

Court No. - 8

Case :- WRIT - A No. - 1193 of 2011

Petitioner :- Smt. Mithilesh Kumari

Respondent :- Vidhan Parishad Of U.P.Through Its Prin. Secy. Of Vidhan

Counsel for Petitioner :- Pt.S.Chandra,R.U.Pandey,Rajesh Kumar,Safiya Abid

Counsel for Respondent :- Lalit Shukla,Akansha Dubey,Atiya Abid,Kailash Narain Srivastava,Mohd Abid Ali,Surya Bhan Pandey

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Ram Ujagar Pandey, learned counsel for the petitioner as well as Ms. Akanksha Dubey, learned counsel for opposite party nos.1 to 3 and Ms. Atiya Abid, learned counsel for opposite party no.5.

2. The present writ petition under Article 226 of the Constitution of India has been filed seeking her promotion to Group 'C' post in Vidhan Parishad on the ground that junior to her, Girish Chandra Srivastava, opposite party no.5, was promoted to Group 'C' post on 19.12.2005, therefore, she should have been promoted from the same date i.e. the date when her immediate junior was promoted.

3. The petitioner, who was employed in Uttar Pradesh Vidhan Parishad on Group 'D' post, got retired from service on 31.1.2020 on attaining the age of superannuation.

4. Before filing this writ petition, the petitioner approached this Court in the year 2009 by filing Writ Petition No.1947 (SS) of 2009. The said writ petition was finally disposed of vide order dated 20.11.2010 and directed the opposite parties to look into the grievance of the petitioner and pass an appropriate order regarding promotion of the petition from Group 'D' post to Group 'C' post. The petitioner's representation in pursuance to the said direction issued by this Court in the aforesaid writ petition came to be rejected vide order dated 21.1.2011.

5. The ground for rejection of the representation for claim of the petitioner from Group 'D' post to Group 'C' post, is that the recruitment and service conditions of the employees of the Vidhan Parishad are governed under the Uttar Pradesh Vidhan Parishad Secretariat Service (Recruitment and Conditions of Service) Rules, 1976 and there was no provision for promotion of a person working on Group 'D' post to Group 'C' post.

6. Ms. Akanksha Dubey, learned counsel for opposite party nos.1 to 3 submits that promotion of opposite party no.5 was an illegal promotion and an exception/relaxation was carved out in his favour. The promotion of opposite party no.5 has never been challenged. The petitioner for the first time, approached this Court only in the year 2009 by filing Writ Petition No.1947 (SS) of 2009, in which an order of deciding her representation was passed. Any illegal order regarding promotion or otherwise, would not give right to other employee to seek similar illegal order as illegality cannot be perpetuated and it has to be stopped.

7. Ms. Atiya Abid, learned counsel for opposite party no.5 submits that opposite party no.5 has been working on Group 'C' post since the date of his promotion i.e. 19.12.2005 and now he is on the verge of retirement inasmuch he will attain the age of superannuation in December, 2023. Therefore, at this stage, setting aside the promotion order of opposite party no.5, which was passed way back in 2005, would not be justified though the said order is admittedly illegal.

8. Learned counsel for the petitioner does not dispute the fact that there is no provision for promotion of Group 'D' employee to Group 'C' post in Vidhan Parishad under the Rules.

9. In view thereof, it is clear that the promotion order of opposite party no.5 was nothing but an illegality order and this

Court cannot direct for perpetuation of the illegality on the ground that since opposite party no.5 was promoted against the Rules, though he was junior to the petitioner, the same illegality should also be committed in respect of the petitioner.

10. Thus, I do not find much substance in this writ petition, which is hereby ***dismissed***.

Order Date :- 14.7.2023
Rao/-