

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3294 of 2023

Applicant :- Subhash Chandra Gupta

Opposite Party :- Sri Himanshu Kumar, Addl. Chief Secy. Rural Development, Civil Sectt. Lko. And Another

Counsel for Applicant :- Vijay Kumar Srivastava

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed order dated 4.10.2023, which reads as under :

"1. Heard Sri Vijay Kumar Srivastava, learned counsel for the petitioner.

2. Attention has been drawn towards the order of the writ court dated 14.12.2022 in Writ-A No. 7846 of 2022 which reads as under :

"1. Heard Sri Vijay Kumar Srivastava, learned counsel for the petitioner as well as learned Standing counsel for the opposite parties.

2. It has been submitted by learned counsel for the petitioner that the petitioner was directly recruited and appointed to the post of Junior Engineer (Civil) in District Rural Development Agency (D.R.D.A.) on 25.7.1985 and was subsequently promoted to the post of Assistant Engineer on 7.4.2000. The persons who were aggrieved by the promotion of the petitioner approached this Court by filing writ petition No.458 (S/B) of 2000 wherein an interim order was passed on 10.4.2000 staying the operation of the order dated 7.4.2000. During pendency of this petition certain Junior Engineers who were junior to the petitioner were also promoted to the post of Assistant Engineer and the salary of these persons was fixed in the pay scale of Rs.8000-13500/-. It is stated that subsequently writ petition No.458 (S/B) of 2000 was dismissed by this Court vide judgment and order dated 24.12.2009 and the interim order was discharged and consequently the petitioner was permitted to join on the post of Assistant Engineer in pursuance of promotion order dated 7.4.2000. Despite the fact that the petitioner has been promoted by means of order dated 7.4.2000 but his salary was not fixed in the grade pay of 7400/- while his juniors who have been promoted along with the petitioner continued to draw higher salary on the basis of their pay fixation during pendency of the petition no.458(SB) of 2000.

3. It is stated that the petitioner continued to make representations and subsequently filed writ petition bearing writ petition No.1667 (S/B) of 2012 for fixation of salary of the petitioner in the pay scale of Rs.8000-13500/- from the date of his promotion. The said writ petition was disposed of by means of judgment and order dated 5.12.2012 with direction to the opposite party to pass appropriate orders on the representation of the petitioner. By means of order dated 2.5.2013 the representation of the petitioner was rejected subsequent to which the petitioner again approached this court by filing writ petition No.857 (S/B) of 2013 which was allowed by this Court by means of order dated 15.11.2016 quashing the order dated 2.5.2013 with direction to the respondents to fix salary of the petitioner with effect from 7.4.2000.

4. Petitioner submits that in the meanwhile the persons junior to the petitioner were promoted along with the petitioner and have been granted next higher pay scale of Rs.18500-13500/- with effect from 8.4.2008 on completion of eight years' satisfactory services. The petitioner submits that the petitioner was again discriminated and was not granted the benefit of A.C.P. despite submitting various representations and subsequently by means of order dated 25.9.2019

the salary of the petitioner was fixed in the next higher pay scale of Rs.10000-39100/-but the second A.C.P. to which the petitioner was entitled with effect from 1.1.2014 was not granted to the petitioner. The petitioner again represented his case before the respondents and subsequently approached this Court by means of writ A No.1840 of 2022 which was disposed of vide order dated 1.4.2022 directing the respondents to consider the case of the petitioner and pass necessary orders thereon. It is in compliance of the orders of this Court dated 1.4.2022 that the impugned order dated 21.10.2022 has been passed rejecting the case of the petitioner for grant of second A.C.P. relying upon the government order dated 29.9.2020 according to which in case any junior has been granted higher pay scale giving the benefit of A.C.P. then the senior cannot claim higher pay scale on the said basis. Solely, relying upon the Government Order dated 29.9.2020 the representation of the petitioner has been rejected.

5. The petitioner, on the other hand, assailing the impugned order dated 21.10.2022 has submitted that the Government Order dated 29.9.2020 would not have retrospective operation in as much as the petitioner's claim for grant of second A.C.P. is from 1.1.2014 and, in fact, the same was granted to the petitioner on 7.4.2016. His claim is only for grant of the said benefit of A.C.P. from 1.1.2014 to 7.4.2016 when juniors to the petitioner were given the benefits second A.C.P.

