

Court No. - 5

Case :- WRIT - A No. - 1907 of 2010

Petitioner :- Bhupal Singh Bisht S/O Late H.S. Bisht

Respondent :- State Of U.P. Thru Secretary/Director Non
Conventional Energ

Counsel for Petitioner :- Qamrul Hasan, Dev Prakash
Mishra, Shakeel Ahmad, Zubair Hasan

Counsel for Respondent :- Jyotinjay Verma, Nishant Shukla

Hon'ble Irshad Ali, J.

1. Heard Shri Zubair Hasan, learned Counsel for the petitioner. No one has responded on behalf of the respondent Nos. 1 and 2 on the case being called out twice.

2. Through the present writ petition, the petitioner has assailed an arbitrary and malafide action of the respondents in declining to allow the correct pay scale of Rs. 1200-2040-00, now revised as Rs. 4000-6000-00 with effect from 7.1.1992 to the petitioner. The said pay scale has already been allowed to the other similarly placed Junior Assistant Clerk-cum-Typist and even juniors to him, like, Jane Alam, junior to the petitioner no.1 and Ashok Kumar Yadav, junior to petitioner no.7 have also been allowed the said pay scale.

3. The brief facts of the case giving rise to the present writ petition are that the petitioner was initially engaged in Non-Conventional Energy Development Agency, Lucknow on a ministerial post on 1.11.1991. The process for regularization on the post of Junior Assistant-cum-Typist was started. Formal orders were issued by the respondents on 8th August, 1991 and 15th/20th August, 1991 indicating various posts on which the holders of the posts were to be regularized. Accordingly, a formal order of appointment was issued on 1st November, 1991, appointing the petitioners and other seven employees including Jane Alam and Ashok Kumar Yadav. A formal regular selection after following due procedure in accordance with the relevant Service Rules also took place. The petitioner was appointed on two years' probation against a permanent post of Junior Assistant-cum-Typist in the pay scale of Rs. 950-1500-00. He was required to acquire 30 words per minute speed in typing and the petitioner has acquired the required speed in typing. The petitioner has raised a grievance against allocating the pay scale of Rs. 950-1500-00 and claimed the pay scale of Rs. 1200-2040-00, which was admissible to Junior Assistant-

cum-Typist Grade I of the organization. A copy of the relevant Regulation (Chapter II Part IV) regarding Ministerial Staff has been placed as Annexure-3 to the writ petition, which shows that there were 90 posts of Junior Assistant-cum-Typists, that is, Kanisht Sahayak-cum-Tankak. Petitioner ought to have been allowed the pay scale of Rs. 1200-2040-00 immediately from the date of issuance of the order dated 1.11.1991. The petitioner has also placed, the pay revision chart, which clearly shows that the pay scales of Rs. 470-735-00 and 430-685-00 in respect of Kanisht Sahayak-cum-Tankak (Junior Assistant-cum-Typist) was raised to Rs. 1200-2040-00. Since the petitioner was holding the post of Junior Assistant-cum-Typist, applying the pay scale as mentioned in Chapter II, Part IV of Ministerial Staff Regularisation and the Pay Revision Committee's Chart he was entitled for the pay scale of Rs. 1200-2040-00. Interestingly, this pay scale was made admissible to all the employees, who were appointed along with petitioner in the year 1991, but for the reasons best known to the respondents, petitioner was denied this pay scale. One Jane Alam and Ashok Kumar Yadav had approached this Court by filing Writ Petition No. 381 (S/S) of 2005, Jane Alam v. Non-Conventional Energy Development Agency in which an interim order was passed by this Court on 19.1.2005, which runs as under:-

"Heard Sri S.P Singh, learned Counsel for the petitioners and Sri N.C Mehrotra, learned Counsel for opposite parties, who prays for and is granted six weeks time to file counter affidavit.

Rejoinder affidavit, if any, may be filed within two weeks thereafter. List in the month of April, 2005.

Learned Counsel for the petitioners has submitted that the petitioners were initially appointed as Junior Assistant-cum-Typist on 1.11.1991. In Rule 53, Chapter II, Part IV of the Ministerial Staff Cadre has been annexed as Annexure-3 to the writ petition. It indicates that the Ministerial Cadre consists of Office Superintendent, Senior Assistant, Junior Assistant Grade I, Junior Assistant Grade II. The petitioners were placed as Junior Assistant-cum-Typist. The petitioners have raised their grievance that they were not occupying the post of Junior Assistant Grade II and no such post exists in the Ministerial Cadre. However, pay scale was later on revised to Rs. 4000-6000 for the post of Junior Assistant-cum-Typist, the post held by the petitioners. The petitioners have submitted several representations to the Secretary, Non-Conventional Energy Development Agency, Lucknow but no action has been taken for the last several years.

