

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2096 of 2022

Applicant :- Subhadra Devi

Opposite Party :- Kapil Singh, Director Bal Vikas Evam Pushtahar Lko

Counsel for Applicant :- Manendra Nath Rai

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Manendra Nath Rai, learned counsel for the petitioner and Sri Amrendra Pratap Singh, learned Standing Counsel.

2. This Court has passed order dated 09.11.2023, which reads as under:-

"1. Heard Sri Mahendra Nath Rai, learned counsel for the petitioner.

2. Sri Rai, learned counsel for the petitioner has firstly drawn attention of this Court towards order dated 04.07.2023 passed by this Court in Writ-A No.8012 of 2022, which reads as under:-

"1. Heard Mr. Manendra Nath Rai, learned counsel for the petitioner, as well as Mr. Jogendra Nath Verma, learned Standing Counsel for the respondents-State Authorities.

2. This is second writ petition filed by the petitioner, seeking promotion to the post of Junior Assistant in the Department of Bal Vikas Seva Evam Pustahar, Government of Uttar Pradesh, where he is employed on Class-IV post.

3. The earlier writ petition filed by the petitioner being Writ-A No.1339 of 2022 was disposed of by this Court on 10.03.2022. The order dated 10.03.2022 reads as under:-

"1. Heard learned counsel for petitioner and learned Standing Counsel for the State.

2. Petitioner has filed present writ petition claiming that he is entitled for being promoted under 15% quota provided for group-D post with the department. Learned counsel for petitioner further submits that similar controversy was raised before this Court in Writ-A No. 239 of 2022 in which this Court on 21.01.2022 passed the following order:-

"Heard.

The contention of learned counsel for the petitioner is that 15 per cent quota is provided for group-D employees having the educational

qualification of high school with other eligibility conditions such as typing for being considered for promotion against group-C post in a department under the Government as per the rules annexed as Annexure no.7. 5 per cent further quota has been provided for similar group-D employees but with educational qualification of intermediate. The petitioner claims to have the educational qualification of intermediate as also knowledge of typing. Learned counsel for the petitioner says that the aforesaid quota for group-D employees in the matter of promotion to group-C posts has not been filled since 2014 thereby violating the aforesaid rules of 2014.

Considering the facts of the case, the petition is disposed of with the observation/ direction that the petitioner may move appropriate application before the appointing authority of group-C posts in her department raising a claim for being considered for promotion under the aforesaid rules, which on receipt shall be processed, the facts shall be got verified, the vacancies under the quota shall be got determined and thereafter process of selection shall be initiated and eligible persons shall be considered for promotion under the said quota. If the petitioner is eligible and within the zone of consideration then she shall also be considered. If she is not found eligible or not within the zone of consideration then she shall be intimated this fact in writing. This exercise shall be completed within three months, unless there is some legal impediment in this regard, in which case also, the petitioner shall be informed about it."

3. Since the order dated 21.01.2022, the required exercise must have been started by the department, therefore, it is expected that department shall also consider the case of petitioner, in case he falls for consideration in the exercise being conducted in furtherance of order dated 21.01.2022. In case, petitioner is not falling for consideration in the said exercise, the said fact shall also be communicated to the petitioner within a period of four weeks from the date a certified copy of this order placed before respondent no.2.

4. With the aforesaid, present writ petition is disposed of."

4. The petitioner is seeking promotion under 20% promotion quota on the post of ministerial cadre under The Uttar Pradesh Government Department Ministerial Cadre Service Rules, 2014 (for short "Rules, 2014") framed under Article 309 of the Constitution of India. Rules 7 of the Rules, 2014 provides two sources of recruitment to the post of ministerial cadre (Junior Assistant). 80% posts are to be filled up by direct recruitment, whereas 20% posts are to be filled up by promotion of Class-IV employees having knowledge of typing.

5. 20% posts are to be filled up by promotion are divided into two parts;(i) 15% from Class-IV, having high school or equivalent qualification with typing knowledge, and (ii) 5% having intermediate qualification having knowledge of typing. The cadre strength of Assistant is 1233. 172 posts of promotion quota are vacant. The petitioner's representation for promotion has been rejected vide the impugned order dated 25.05.2022 (Annexure-2) only on the ground that the petitioner having intermediate can be promoted only against 5% quota, and his case cannot be considered under 15% quota. Under the 5% quota, there are 65 persons working against 62 posts.

