

Court No. - 7

Case :- WRIT - A No. - 7341 of 2023

Petitioner :- Anand Kumar And 2 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Social Welfare Deptt. Lko. And Another

Counsel for Petitioner :- Vijay Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioners and Sri Ran Vijay Singh, learned counsel appearing on behalf of all the respondents.
2. With the consent of learned counsel appearing on behalf of the contesting parties, the instant writ petition is being finally decided.
3. Instant writ petition has been filed challenging the order dated 12.09.2023 passed by the respondent no. 2, a copy of which is annexure 1 to the writ petition. A further prayer is for a mandamus commanding the respondents to grant the benefit of Assured Career Progression Scheme (hereinafter referred to as "ACP") to the petitioners as per the Government order dated 24.03.2015 and to pay arrears of salary after fixation thereof.
4. At the very outset, learned counsel for the petitioner contends that the petitioners had approached this Court earlier by filing Writ-A No. 23338 of 2021 Inre; Anand Kumar and Ors Vs. State of U.P and Ors whereby they were aggrieved against the order dated 17.02.2021 by which the respondents had negated the claim of the petitioner for grant of ACP. They had also prayed for a direction for being granted the benefit of the ACP as per the Government order dated 24.03.2015.
5. This Court vide judgment and order dated 13.07.2023, a copy of which is annexure 19 to the writ petition had quashed the rejection order dated 17.02.2021 and had required the respondents to consider the case of the petitioners in the light of the discussions made in the judgment and considering the Government order dated 24.03.2015 for grant of ACP.

6. It is contended that subsequent thereto, the respondents have passed the order impugned dated 12.09.2023 wherein the claim of the petitioners for grant of ACP has again been rejected.

7. Learned counsel for the petitioners contends that the ground which have been indicated in the order impugned by the respondent no. 2 while rejecting the claim of the petitioners for grant of ACP are verbatim the same as had been indicated in the earlier order dated 17.02.2021 which had been quashed by this Court vide judgment and order dated 13.07.2023 and thus submits that there cannot be any occasion for the respondents to have primarily copied and pasted the earlier order while considering and rejecting the case of the petitioners.

8. On the other hand, Sri Ran Vijay Singh, learned counsel for the respondents on the basis of instructions submits that a detailed order has been passed by the respondent no. 2 while rejecting the claim of the petitioners and as the petitioners were not found entitled for being granted ACP consequently, there claim has been rejected.

9. As only a short question is involved as to whether the respondent no. 2 has simply reiterated his earlier order dated 17.02.2021 while passing the order impugned in pursuance to the directions issued by the writ Court, the Court does not find it necessary to call for a counter affidavit.

10. A perusal of the earlier order dated 17.02.2021 that had been passed by the respondent no. 2 by which the claim of the petitioners for grant of ACP was rejected, a copy of which is annexure 18 to the writ petition when compared with the order impugned dated 12.09.2023 would indicate that the impugned order is verbatim what had been passed earlier by the respondent no. 2 and which had been quashed and set aside by this Court vide judgment and order dated 13.07.2023.

11. For the sake of convenience, the operative portion of the order dated 17.02.2021 is reproduced below:-

"समाज कल्याण विभाग द्वारा अनुदानित प्राविधिक संस्थाओं में कार्यरत अनुमोदित प्रशिक्षकों/स्टाफ के वेतन

अनुदान के भुगतान हेतु संबंधित जनपदों के जिला समाज कल्याण अधिकारी को बजट आवंटित किया जाता है तथा जिला समाज कल्याण अधिकारी द्वारा अनुदानित प्रशिक्षकों/स्टाफ को अन्य औपचारिक का परीक्षण कर प्रबन्धक द्वारा सत्यापित बिल के आधार पर वेतन का भुगतान किया जाता है। याचीगण एवं अन्य कार्मिक पूर्णतया प्रबंधतंत्र के नियंत्रणाधीन होते हैं तथा नियुक्ति भी प्रबन्धतंत्र द्वारा की जाती हैं। सुनिश्चित कैरियर प्रोन्नयन (ए०सी०पी०) का लाभ अनुमन्य कराये जाने का समाज कल्याण विभाग द्वारा अनुदान पर संचालित ऐसी संस्थाओं में कार्यरत कार्मिकों के सम्बन्ध में शासन द्वारा समय -समय पर निर्गत - शासनादेशों में कोई प्राविधान / नीति व्यवस्था न होने के कारण याचीगण को सुनिश्चित कैरियर प्रोन्नयन (,०सी०पी०) लाभ अनुमन्य कराये जाने का कोई औचित्य नहीं है तथा वर्णित स्थिति में याची का दावा | बलहीन होने के कारण पोषणीय नहीं है।"

12. Likewise, the operative portion of the order impugned dated 12.09.2023 is reproduced below:-

"समाज कल्याण विभाग द्वारा अनुदानित प्राविधिक संस्थाओं में कार्यरत अनुमोदित प्रशिक्षकों/स्टाफ के वेतन अनुदान के भुगतान हेतु संबंधित जनपदों के जिला समाज कल्याण अधिकारी को बजट आवंटित किया जाता है तथा जिला समाज कल्याण अधिकारी द्वारा अनुदानित प्रशिक्षकों /स्टाफ को अन्य औपचारिक का परीक्षण कर प्रबन्धक द्वारा सत्यापित बिल के आधार पर वेतन का भुगतान किया जाता है। याचीगण एवं अन्य कार्मिक पूर्णतया प्रबंधतंत्र के नियंत्रणाधीन होते हैं तथा नियुक्ति भी प्रबन्धतंत्र द्वारा की जाती हैं। सुनिश्चित कैरियर प्रोन्नयन (ए०सी०पी०) का लाभ अनुमन्य कराये जाने का समाज कल्याण विभाग द्वारा अनुदान पर संचालित ऐसी संस्थाओं में कार्यरत कार्मिकों के सम्बन्ध में शासन द्वारा समय - समय पर निर्गत - शासनादेशों में कोई प्राविधान / नीति व्यवस्था न होने के कारण याचीगण को सुनिश्चित कैरियर प्रोन्नयन (,०सी०पी०) लाभ अनुमन्य कराये जाने का कोई औचित्य नहीं है तथा वर्णित स्थिति में याची का दावा | बलहीन होने के कारण पोषणीय नहीं है।"

13. Perusal of both the aforesaid orders would indicate that there is no difference between what had been indicated by the respondent no. 2 while passing the order dated 17.02.2021 viz-a-viz the order which has been passed now dated 12.09.2023.

14. Considering the aforesaid, this Court is of the view that exemplary cost should be imposed upon the respondent no. 2 who has passed the order impugned.

15. However, Sri Ran Vijay Singh, learned Additional Chief Standing counsel states that atleast an opportunity may be granted to the respondent no. 2 to pass a fresh order keeping in view the earlier order of this Court dated 13.07.2023.

16. Accordingly, keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned dated 12.09.2023, a copy of which is annexure 1

to the writ petition is quashed. The respondent no. 2 is directed to pass a fresh order regarding the claim of the petitioner for grant of the ACP keeping in view the discussion made in the judgment and order dated 13.07.2023.

17. Let such an order be passed within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 11.10.2023

Pachhere/-