Accordingly, the opposite parties are directed to consider and

dispose of the representation of the petitioner. Since the petitioner are admittedly working as Junior Assistant-cum-Typist in the Ministerial Cadre of Non-Conventional Energy Development Agency, they shall be given the payscale meant for the post of Junior Assistant Grade I as indicated in Rule 53(or para 53, as the case may be) of the relevant service rules as contained in Chapter II, Part IV of the Ministerial Staff Rules. The petitioners shall be allowed revised pay scale of Rs. 4000-6000 which is meant for the aforesaid post and the arrears shall also be calculated and paid to the petitioners."

4. These persons were allowed the higher pay scale of Rs. 1200-2040-00 with effect from 1.11.1991 This order became final and thus was implemented and is still operative. Similarly, on 7.11.1987, 43 persons who were appointed on the post of Junior Assistant-cum-Typist alongwith the petitioner and subsequent to his appointment were allowed the pay scale of Rs. 1200-2040-00, names of these 43 persons have been indicated in a document appended as Annexure no.2 of the writ petition. Those persons were appointed in the pay scale of Rs. 430-520-00 and later on they were also allowed the pay scale of Rs. 1200-2040-00. The nature of work, duties, functions and responsibilities is quite similar and those persons are also holding the same post, that is, Junior Assistant-cum-Typist as has been held by the petitioner.

5. Later on, the petitioner was promoted on the post of Junior Assistant-cum-Typist Grade I and started getting the pay scale of Rs. 1200-2040. The petitioner is also entitled for the pay scale of Rs. 1200-2040-00, now further revised to Rs. 4000-6000-00, with effect from 1.11.1991 to 23.8.1998 Learned Counsel for the petitioner has placed reliance on the judgments of the Apex Court as well as of this Court reported in **(2007)6 SCC 9, Nehru Yuva Kendra Sangathan v. Rajesh Mohan Shukla** and **2007(6) ALJ (DOC)355 (DB) (ALL.)**, **Smt. Beena Mishra v. U.P Development Systems Corporation Ltd. and another** in support of his submissions that when the nature of duties being discharged by the other employees who were appointed alongwith the petitioner and subsequently being the same and if they are getting higher pay scale, the petitioner is also entitled for similar treatment. The petitioner like 43 other employees including Jane Alam and Ashok Kumar Yadav, has been appointed similarly on the same posts of Junior Assistant cum Typist and is discharging same duties, functions and responsibilities and as such he must be allowed similar pay scale of Rs. 1200-2040-00.

6. Under the orders of the Court the file of the Writ Petition No. 381 (S/S) of 2005, Jane Alam v. Non-Conventional Energy

Development Agency, Gomti Nagar, Lucknow has also been brought for perusal of the Court. Since no appearance has been put in by learned Counsel for the respondents, this Court has gone through the counter affidavit dated 21.11.2005 filed in Writ Petition No. 381 of 2005 by Sri S.M Padhe, Administrative Officer of Non-Conventional Energy Development Agency, U.P, Gomti Nagar, Lucknow. The respondents have tried to defend their action on the ground that Jane Alam and others were not entitled for the pay scale of Rs. 1200-2040-00, first of all, they should have worked for at least five years in the pay scale of Rs. 950-1500-00. Further they were not promoted to the next higher grade, that is, junior Assistant-cum-Typist Grade I. Initially petitioner was appointed on Daily Wage basis and thereafter on the recommendations of a three members Committee, the pay scale of Rs. 950-1500-00 was allowed to this set of Junior Assistant-cum-Typist Grade I. It has been admitted in Paragraph 8 of the counter affidavit that after regular selection, appointment letters were issued on 1.11.1991 in respect of Bhopal Singh Bisht, Diwaskar Bhatt, Mohd. Rafique Ahmad, Jane Alam, Smt. Indumati, Suresh Kumar Singh, Tej Narain and Ashok Kumar Yadav.

7. Learned Counsel for the petitioner has drawn the attention of the Court to the counter affidavit filed in Writ Petition No. 381 (S/S) of 2005 that the petitioner was in fact appointed and regularized in the services in pursuance of a policy decision/Notification dated 8.8.1991 (copy appended as Annexure-I) and the Committee's report dated 31.10.1991 The petitioner was regularized in the services and he is entitled for the same benefits which have been allowed to other similarly placed employees.

8. I have heard learned Counsel for the petitioner and perused the materials on record including the counter affidavit filed in the connected Writ Petition No. 381 (S/S) of 2005.

9. It has been admitted by the respondents in the counter affidavit that several category of posts like Junior Assistant-cum-Typist, Accounts Assistant, Junior Engineer, Data Entry Operator and Class IV employees etc. were available in the Agency for regularization. A perusal of the Circular dated 8th August, 1991, it is clear that the respondents were going to regularize services of the incumbents after holding a formal regular selection to be held at the Head Quarter between 20th August, 1991 to 31 August, 1991. The posts of Junior Assistant-cum-Typist has been mentioned at Serial No. 1 in the list of posts. A perusal of the Annexure-2 to the writ petition, that is the appointment order dated 1st November, 1991 clearly reveals that the petitioner-Diwakar Bhatt, Bhopal Singh Bisht, Mohd.

