

Court No. - 20

Case :- WRIT - A No. - 6641 of 2023

Petitioner :- Km. Lata Rani

Respondent :- State Of U.P. Thru.Addl. Chief Secy. State Tax Deptt. Govt. Of U.P. Civil Sectt. Lko. And 4 Others

Counsel for Petitioner :- Yogendra Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Counter affidavit filed on behalf of opposite party no.2 is taken on record.

2. Heard learned counsel for the petitioners and learned State Counsel for opposite parties.

3. Petition has been filed challenging the order dated 31.05.2022 but this Court does not find the said order germane to the present dispute. Further prayer for direction to opposite parties to send petitioner back on the post of Entertainment Tax Inspector in parent department, i.e., the Entertainment Tax Department/ Commercial Tax Department (now known as State Tax Department) has also been sought as also regarding fixing her seniority on the said post.

4. On 14.09.2023, the following order had been passed:-

"Heard petitioner in person and learned State Counsel appearing on behalf of opposite parties.

It has been submitted that initially petitioner was selected and posted as Entertainment Tax Inspector in the Entertainment Tax Department/ Commercial Tax Department but due to orders passed by this Court by learned Single Judge, reshuffling had taken place due to which petitioner was posted in the Consolidation Department. It is submitted that the directions issued by learned Single Judge were thereafter challenged in Special Appeal and was set aside. Consequently, it is prayed that in pursuance thereof, petitioner is required to be posted in her parent department in her original post.

Learned State Counsel is granted two weeks' time to seek instructions and file a short affidavit with regard to aforesaid submission, list on 03.10.2023, as fresh."

5. Subsequently, on 07.11.2023, the following order had been passed:-

"Heard learned counsel for petitioner and learned State Counsel for opposite parties.

Learned State Counsel on the basis of counter affidavit submits that earlier petitioner was appointed on the post of Entertainment Tax Inspector Grade II in the Entertainment Tax Department as a result of final selection conducted in the year 1998 whereafter in pursuance of interim direction issued by this Court dated 17th July, 2002 passed in writ petition No. 4864 of 2001 (Trilok Nath Mishra and others versus State of U.P. and others) the appointments were reshuffled due to which petitioner was also reshuffled and subsequently appointed in the Consolidation Department on the post of Assistant Consolidation Officer. It is submitted that order dated 17th July, 2002 was thereafter set aside in special appeal (defective) No. 621 of 2002. Special Appeal No.1092 of 2002 also did not interfere with the order passed in special appeal.

It is however submitted that in the meantime personnel of entertainment tax department were merged in the commercial tax department now known as state tax department but was declared a dying cadre vide notification dated 9th March, 2019. In view of aforesaid circumstances, reference has been made to the personnel department of the State Government to take an appropriate decision regarding regarding posting of petitioner but no final orders have been passed till date.

In view of aforesaid, list this case on 30th November, 2023 as fresh.

Final decision taken by the personnel department shall be brought on record by means of an affidavit by next date of listing, failing which, the opposite party No.2 i.e. Additional Chief Secretary Karmik Department, Govt. of U.P., Lucknow shall appear in person."

6. Learned counsel for the petitioner submits that the Special Appeal No.610 of 2002 (Defective) was thereafter renumbered as Special Appeal No.72 of 2010 and was also disposed of vide judgment and order dated 09.05.2017 in terms of judgment rendered in Special Appeal No.910 of 2002 and Special Appeal No.912 of 2002.

7. Learned counsel for the petitioner has drawn attention to the order dated 18.04.2001 indicating the fact that petitioner was initially appointed in the Commercial Tax Department and due to judgment rendered by learned Single Judge was thereafter provided fresh appointment in the Consolidation Department vide order dated 28.02.2005 with specific stipulation that appointment made in the Consolidation Department shall be subject to final outcome of Special Appeal No.621 of 2002 and Special Appeal 1092 of 2002. It is submitted that the

aforesaid appeals have thereafter been allowed vide judgments and orders dated 29.08.2012, 15.07.2016 & 09.05.2017 whereafter it was incumbent upon the opposite parties to have posted the petitioner in the Commercial Tax Department in terms of the order dated 28.02.2005. It is submitted since petitioner was not a party to the aforesaid Special Appeals, she was unaware with regard to final outcome of the said appeals and upon coming to know of those Appeals, she gave a representation dated 21.07.2022 which is still pending consideration with the opposite parties.

8. At present, learned counsel for the petitioner restricts his prayer for final decision with regard to the same being taken by the concerned authority, particularly in view of specific stipulation in the order dated 08.02.2005.

9. Learned State Counsel, however, has adverted to paragraph 8 and 10 of the counter affidavit filed today on behalf of the opposite party.2, to submit that the relief as prayed for by the petitioner cannot be granted.

10. Considering the aforesaid submissions being made by learned counsel for petitioner and without entering into the merits of the case, opposite party No.2, i.e., Additional Chief Secretary, Karmik Department, Govt. of U.P., Civil Secretariat, Lucknow is directed to take final decision with regard to the petitioner's representation dated 21.07.2022 by a reasoned and speaking order within a period of 8 weeks from the date a certified copy of this order is produced before the said authority.

11. Petitioner shall annex a copy of representation dated 21.07.2022 along with a copy of this order.

12. With the aforesaid observation, petition stands **disposed of.**

Order Date :- 30.11.2023

Manoj K.