

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2090 of 2023

Applicant :- Pratima Srivastava

Opposite Party :- Sri Anil Kumar Iird, The Prin. Secy. Labour Deptt.
Lko. And Another

Counsel for Applicant :- Yogesh Chandra Srivastava

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri S.K. Kalia, learned Senior Advocate assisted by Sri Y.C. Srivastava and Sri Mohit Jauhari, learned Standing Counsel for the State.

2. This Court has passed order dated 6.11.2023 which reads as under :

"1. Heard.

2. This Court has passed the order dated 18.10.2023, which reads as under:-

"1. Heard.

2. This Court has passed the order dated 19.09.2023 which reads as under:

"1. Heard Sri Yogesh Chandra Srivastava, learned counsel for the petitioner and Sri Vinayak Saxena, learned Standing Counsel for the State.

2. Writ Court has passed order dated 22.2.2023 which reads as under :

"Heard learned counsel for the petitioner and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for the State.

Late Dr. Virendra Kumar Srivastava has filed the present writ petition with the following main relief:-

"(i) To issue a writ, order or direction in the nature of mandamus directing the opposite parties to treat him substantively appointed in the year 1987 and to reckon the period of service since the date of his initial appointment with all service benefit like time scale promotion on completion of 5 years, 16 years and 26 years satisfactory service including for the purpose of pension etc, and the same may be allowed alongwith the arrears of salary.

(ii) To issue a writ, order or direction in the nature of mandamus directing the opposite parties to extend the service benefit to the petitioner, who is identically situated, reckoning the services since the date of joining in the year 1987, as the petitioners of Writ Petition No.1062 (SB) of 2011 and 1573 (SB) of 2012 were extended vide orders dated 05.08.2015 and 15.01.2016 respectively.

(iii) To issue a writ order or direction in the nature of mandamus directing the opposite parties to extend the benefit of the judgment and order dated 06.07.2016 passed in Writ Petition No. 15321 (SB) of 2016 i.e. Dr. (Smt.) Pratibha Nigam Vs. State of U.P. and others , which has attained finality after dismissal of the Special Leave Petition.

(III-a) To issue a writ order or direction in the nature of certiorari quashing the impugned order dated 15.12.2016 contained in Annexure No.1 to writ petition"

The brief facts of the present case are that husband of the petitioner was appointed on ad hoc post against the permanent vacancy as Medical Officer on 30.05.1987 for six months, however, the services of Dr. Virendra Kumar Srivastava was continued without any break and he was regularized vide order dated 24.07.2009.

During the pendency of the writ petition, Dr. Virendra Kumar Srivastava/petitioner died and his wife Smt. Pratima Srivastava has been substituted.

Learned counsel for the petitioner has submitted that vide order dated 24.07.2009 the case of the petitioner's husband Dr. Virendra Kumar Srivastava was considered alongwith other similarly situated persons i.e. Dr. Annpurna Srivastva and Dr. Amita Gupta and others and they were regularized with effect from 24.07.2009.

It has been submitted by learned counsel for the petitioner that the husband of the petitioner was entitled for computing his past services which was rendered by him on ad hoc basis and the same was liable to be considered for all pensionary benefit. The similarly situated Medical Officer Dr. Pratibha Nigam had approached before this Court by filing Writ Petition No. 15321 (SS) of 2016 (Dr. (Smt.) Pratibha Nigam Vs. State of U.P. and others which was disposed of vide order dated 06.07.2016 and this Court directed that the said petitioner shall be entitled for all pensionary benefits and ad hoc services rendered by her will be counted for pensionary benefits.

Learned counsel for the petitioner has submitted that the case of the petitioner is at par with Dr. Pratibha Nigam, who was selected in the year 1989 on ad hoc basis. He has drawn attention before this Court towards Special Leave to Appeal No.5007 of 2017 filed by the State against the order dated 06.07.2016 which was dismissed vide order dated 20.03.2017.

On the other hand, learned Standing Counsel has taken a stand that the husband of the petitioner was not appointed on regular basis, therefore, he is not entitled for counting his service to grant pensionary benefit. However, he could not dispute the fact that the identically situated Medical Officer Dr.(Smt.) Pratibha Nigam was allowed pensionary benefits by counting her past services.

I have heard learned counsel for the parties and gone through the record.

The case of the husband of the petitioner is fully covered with the case of Dr. (Smt.) Pratibha Nigam (supra) passed by this Court on 06.07.2016 in Writ Petition No.15321 (SS) of 2016, therefore, the petitioner is also entitled for the benefit of the aforesaid judgment passed by Division Bench of this Court.

Accordingly, the writ petition is allowed. The impugned order dated 15.12.2016 (Annexure no.1 to the writ petition) passed by opposite party no.1 is quashed. The past services of the petitioner's husband will be counted for all pensionary benefit from 20.05.1987. The opposite party no.2/Director, Employees State Insurance Scheme, Labour Medical Services, U.P. Kanpur is directed to release the pensionary benefit to the petitioner by computing the service rendered with effect from 20.05.1987 treating the husband of the petitioner as regular Medical Officer within a period of two months from the date of production of certified copy of this order."

3. Learned counsel for the petitioner has stated that till date the benefit of the order of the writ court has not been provided to the petitioner who is widow of Dr. Virendra Kumar Srivastava. He has further submitted that during the pendency of the writ petition the present petitioner was substituted as one of the petitioners.

4. Sri Saxena has drawn attention of this Court towards the Annexure no. A-1 which is an order dated 7.7.2023 passed in Special Appeal Defective No. 436 of 2023 calling upon the objection from the private respondent.