6. This Court finds the stand taken by the respondents preposterous and untenable. Rules have to be read in harmonious manner so that they do not become absurd. Rule 7(1) of the Rules, 2014 has to be read in the manner which should promote the merit and higher qualification, and should not disqualify the same for promotion. In my view, Rule-7 of the Rules, 2014 has to be read as that the persons, having intermediate or higher qualification, should be given out of turn promotion with limit of 5%, but it would not be a disqualification for considering them under 15% quota of promotion. A person would acquire intermediate qualification only after he has acquired high school qualification.

7. In view thereof, the impugned order is unsustainable and liable to be quashed. Ordered accordingly. This petition is hereby allowed. The respondents are directed to make promotion of the petitioner on the post of Junior Assistant against vacant posts of promotion quota, if he has knowledge of typing as per Rules. Such a decision must be taken within a period of two months from the date a certified copy of this order is produced/submitted before respondent no. 2-Director, Bal Vikas Seva Evam Pustahar, Government of Uttar Pradesh."

3. Sri Rai, learned counsel for the petitioner has further drawn attention of this Court towards order of the Writ Court dated 21.01.2022 passed in the present case i.e. Writ-A No.239 of 2022, which reads as under:-

"Heard.

The contention of learned counsel for the petitioner is that 15 per cent quota is provided for group-D employees having the educational qualification of high school with other eligibility conditions such as typing for being considered for promotion against group-C post in a department under the Government as per the rules annexed as Annexure no.7. 5 per cent further quota has been provided for similar group-D employees but with educational qualification of intermediate. The petitioner claims to have the educational qualification of intermediate as also knowledge of typing. Learned counsel for the petitioner says that the aforesaid quota for group-D employees in the matter of promotion to group-C posts has not been filled since 2014 thereby violating the aforesaid rules of 2014.

Considering the facts of the case, the petition is disposed of with the observation/ direction that the petitioner may move appropriate application before the appointing authority of group-C posts in her department raising a claim for being considered for promotion under the aforesaid rules, which on receipt shall be processed, the facts shall be got verified, the vacancies under the quota shall be got determined and thereafter process of selection shall be initiated and eligible persons shall be considered for promotion under the said quota. If the petitioner is eligible and within the zone of consideration then she shall also be considered. If she is not found eligible or not within the zone of consideration then she shall be intimated this fact in writing. This exercise shall be completed within three months, unless there is some legal impediment in this regard, in which case also, the petitioner shall be informed about it."

4. Sri Rai, learned counsel for the petitioner has further submitted that this is a similar matter to the matter in re: Akash Dwivedi (supra) wherein the order of the Writ Court dated 04.07.2023 has been complied with.

5. Sri Rai, learned counsel for the petitioner has further submitted that the Hon'ble Contempt Court has dismissed the contempt petition bearing Contempt Application (Civil) No.3433 of 2023 today itself i.e. 09.11.2023 on the ground that the order of the Writ Court has been complied with. For convenience, the order dated 09.11.2023 is being reproduced here-in-below:-

"1. Sri Mahendra Nath Rai, learned counsel for the petitioner has stated that order of the Writ Court has been complied with in its letter and spirit as in compliance of order of the Writ Court appropriate order has been passed Yesterday i.e. 08.11.2023, however, copy thereof has not been shown to learned counsel for the petitioner but his client has informed this fact. Sri Rai, learned counsel for the petitioner has also informed the Court that 20th November, 2023 is the date fixed for typing test. Therefore, nothing remains to be adjudicated in the instant contempt petition, hence, the same may be dismissed.

2. Accordingly, the instant contempt petition is dismissed.

3. Notice, if any, stands discharged."

6. On that, Sri Mohit Jauhari, learned Standing Counsel has stated that he has received complete instructions in the matter, therefore, he may be given some reasonable time to file affidavit of compliance.

7. As per Sri Rai, learned counsel for the petitioner, the date for typing test has been fixed on 20.11.2023 in the earlier case, therefore, this matter may be listed before 20.11.2023.

8. Considering the aforesaid facts and circumstances, list this case on 18.11.2023 within top ten cases.

9. On that date, if the affidavit of compliance could not be filed, at least Sri Mohit Jauhari, learned Standing Counsel shall demonstrate the Court as to what order has been passed by the Competent Authority in the present case.

10. Liberty is given to learned counsel for the petitioner to make mention on the next date for taking up this case out of turn."

3. Sri Manendra Nath Rai has stated that the date for typing test has been fixed for 20.11.2023, therefore, the present contempt petition has lost its efficacy for all practical purposes.

4. Accordingly, the present contempt petition is **dismissed**.

5. Notices, if any, stand discharged.

[Rajesh Singh Chauhan,J.]

Order Date :- 18.11.2023

RBS/-