Rafique Ahmad, Jane Alam, Smt. Indumati, Suresh Kumar Singh, Tej Narain and Ashok Kumar Yadav, total eight candidates, were regularized on the post of Junior Assistant Clerk-cum-Typist in the pay scale of Rs. 950-1500-00. Moreover, they were put on two years probation. A person can be put on probation when there is availability of a permanent post only. Since the petitioner was appointed against a clear and permanent vacancy of Junior Assistant-cum-Typist and after a formal regular selection, his appointment was regularized vide order dated 1st November, 1991 and he was allowed pay scale of Rs. 950-1500-00, now this situation cannot be treated to be altered. The averments made in the counter affidavit are contradictory. Evasive reply has been given in the counter affidavit to somehow justify the malafide and illegal action of the respondents in not allowing the pay scale of Rs. 1200-2040-00 to the petitioner, while the same has been allowed not only to Jane Alam and Ashok Kumar Yadav, but to other similarly placed Junior Assistant-cum-Typists, who were members of the same cadre of Junior Assistant-cum-Typist. As per Paragraph 53/54 contained in Chapter II, Part IV of the Ministerial Staff Regulation, there were 90 posts of Junior Assistant-cum-Typist. There is clear and specific mention of raising of pay scale to Rs. 1200-2040-00 to those incumbents who were getting the pay scales of Rs. 470-735-00 and 430-685-00. There is no denial in the counter affidavit regarding status of appointment order dated 1st November, 1991. Service Regulation and pay revision chart which the respondents have filed to meet out the allegations of the petitioner could not justify as to why the persons appointed by one and same appointment order, similarly placed, belonging to same category of posts and cadre including Jane Alam and Ashok Kumar Yadav and 43 other Junior Assistant-cum-Typists were allowed the pay scale of Rs. 1200-2040-00, while the petitioner was denied the same and was got stagnant in the lower pay scale during the period between 1.11.1991 to 23.8.1998. No plausible justification has been pointed out to his arbitrary and discriminatory treatment meted out to the petitioner. Interestingly, the Court has also taken note of the fact that out of eight persons appointed by one and same order, that is, the order dated 1.11.1991, Jane Alam and Ashok Kumar Yadav were allowed higher pay scale of Rs. 1200-2040-00, while the same has been arbitrarily and illegally denied to the petitioner. The petitioner might have been appointed on ad hoc basis, but after following a formal regular selection as per Service Regulations his services were regularized vide order dated 1st November, 1991. He had undergone selection process and interview etc. which was held between 20th August to 31st August, 1991 as per the Circular letter dated 8th August, 1991, which is also clear from the office

memorandum dated 7.11.1991. All the Junior Assistant Clerk-cum-Typists are performing similar duties, functions and responsibilities of the same post. They were allowed the pay scale of Rs. 1200-2040-00, while the petitioner, who is also discharging the similar duties, functions and responsibilities was allowed lower pay scale. There appears to be force in the submissions of the learned Counsel for the petitioner that the action of the respondents is wholly discriminatory, arbitrary, illegal and malafide. The petitioner is also entitled for the pay scale of Rs. 1200-2040-00 with effect from 1.11.1991 His case is covered by the decisions of **2007(6) ALJ (DOC) 355 (DB) (ALL.)**, **Smt. Beena Mishra v. U.P Development Systems Corporation Ltd.**, and the decision of the Apex Court in **(2007)6 SCC 9, Nehru Yuva Kendra, Sangathan v. Rajesh Mohan Shukla, (supra)** as well as the decision of the Apex Court in the case of **D.S Nakara v. Union of India v. Union of India and others, AIR 1983 SC 130.**

10. In view of the discussions made above, writ petition deserves to be allowed. Accordingly, writ petition succeeds and is **allowed**. A writ of mandamus is issued commanding the respondents to fix the salary of the petitioner in the pay scale of Rs. 1200-2040-00, now revised to Rs. 4000-6000-00, with effect from 1.11.1991 which has already been allowed to similarly placed employees including Jane Alam and Ashok Kumar Yadav, who were also appointed along with the petitioner by one and the same appointment order issued on 1st November, 1991. The arrears of the salary shall also be calculated and paid to the petitioner within two months from the date of presentation of a certified copy of this order. The petitioner shall also be entitled to other consequential benefits arising out of such revised pay fixation in higher pay scale with effect from 1.11.1991 The judgment and order shall be complied with in its true spirit within two months from the date of presentation of a certified copy of this order before the respondents.

Order Date :- 28.11.2023
GK Sinha