5. On being confronted Sri Saxena as to whether the delay has been condoned in the aforesaid special appeal or not he has stated that the delay has not been

condoned. On being further confronted as to whether any interim order etc. has been passed in favour of the appellant / opposite party, he has informed that no interim order has been granted in favour of the opposite party / appellant of the appeal.

6. Be that as it may, the law is trite that mere pendency of the special appeal, more so defective special appeal, may not protect the opposite parties if the order of the writ court has not been complied with in its letter and spirit.

7. During the course of the arguments learned counsel for the petitioner has stated that the similar orders have been complied with by the authorities but in the present case the order of the writ court has not been complied with.

8. List this case on 18.10.2023.

9. On or before 18.10.2023 the learned Standing Counsel shall either file copy of interim order / final order, if any being passed by the appellate court or the affidavit of compliance making compliance of the order of the writ court in its letter and spirit failing which the opposite party no. 1 namely, Sri Anil Kumar - III, Principal Secretary, Labour Department (Anubhag-6), Civil Secretariat, Lucknow and opposite party no. 2 namely, Sri Surendra Prasad Singh, Director, Employees State Insurance Scheme, Labour Medical Services, U.P. Sarvodaya Nagar, Kanpur shall appear in person on the next date.

10. It is made clear that if the order of the writ court has not been complied with in its letter and spirit the consequential orders under the Contempt of Courts Act, 1971 may be passed against the opposite parties on the next date."

3. In compliance of the aforesaid order, Sri Anil Kumar-III, Principal Secretary, Department of Labour, Govt. of U.P., Civil Secretariat, Lucknow (opposite party no. 1) and Sri Surendra Prasad, Director, Employees State Insurance Scheme Labour Medical Services, Kanpur, U.P. (opposite party no. 2) are present in person.

4. Sri Mohit Jauhari, learned Standing Counsel has filed the applications for deferment alongwith the short counter affidavits, the same are taken on record. However, he has submitted that the order of Writ Court has not been complied with till date. Sri Jauhari has stated that the reasons for non-compliance of the order of Writ Court have been indicated in the short counter affidavits.

5. Be that as it may, if the order of Writ Court has not been complied with, it is got serious ramifications, therefore appropriate orders may be passed under the Contempt of Courts Act on the next date.

6. Since one contempt petition of a person whose benefit has been given to the present petitioner is listed on 06.11.2023, therefore list this case again on 06.11.2023.

7. On that date, the officers, who are present in person, shall again appear in person."

3. In compliance of the aforesaid order, Sri Anil Kumar-III, Principal Secretary, Labour Department (Anubhag-6), Civil Secretariat, Lucknow and Sri Surendra Prasad Singh, Director, Employees State Insurance Scheme, Labour Medical Services, U.P. Sarvodaya Nagar, Kanpur, U.P. are present in person before the Court.

4. Sri Mohit Jauhari, learned Standing Counsel has filed application for deferment along with short counter affidavit of Sri Anil Kumar-III and application for deferment along with short counter affidavit of Sri Surendra Prasad Singh, today in the Court, the same are taken on record.

5. Sri Mohit Jauhari, learned Standing Counsel has stated that today the special appeal is listed and a mention has been made before the Appellate Court today for taking up the special appeal and he is very hopeful that any order may be

passed on the aforesaid special appeal, therefore, the case may be adjourned for today.

6. On the aforesaid request of Sri Mohit Jauhari, learned Standing Counsel, list/ put up this case tomorrow i.e. 07.11.2023. The officers, who are present in person before the Court today, shall again appear in person before the Court tomorrow i.e. 07.11.2023.

7. It is made clear that any interim order/ final order, if any, being passed by the Appellate Court or affidavit of compliance is not produced/ filed within 24 hours, the charges may be framed against the officers who are present before the Court today."

3. In compliance of the aforesaid order Sri Anil Kumar-III, Principal Secretary, Labour Department, U.P., Lucknow and Sri Surendra Prasad Singh, Director, Employees State Insurance Scheme, Labour Medical Services, U.P., Kanpur are present in person and Sri Jauhari has filed affidavit of compliance of both the officers, same are taken on record.

4. Sri Jauhari has stated that the Principal Secretary of the Department has passed an office memo dated 6.11.2023 (Annexure A-1) making compliance of the order of the writ court in its letter and spirit subject to the final outcome of the special appeal. In the aforesaid order it has been categorically indicated that the petitioner shall be paid his all consequential service benefits including post retiral benefits counting the ad-hoc services of the petitioner, however, those benefits shall remain subject to the final outcome of the special appeal.

5. Be that as it may, when the competent authority has passed the office memo dated 6.11.2023 (supra) extending all service / retiral benefits to the petitioner in terms of the order of the writ court, therefore, there is no purpose to keep this contempt petition pending any longer. However, learned Senior Advocate has stated that the aforesaid office memo has been passed yesterday i.e. on 6.11.2023, therefore, until and unless those benefits are credited in the account of the petitioner, this contempt petition may be kept pending.

6. Considering the aforesaid submission of learned Senior Advocate it is expected that in compliance of the order of the writ court and pursuant to the office memo dated 6.11.2023 all service benefits shall be credited to the account of the petitioner within a period of four weeks, to be more precise, on or before 9.12.2023.

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

8. Notices, if any, stand discharged.

9. However, it is always open for the petitioner to file an

application for revival of the contempt petition immediately after 9.12.2023, if in compliance of the order of the writ court and pursuant to the office memo dated 6.11.2023 all service benefits including the retial benefits are not paid to the petitioner and if such application is filed and it is found that those benefits have not been given, the contempt petition may be revived and any coercive order under the Contempt of Courts Act may be passed against the authorities concerned.

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[Rajesh Singh Chauhan, J.]

Order Date :- 7.11.2023

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