

Court No. - 7

Case :- WRIT - A No. - 704 of 2011

Petitioner :- Anurag Singh

Respondent :- State Of U.P. Through Secy.Higher Edu.Lucknow And Ors.

Counsel for Petitioner :- K.K.Singh,M.A.Khan,Mohd.Ateeq Khan,Nisar Ahmed

Counsel for Respondent :- C.S.C.,S.P.Shukla,Savitra Vardhan Singh

Hon'ble Abdul Moin,J.

1 Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondent no. 1 and Sri Savitra Vardhan Singh, learned counsel appearing on behalf of the respondents no. 2 & 3.

2. Learned counsel appearing on behalf of the contesting parties state that the facts of the instant case have already been indicated in detail in the order dated 03.07.2019 which for the sake of convenience is reproduced below:-

"Heard.

Under challenge is the order dated 30.08.2010 by which the claim of the petitioner for grant of a regular pay scale as extended to the persons similarly circumstanced has been rejected. It is contended by the petitioner that he was appointed through an order dated 21.08.2004, a copy of which is annexure 3 to the petition on a fixed pay on a Class III post in pursuance to the said order. The appointment was done against a sanctioned post in a Self Finance Course of Institute of Management Science. The Government order governing such appointments has been issued on 04.02.2000, a copy of which has been filed as annexure 11 to the petition. For the posts being sanctioned by the Government, learned counsel for the petitioner has placed reliance on an order dated 27.09.2008, a copy of which has been filed as annexure 4 to the petition to contend that the said order itself indicates that nine posts have been created in the Institute of Management Science (IMS) by the Government. The order also contains the names of the nine persons who are working against the said post which also includes the name of the petitioner.

Learned counsel for the petitioner contends that subsequent thereto, seven persons have already been given a regular pay scale as would be apparent from a perusal of annexure SA 1 which has been filed with the supplementary affidavit dated 26.02.2014 which indicates that with the exception of the petitioner and two others, all others seven persons have been granted a regular pay scale. It is contended that when the petitioner approached the respondents for grant of the regular pay scale, the respondents have proceeded to reject the claim of the petitioner by means of the impugned order dated 30.08.2010, a copy of which is annexure 1 to the petition by placing reliance on a letter issued by His Excellency the Chancellor dated 09.07.2010. It is argued that the letter dated 09.07.2010 would not be applicable with respect to the petitioner inasmuch as the letter dated 09.07.2010 as issued by His Excellency Chancellor, a copy of which has been filed as annexure 2 to the petition pertains to those posts of Self Finance Course which had not been sanctioned by the

Government but in the instant case the posts have been sanctioned and consequently it is contended that the respondents patently erred in law and in fact while rejecting the claim of the petitioner for grant of the regular pay scale. Learned counsel for the petitioner also argues that non grant of the regular pay scale to the petitioner and at the same time giving of the regular pay scale to others who are working in the said Self Finance Course of Institute of Management Science is a discriminatory act on the part of the respondents which cannot be permitted by any stretch of imagination.

On the other, Sri Savitra Vardhan Singh seeks time to address the Court on the aforesaid issues as have been raised by the learned counsel for the petitioner. As such, on his request, list this case in the next week. "

3. Sri Savitra Vardhan Singh, learned counsel appearing on behalf of the respondents no. 2 & 3 states that in pursuance to the order dated 03.07.2019, a supplementary affidavit has been filed per which it has been indicated that on the basis of resolution taken by the Executive Council it has been decided that all those who are appointed subsequent to 1997 would not be given the pay scale and thus no error has been committed by the respondents while passing the order impugned. Various other grounds have also been indicated in the supplementary counter affidavit.

4. However, a perusal of the order impugned dated 30.08.2010 would indicate that the claim of the petitioner for grant of regular pay scale has been rejected by placing reliance on an order passed by His Excellency, The Chancellor issued on 09.07.2010 by which all the Universities were required to adhere to the policy decision taken by the State Government regarding payment of salary to the teaching and non teaching employees working under self finance course.

