

Court No. - 7

Case :- WRIT - A No. - 6774 of 2022

Petitioner :- Manish Kumar Srivastava

Respondent :- State Of Up Thru. Secy./ Addl. Chief Secy., Deptt. Agriculture Education And Research And 4 Others

Counsel for Petitioner :- Ankit Pande

Counsel for Respondent :- C.S.C., Prashant Kumar Singh, Uttam Kumar Verma

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondent no. 1 and Sri Uttam Kumar Verma, learned counsel appearing on behalf of the respondents no. 2 to 5.
2. With the consent of learned counsel appearing on behalf of the contesting parties, the instant writ petition is being finally decided.
3. At the very outset, Sri Uttam Kumar Verma, learned counsel appearing on behalf of the respondents no. 2 to 5 states that in pursuance to the earlier order of this Court dated 14.10.2022, he has received the instructions.
4. The case set forth by the petitioner is that the petitioner was initially appointed on compassionate grounds on 10.02.1995 on the post of Junior Clerk. As the petitioner was educationally qualified for holding the post of Accounts Clerk, he preferred various applications and the competent authority vide order dated 14.07.2005, a copy of which is annexure 4 to the writ petition appointed the petitioner as Accounts Clerk against the vacant post.
5. The petitioner claims to have continued to work on the post of Account Clerk when by means of order dated 27.08.2022 upon his conduct being found to be one of gross indiscipline and misconduct, a warning was issued to the petitioner to be more careful failing which he would be reverted. Subsequently, by means of order dated 01.09.2022, a copy of which is annexure 2 to the writ petition, the petitioner has been reverted to the original post of Junior Clerk.
6. Being aggrieved, the instant writ petition has been filed.
7. The argument of learned counsel for the petitioner is that once the petitioner vide order dated 14.07.2005 was adjusted as Accounts Clerk and continued to

work on the said post for a period of almost 17 years consequently, even if any of his act falls within the ambit of there being gross discipline and misconduct, the petitioner in the capacity of being a regular employee could not have been reverted to a lower post as the same would amount to a major penalty which could only be imposed after disciplinary proceedings.

8. Responding to the same, Sri Uttam Kumar Verma, learned counsel appearing on behalf of the respondents no. 2 to 5 on the basis of instructions states that as the original post of the petitioner was Junior Clerk and he had only been adjusted on the higher post on the basis of his own request in the year 2009 consequently, he did not acquire any right to hold the said post and as such, no error has been committed by the respondents while reverting the petitioner to the original post on the ground that gross misconduct has been committed by the petitioner as stands recorded in the order dated 27.08.2022.

9. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the records what emerges is that admittedly the petitioner was initially appointed on compassionate grounds in the year 1995 on the post of Junior Clerk. On the basis of request made by the petitioner he was adjusted on the post of Accounts Assistant w.e.f the date of his initial appointment vide order dated 14.07.2005. Admittedly, the petitioner has worked on the post of Accounts Assistant right since the year 14.07.2005. Initially the respondents vide order impugned dated 27.08.2022 indicated about certain gross indiscipline and misconduct having been occasioned on account of the working of the petitioner and the petitioner was warned. Shortly, thereafter by means of the order dated 01.09.2022, the petitioner has been reverted to the post of Junior Clerk.

10. Once when from the order impugned dated 27.08.2022 it is noticed that there has been gross indiscipline and misconduct on the part of the petitioner which has subsequently led to his reversion on the lower post of Junior Clerk and reversion being a major penalty as prescribed in the service rules of the respondents consequently, the said order could not have been passed without holding a regular inquiry against the petitioner.

11. Keeping in view the aforesaid discussion, the writ petition is allowed. The orders impugned dated 27.08.2022 & 01.09.2022, copies of which are annexures 1 & 2 to the writ petition are quashed.

Consequences to follow.

However, it would open for the respondents to proceed against the petitioner in accordance with law and the relevant rules.

Order Date :- 2.11.2023

Pachhere/-