6. It is submitted that the petitioner being eligible for second A.C.P. ought to have been granted the same from 16.5.2012 and had the case of the petitioner been considered within the prescribed time i.e. prior to coming into force the Government Order dated 29.9.2020 then there was no reason for the respondents to have denied the benefit of second A.C.P. The reason for rejection of the representation of the petitioner is therefore arbitrary.

7. Learned Standing counsel, on the other hand, has opposed the writ petition and submits that bar is created by the Government Order dated 29.9.2020 due to which the petitioner could not be granted the benefit of the second A.C.P. and in the impugned order itself it is stated that even juniors to the petitioner have wrongly been granted the benefit of second A.C.P. but learned Standing counsel could not dispute the fact that the Government Order 29.9.2020 does not have any retrospective operation and would be operative only prospectively i.e. from 29.9.2020 on wards.

8. I have heard learned counsel for the parties and perused the records.

9. Considering the rival submissions, it is noticed that the claim of the petitioner for grant of second A.C.P. from 1.1.2014 to 7.4.2016. Though the petitioner was granted the benefits of second A.C.P. with effect from 7.4.2016 relying upon the government order dated 16.5.2012 but his claim is for grant of the same from 1.1.2004 when his juniors were granted. The question in this case is only with regard to the fact that the said benefit was to be granted on completion of 16 years' services and the petitioner became eligible for grant of the same on 1.1.2014, when his juniors were granted the said benefits but he has been discriminated against and wrongly denied the same benefit illegally and adverse discriminating against the petitioner without any basis. This Court also finds that the reasoning given in the impugned order are clearly arbitrary looking into the fact that the case of the petitioner has been rejected solely relying upon the government order dated 29.9.2020. Needless to say that the said government order would not have retrospective operation and would not cover the case for grant of A.C.P. from 2014 to 2016 which case would be covered only by the government order holding field during the said period. The case of the petitioner has been rejected solely relying upon the subsequent government order dated 29.9.2020 which was not in existence when the case of the petitioner was considered and granted the second A.C.P. and accordingly the reasons stated in the impugned order are illegal and arbitrary as the said government order would not have retrospective operation.

10. For the reasons stated above, the writ petition is allowed. Order dated 21.10.2022 is set aside. The case of the petitioner for grant of the benefits of the second A.C.P. from the date junior to the petitioner were granted the said benefit is remitted back to the competent authority to pass fresh order in accordance

with law, expeditiously, say within a period of six weeks from the date a certified copy of this order is placed before him. Needless to say that the petitioner shall be given all the benefits to which he is entitled and became eligible for the second A.C.P. from the date his juniors were given the said benefits. Let the fresh order be passed within a period of three weeks from the date a certified copy of this order is submitted to the competent authority. "

3. Sri Srivstava has stated that on account of undue harassment by the opposite parties the petitioner was compelled to file five writ petitions and the writ petition on which the contempt petition has been filed is the fifth writ petition. Not only the above, the petitioner was compelled to file five contempt petitions including this contempt petition. He has further submitted that only after the contempt notices are issued the order of the writ court is complied with.

4. Sri Srivastava has further stated that the order of the writ court dated 14.12.2022 along with representation has been sent to the concerning / competent opposite party through registered post on 7.1.2023 and again a reminder was given on 3.2.2023 but compliance of the order of the writ court has not been done.

5. The matter requires consideration.

6. Issue notice to opposite party no. 1 returnable at an early date.

7. List on 6.11.2023.

8. If the order of the writ court is not complied with by the next date of listing the opposite party no. 1 shall appear in person."

3. In compliance of the aforesaid order Sri Sunil Bajpai, learned Addl. C.S.C. has filed affidavit of compliance on behalf of opposite party no. 1, same is taken on record.

4. Attention has been drawn towards Annexure no. CA-1 which is office memo dated 2.11.2023 passed by the Joint Secretary, Department of Rural Development, U.P. whereby the benefit of Second Assured Career Progression has been provided to the petitioner by amending the earlier order and an amount of Rs. 2,97,880/- has been credited / transferred in the account of the petitioner.

5. In the wake of the aforesaid development since the benefit of second A.C.P. has been given to the petitioner in terms of the order of the writ court and amount has been transferred in the account of the petitioner, nothing remains to be decided by this Court.

6. Accordingly, the contempt petition is **dismissed**.

7. Notices discharged.

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[Rajesh Singh Chauhan, J.]

Order Date :- 6.11.2023

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