

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 419 of 2022

Appellant :- Masiyat Ullah Siddiqui

Respondent :- State Of U.P. Thru. Secy. Deptt. Minor Irrigation, Lko. And 4 Others

Counsel for Appellant :- Rakesh Kumar Saini

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Jaspreet Singh, J.

Heard Shri R.K. Saini, learned counsel for the appellant and learned Standing counsel for the State-respondents.

In the instant intra-court appeal, a challenge has been raised to the judgment dated 12.09.2022 passed by learned Single Judge in Writ-A No.220 of 2014, whereby the writ petition of the appellant was disposed of with the direction to pay the outstanding service benefits except the claim of second promotional pay scale.

The learned counsel for the appellant has strenuously urged that the learned Single Judge has erred in not granting the second promotional pay scale despite the petitioner having completed 24 years of satisfactory service. It is urged that once the appellant had been regularized with the effect from 21.08.1979, he completed 24 years of regular service in the year 2003. Accordingly, the respondent authorities were not justified in paying the second promotional pay scale and even the learned Single Judge has not considered the matter appropriately.

It is further urged that the ground taken by the learned Single Judge is that the appellant did not assail the adverse entries awarded to him, however, it is submitted that these entries were not informed and therefore, it is only during the exchange of pleadings before the writ Court that this issue was raised by the respondents in their counter affidavit. Accordingly, during the tenure of the appellant, he was not informed about the alleged adverse entries, consequently, they were liable to be ignored and the appellant was entitled for the second promotional pay scale.

The learned Standing counsel submits that at no point of time, the aforesaid adverse entries were assailed by the appellant. It is further urged that there are six adverse entries against the

appellant in the year 1990-91, 1991-92, 1992-93, 1994-95, 1998-99 and 1999-2000.

It has further been pointed out that insofar as the adverse entries in the year 1990-91, 1991-92, 1992-93 and 1994-95 is concerned, the appellant made no representation, however, adverse entries relating to the year 1998-99 and 1999-2000, the same was questioned by the appellant by making a representation. However, it did not find favour with the authorities and the same was rejected. It is thus submitted that it clearly indicates that the appellant had not completed 24 years of satisfactory service and this aspect has been appropriately considered by the learned Single Judge, while rejecting the prayer for the aforesaid grant of promotional pay scale.

The Court has considered the rival submissions and also perused the material on record.

Apparently, the submission of the learned counsel for the appellant that he was not aware of the adverse entries does not appear to be correct for the reason that there was six adverse entries against the appellant. Admittedly, he had made a representation against adverse entries relating to the year 1998-99 and 1999-2000, which were rejected. This clearly indicates that he was aware of the said adverse entries. Even assuming if it is considered that the appellant was not aware of the adverse entries, yet once the same was brought to the notice of the appellant by the respondents through their counter affidavit, it was open for the appellant to have amended the writ petition to assail the same, in case, if he was not aware at all, rather he did not choose the aforesaid course of action. The matter was contested by the petitioner-appellant and those entries for the year 1990-91, 1991-92, 1992-93 and 1994-95 have never been challenged and they still continue to subsist. Once the aforesaid situation is not disputed, it cannot be said that the appellant has completed 24 years of satisfactory service. In view of the aforesaid, the findings recorded by the learned Single Judge cannot be faulted. Accordingly, there does not appear to be any merit in the appeal, which is dismissed.

With the aforesaid observations, the appeal is **dismissed**.

Order Date :- 19.7.2023

Gurpreet Singh

(Jaspreet Singh, J.) (Pritinker Diwaker, C.J.)