5. A perusal of the order dated 09.07.2010 issued by His Excellency, the Chancellor, a copy of which has been filed as part of annexure 2 to the writ petition along with the covering letter dated 06.04.2010, a copy of which is annexure 2 to the writ petition would indicate that it is with respect to those posts which have sanctioned by the State Government where a regular pay scale would be given to the employees.

6. Learned counsel for the petitioner has invited the attention of the Court towards the order issued by the Institute of Management Sciences dated 27.09.2008, a copy of which is annexure 4 to the writ petition per which at Serial No. 9 the post of Routine Grade Clerk (hereinafter referred to as "RGC")

cum-typist have been indicated and in column no. 4, the details of Government order dated 15.01.1998 have been given and the number of employees including the petitioner have been indicated to be working.

7. A copy of Government order dated 15.01.1998 has been filed as annexure 1 to the rejoinder affidavit dated 14.08.2019 which indicates that for the Institute of Management in the Lucknow University various posts have been sanctioned including the post of Junior Clerk-cum-Typist for the office.

8. Placing reliance on the aforesaid documents the argument of learned counsel for the petitioner is that when the order of His Excellency, the Chancellor indicates that it is only with respect to those posts which have been sanctioned by the Government which would be entitled for payment of the regular pay scale and in terms of the Government order dated 15.01.1998, the post had in fact been sanctioned against which the petitioner is working consequently, the respondents have patently erred while passing the order impugned whereby the claim of the petitioner for grant of regular pay scale has been rejected. It is also contended that recommendations have also been made by the Director of Institute of Management Sciences vide recommendations dated 01.06.2018 and 07.01.2016 for grant of regular pay scale, copies of which are part of Annexure-2 to the rejoinder affidavit dated 14.08.2019.

9. On the other hand, Sri Savitra Vardhan Singh, learned counsel appearing on behalf of the respondents no. 2 & 3 states that the post was only being sanctioned on a fixed pay as would be apparent from a perusal of the Government order dated 15.01.1998 consequently, there would not be any occasion for payment of regular pay scale to the petitioner. Apart from this, it has been contended that the Executive Council has taken a decision of granting of regular pay scale only to persons appointed on or before 1997 and the petitioner having been appointed in the year 2004 on the fixed pay basis would not be entitled for grant of regular pay scale.

10. Having heard the learned counsel appearing for the contesting parties and having perused the records what emerges is that the claim of the petitioner for

grant of regular pay scale has been rejected vide order impugned dated 30.08.2010 by placing reliance on an order issued by His Excellency, the Chancellor dated 09.07.2010. The order dated 09.07.2010 along with the covering letter dated 06.04.2010 would indicate that a regular pay scale has been directed to be given to only those persons who are working against the posts sanctioned by the Government. Admittedly, the petitioner is working in the Institute of Management and Sciences of the Lucknow University which post had been sanctioned through the Government order dated 15.01.1998. Thus, once the post had been sanctioned and as per the order issued by His Excellency, the Chancellor the regular pay scale is to be given only to those who are working on posts sanctioned by the Government consequently, the artificial class being sought to be created by the respondents of describing the sanctioned post on fixed pay and regular pay cannot be said to be legally sustainable in the eyes of law.

11. So far as the ground taken by the respondents of a decision having been taken by the Executive Council of only granting a regular pay scale to those who were appointed on or before 1997, the same may not detain the Court inasmuch as the said ground does not find place in the order impugned. Even if the respondents may have taken the said ground while filing the counter affidavit or a supplementary counter affidavit yet once the said ground does not find place in the order impugned consequently, no credence or cognizance can be taken of the said ground taking into consideration the law laid down by the Apex Court in the case of **Mohinder Singh Gill & Anr vs The Chief Election Commission** reported in **1978 AIR SC 851**.

12. Keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned dated 30.08.2010, a copy of which is annexure 1 to the writ petition is quashed.

13. The respondent no. 3 is directed to consider the claim of the petitioner for grant of regular pay scale keeping in view the Government order dated 15.01.1998 and the fact that the persons similarly circumstanced have already been granted a regular pay scale and the recommendations dated 01.06.2018 and

07.01.2016.

13. Let a decision be taken in this regard within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 8.11.2023

Pachhere/-