

Court No. - 20

Case :- CIVIL MISC REVIEW APPLICATION No. - 86 of 2023

Applicant :- Bheem Singh, Pno No. 060472146, And 11 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko And 5 Others

Counsel for Applicant :- Sheshnath Bhardwaj Advoc

Hon'ble Manish Mathur,J.

1. Heard learned counsel for review applicant and learned State Counsel appearing on behalf of opposite parties.

2. On 25.08.2023, the following order had been passed:

"1. Heard learned counsel for Review-Applicants.

2. Review has been filed against judgment and order dated 03.07.2023 passed in WRIT - A No. - 4715 of 2023 whereby writ petition filed by petitioners against order of transfer has been dismissed.

3. It has been submitted that petitioners had filed aforesaid writ petition against order dated 07.06.2023 on ground that they have remained posted for more than 15 years in one place in District, Bareilly and has been transferred on the basis of recommendation of the Establishment Board pertaining to provincial Armed Constabulary. It has been submitted that the said petition was dismissed on ground that P.A.C. Establishment Board is entitled to make recommendation for petitioner's transfer and not the Superintendent of Police, Logistic Police Establishment Board as was submitted by petitioner.

4. Learned counsel for petitioner has submitted that in paragraphs 7 to 10 of writ petition, it has been clearly stated that it is only Logistic Police Establishment Board which is competent to recommend transfer of petitioner who are working on posts of Constable-Driver, Head Constable-Driver and Head Constable-Motor Transport and not the Police Establishment Board. It is submitted that U.P. Police Motor Transport Unit Subordinate Service Rules, 2015 and Circular dated 19.01.2023 were brought on record as Annexures 4 and 5 to the petition to substantiate the said facts. Learned counsel has also drawn attention to various interim orders passed by this Court contained as Annexures 6 to 9 whereby similar controversy has already been dealt with but was not adverted to while passing impugned judgment.

5. Prima facie submissions advanced by learned counsel for petitioner indicate an error apparent on the face of record. Since neither the Rules of 2015 nor order passed by this Court as indicated herein above appear to have been considered while passing the impugned judgment and order.

6. Considering aforesaid facts, issue notice to opposite parties.

7. Since only the State Authorities are the opposite parties, notice may be given by petitioner in the office of learned Chief Standing Counsel and

fresh notices are dispensed with.

8. List this case on 20.09.2023 peremptorily.

9. Till the next date of listing, operation of impugned judgment and order dated 03.07.2023 shall remain stayed."

3. In pursuance thereof, objections to the review application has been filed in which it has been reiterated that since Constable Driver appointed in provincial Armed Constabulary form a separate cadre but still comes under the P.A.C., there was no occasion for having taken consent or approval of the Logistic Police Establishment Board. It is submitted that in fact review applicant would be governed by the Pradeshik Arms Constabulary Subordinate Officers Service Rules, 2008 and not the Service Rules of 2015.

4. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it appears that while passing the impugned judgment and order 03.07.2023, this Court inadvertently failed to take notice of the distinction between the aforesaid Rules of 2008 and 2015. Pleadings with regard to same as indicated in the petition was also not considered. The petitioner in his writ petition has also annexed various interim orders passed by different Coordinate Benches of this Court, which too unfortunately could not be considered.

5. In view of aforesaid, error is quite apparent on the face of record and therefore the judgment and order dated 03.07.2023 passed in Writ A No.4715 of 2023 is hereby set aside.

6. The review application as such is **allowed**.

7. As such is directed to place the memorandum of Writ Petition before appropriate Court in the next week peremptorily.

Order Date :- 15.12.2023

Subodh/-