

Neutral Citation No. - 2023:AHC-LKO:67493-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 795 of 2023

Appellant :- State Of U.P. Thru. Prin. Secy. Revenue Deptt. Civil
Sectr. Lko. And Another

Respondent :- Abhishek

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Amarendra Pratap Singh

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) Heard Sri Prakhar Mishra, learned Additional Chief Standing Counsel appearing for the applicants/appellants and Sri Amrendra Pratap Singh, learned Counsel appearing for the sole respondent.
- (2) This intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is delayed by 500 days.
- (3) The appeal is accompanied with the application for condonation of delay supported with an affidavit.
- (4) Cause shown is sufficient.
- (5) In absence of any objection, the application for condonation of delay is **allowed** and the delay in filing the appeal is **condoned**.
- (6) Let the appeal be assigned a regular number.

Order on Memo of Appeal

- (7) This intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is directed against the judgement and order dated 26.07.2021 passed in Writ Petition No.5471(S/S) of 2017 whereby the writ petition was allowed with certain directions which are as under:-

“20. Accordingly, the petitioner is entitled for payment of minimum wages, as admissible to the post of Computer Operator.

21. The respondents are directed to permit the petitioner to discharge his duties on the post of Computer Operator and to pay him regular honorarium / minimum wages/ pay-scale month by month, as admissible to his post.”

(8) Learned Additional Chief Standing Counsel appearing for the appellants-State authorities submits that the order of termination of the respondent/petitioner from service was set aside by the Writ Court on the ground that no opportunity whatsoever was granted before dispensing with his services. He further submits that the respondent/petitioner was merely an employee working on honorarium basis and was not protected under any rules and his services were subject to the availability of work. It is further submitted that the respondent/petitioner could not claim his salary at par with the regularly appointed persons as there was no post available in the department on which he worked. In these circumstances, learned Counsel appearing for the appellants/respondents prays for allowing the special appeal and setting aside the impugned judgment and order.

(9) Sri A. P. Singh, learned Senior Counsel assisted by Sri Amrendra Pratap Singh, learned counsel appearing for the sole respondent/petitioner at this stage has submitted that pursuant to the appointment letter dated 30.12.2011, the respondent/petitioner joined on 01/02/01/2012 and since then, he is discharging his duties on the said post. When the respondent/petitioner requested the appellants/respondents to increase the honorarium, the respondent/petitioner was paid minimum pay-scale admissible to an

employee. Despite this, the order dated 17.01.2017 was passed by the State Government terminating his services from the post of Computer Operator as the appointment was *de hors* the Rules. When the respondent/petitioner filed Writ Petition No. 5471 (SS) of 2017, it was allowed vide impugned judgment and order dated 26.07.2021.

(10) Learned Counsel for the respondent/petitioner has further submitted that the grounds raised by the learned counsel for the appellant have already been taken before the learned Single Judge and they have also been dealt with. Thereafter, the impugned judgment and order has been passed. Lastly, he has submitted that since the learned Single Judge has directed the appellants/respondents to permit the respondent/petitioner to discharge his duties on the post of Computer Operator and to pay him regular honorarium/minimum wages/pay scale month by month as admissible to the post.

(11) After arguing the matter at length, learned counsel for the respondent/petitioner has fairly conceded that interest of justice would suffice, if the State Authorities/appellants are directed to pay minimum pay scale as he was drawing before his termination.

(12) Considered the submissions made by the learned counsel for the parties and perused the record including the impugned judgment and order. A perusal of the record shows that the respondent/petitioner joined on the post in question on 01/02/01.2012 and worked till 17.01.2017, i.e., the date of termination order. The only ground taken by the State Authorities to pass the termination order is that the appointment of respondent/petitioner was *de hors* the Rules and more over, the termination order was passed without giving him an audience. The respondent/petitioner worked on the post in question for almost six years. During these six years, the appellants/respondents did not find that the appointment order was issued *de hors* the Rules. Evidently, it is clear from the record that when the respondent/petitioner raised his voice to enhance his salary,

they thought that the appointment order issued to him was not in accordance with Rules. In the meantime, vide Government Order dated 12.12.2017, the State Government directed all the Commissioners and Collectors to increase the salary of the employee who were working on the post of Data Entry Operator/Computer Operator in terms of the stipulations contained in the said order.

(13) For all these reasons, though we do not find any illegality or infirmity in the impugned judgment and order dated 26.07.2021, yet issuance of direction to the appellants/respondents by the learned Single Judge needs clarification.

(14) In view of what has been stated above, the Special Appeal is **partly allowed** and the impugned judgment and order dated 26.07.2021 is modified to the extent that the appellants/respondents are directed to pay minimum pay-scale to the respondent/petitioner, as admissible to his post as was paid to him prior to terminating him from service.

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[Om Prakash Shukla, J.] [Attai Rahman Masoodi, J.]

Order Date :- 16.10.2023
Shahnaz/lakshman