same. Sri Singh has further submitted that the petitioner has indicated names of two employees namely Sri Azharul Hasan and Sri Indra Nath Yadav, who are retrenched employees, indicating that they have been given promotion but the aforesaid employees have not been given promotion as specific recital to this effect has been given in para 8 of the short counter affidavit.

9. So far as the case of Sri Qamrul Waheed Khan is concerned Sri Singh has drawn attention of this Court towards para 9 of the short counter affidavit wherein he has indicated that Sri Qamrul Waheed Khan who is similarly situated to the petitioner has been given promotion vide order dated 23.5.2019 and Sri Qamrul Waheed Khan retired on 30.6.2020 whereas the petitioner retired from service on 29.2.2008, therefore, he can not claim parity with Sri Qamrul Waheed Khan.

10. Sri Sharma has stated that when Sri Qamrul Waheed Khan has been given notional promotion for the period he has not discharged the duties then the present petitioner should have also been given the notional promotion and the fact that the Sri Qamrul Waheed Khan was very much in service on 23.5.2019 when the order of promotion has been passed does not make any difference if the benefit of notional promotion would have been considered for the petitioner.

11. Accordingly, the contempt petition is **dismissed**.

12. Notices discharged.

13. However, it is always open for the petitioner to approach the competent authority for redressal of his grievance, if any, inasmuch as the contempt court may not test the validity of Absorption Rules, 1991 (supra) and Government Order dated 11.11.1993 (supra) as well as the fact as to whether the present petitioner should have been given parity with Sri Qamrul Waheed Khan while providing the notional benefit.

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[Rajesh Singh Chauhan, J.]

Order Date :- 2.11.2023

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