

Court No. - 20

Case :- WRIT - A No. - 7314 of 2023

Petitioner :- Sunil Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Medical And Health Services Lko. And 3 Others

Counsel for Petitioner :- Mohammad Tauseef Siddiqui

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed for a direction to opposite parties to make payment of salary to petitioner with effect from 18.04.2022 alongwith arrears.
3. It has been submitted that petitioner was granted appointment on compassionate basis on 16.04.2022 on a Class IV post of Bhisti in the pay-scale of Rs.5200-20200/- and in pursuance thereof joined his post on 18.04.2022. It is submitted that despite the said facts, petitioner has never been paid salary for the post on which he has been appointed.
4. In pursuance of directions issued earlier, learned State Counsel has been provided written instructions dated 25.09.2023 issued by the Chief Medical Superintendent, Maharaja Suhel Deo Swasthasi Rajya Chikitsa Mahavidhyalay Evam Maharshi Balaark Chikitsalay, Bahraich, which is taken on record and as per which it has been admitted that petitioner was provided compassionate appointment vide order dated 16.04.2022. The instructions however states that salary payment to petitioner could not be made since the District Hospital (Female) Bahraich was merged in the Medical Education Department and in pursuance thereof, instructions were sought from the Director regarding status and salary payment of petitioner. The instructions state that thereafter instructions had been provided by the Director vide letter dated 02.12.2022 whereafter petitioner has been absorbed in service in the Office of Chief Medical Officer, Bahriach.
5. The aforesaid aspects indicated in the written instructions dated 25.09.2023 clearly corroborate the stand of petitioner. It is thus admitted by opposite parties that petitioner has been appointed on compassionate basis by means of order dated 16.04.2022. Such compassionate appointment is clearly in the nature of substantive appointment. The opposite parties have

also admitted the fact that such compassionate appointment still continuing but salary payment could not be made to the petitioner only on account of merger of two departments whereafter by means of order dated 02.12.2022 also the Director has clarified the situation whereafter petitioner has been absorbed in service in the office of Chief Medical Officer, Bahraich.

6. The instructions dated 25.09.2023 do not indicate any other reason for depriving petitioner from his salary.

7. In the considered opinion of this Court, the aforesaid reason cannot be said to be a cogent reason for depriving petitioner from his salary particularly once a substantive appointment is admitted by opposite parties.

8. In view of aforesaid, a writ in the nature of Mandamus is issued commanding the opposite parties to ensure payment of salary to petitioner with arrears with effect from 18.04.2022 alongwith admissible emoluments. Such regular salary payment shall be ensured forthwith with arrears of salary being ensured to petitioner within a period two months from the a certified copy of this order is produced before the said authority.

9. Consequently, petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 18.10.2023

Subodh/-