

Court No. - 1

Case :- SPECIAL APPEAL No. - 523 of 2018

Appellant :- Hemendra Singh Yadav And Ors.

Respondent :- State Of U.P.Throu.Prin.Secy.Home Lucknow And Ors.

Counsel for Appellant :- Sm Singh Royekwar,Sumeet Tahliramani

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

1. Heard learned counsel for the parties.
2. This intra-court appeal filed under Chapter VIII Rule V of Allahabad High Court Rules, 1952 has arisen out of judgement/order dated 18.09.2018 passed in W.P.No.27698(S/S) of 2018. The order impugned herein this appeal has dismissed the writ petition on the ground of availability of an alternative remedy, on a plea taken by way of a preliminary objection and the writ court relegated the matter to the Public Services Tribunal.
3. We would not have intervened with such an order for the reason that the appellants would have had the opportunity of pleading all the factual and legal grounds before the Tribunal but looking to the fact that the controversy at hand lies within a narrow compass and a pure question of law is involved, therefore, we proceeded to hear the parties.
4. Its not in dispute that an identical issue having cropped up before this Court in W.P.No.27670(S/S) of 2016 was heard on merit and decided by order dated 21.11.2016 which is extracted here-under:-

“Heard learned counsel for the parties.

The petitioners herein have been granted notional promotion with retrospective effect consequent to the reversion of the incumbents of the promotional post who belongs to the reserved category in view of the pronouncement of the Supreme Court in the case of U.P. Power Corporation Limited Vs. Rajesh Kumar and others reported in (2012) 7 SCC 1, however, the benefit of pay fixation and consequential salary has not been extended to them as yet. While notional promotion disentitles the promotee to actual salary from the date of such promotion, but, he is entitled to refixation of salary on notional basis with consequential current and future salary.

In view of the above, the opposite party no. 1 is directed to act upon the letters dated 15.07.2015 and 17.05.2016 in the light of the

aforesaid and take appropriate decision within a period of two months from the date a certified copy of this order is submitted.

It is open for the petitioner to submit a fresh representation along with certified copy of this order.

With the aforesaid observations, the writ petition is disposed of.”

5. Sri V.P.Nag, learned Standing Counsel for the State, on a pointed query as to why the same benefit may not be extended to the present petitioners, had no good reason to justify and distinguish the case particularly when specific pleadings as to the grant of parity were set out in paragraph 31 to 36 of the writ petition.

6. It is also not the case of the State that the order aforesaid was assailed by the State in any manner, rather the same has been implemented.

7. Relegating contentious questions of fact and law in the exercise of discretionary power may not warrant interference but in the case like the one at hand, the matter has remained pending before this Court for a considerable period of time and the direction issued by the writ court in our humble consideration would not serve any fruitful purpose particularly when the issue has been decided finally by this Court in an identical matter. The ground of parity ought to have been adverted to and we are satisfied that the case of parity is made out.

8. In the circumstances of the case, we hereby dispose of the writ petition as well as the instant special appeal by extending the benefit of the order passed by this Court in W.P.No.27670(S/S) of 2016 on 22.11.2016 in the same terms and the direction issued therein shall be complied with by the State at par not later than a period of two months from the date a certified copy of this order is filed before the authority concerned.

9. The appeal is accordingly *disposed of*.

Order Date :- 18.11.2023

Shahnaz