

**Reserved**

**Neutral Citation No. - 2023:AHC-LKO:79478-DB**

**A.F.R.**

**Court No. - 1**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 843 of 2023

**Appellant :-** State Of U.P. Thru. Prin. Secy. Rural Engineering Deptt.  
U.P. Govt. Civil Sectr. Lko. And Others

**Respondent :-** Satya Prakash Gupta

**Counsel for Appellant :-** C.S.C.

**Counsel for Respondent :-** Ashutosh Shahi, Shireesh Kumar

**Hon'ble Attau Rahman Masoodi, J.**

**Hon'ble Om Prakash Shukla, J.**

- (1) Heard Sri Amitabh Kumar Rai, learned Additional Chief Standing Counsel appearing for the State Authorities/ appellants/applicants and Sri Ashutosh Shahi, learned Counsel appearing for the respondent/petitioner.
- (2) This intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is delayed by one day.
- (3) The appeal is accompanied with the application for condonation of delay supported with an affidavit.
- (4) Since sufficient cause has been shown by the learned Counsel for the applicants/appellants and learned counsel for the respondent/petitioner has no objection, the application for condonation of delay is **allowed** and the delay in filing the appeal is **condoned**.
- (5) Let the appeal be assigned a regular number.

**Order on the appeal**

- (6) The instant Special Appeal has been filed by the State assailing the judgment and order dated 19.07.2022 passed in a bunch of writ petitions, leading Writ-A No.200222 of 2015, *Kuldeep Kumar and 100 others v. State of U.P. and others*. The bunch

also included the writ petition filed by the respondent-petitioner, i.e., Writ-A No. 23634 of 2017. The appeal has also sought to challenge the judgment and order dated 21.09.2023 passed in Civil Misc. Review Application Defective No. 197 of 2023 arising out of the above common judgment.

- (7) The operative portion of the impugned common judgment and order dated 19.07.2022 reads as under:-

*“14. In view of the aforesaid position, I see no reason as to how the petitioners can be discriminated when the controversy has been settled by the Division Bench of this Court and Special Leave Petition against the said judgment has been dismissed. Not only that, even subsequently, this Court has given benefit to other employees by the judgment passed by a Division of Bench of this Court in Writ Petition No.17859 of 2016. The State has fairly submitted before this Court that the case of persons who were similarly situated to the petitioners would be governed by the judgment of the Division Bench of this Court rendered in the case of **Ashok Kanojia versus State of U.P. and others.***

*15. At this stage, it is relevant to quote the findings recorded by the Division Bench of this Court in the case of **Ashok Kanojia versus State of U.P. and others** as under:*

*"In view of what has been discussed above, we are of the view that the opposite parties have wrongly denied the benefit of revised pay scale of Rs.37400 to 67000 with Grade Pay of Rs. 8700 which is the only pay scale of the post of Superintending Engineer. After the up-gradation of pay scale there is only one pay scale of the post of Superintending Engineer which is 37400 to 67000 with grade pay of Rs. 8700 and the petitioners being the Superintending Engineers are entitled to get this pay scale.*

*In view of the Government Order dated 04.05.2010 both the writ petitions succeed.*

*Both the writ petitions are allowed and the impugned orders dated 21.01.2013 as contained as Annexure No. 1 to the Writ Petition No. 236 (SB) of 2013 and the Government Order dated 14.02.2013 as contained as Annexure No. 1 to the Writ Petition No. 1440 (SB) of 2013, are hereby quashed. The opposite parties are directed to make payment of salary to the petitioners in Pay Band-IV with grade pay of Rs. 8700 with effect from the date they are found eligible alongwith the arrears, if any, within three months."*

***16. For the reason aforesaid, this Court is of the considered view that the case of the petitioners is duly covered by the judgment rendered in the case of Ashok Kanojia (supra). The petitioners are also entitled for the same benefit which has been given to the petitioners by the Division Bench in the aforesaid case.***

*17. In view of the aforesaid facts and legal position, the writ petitions are allowed and the Government Order dated 10.04.2015, reference of which has been given above is hereby quashed, so far as it says that the petitioners are not entitled for the benefit of G.O. dated 10.04.2015. In consequence thereof the order rejecting the representation of the petitioners i.e. order dated 18.07.2016 passed by State Government in Writ Petition No.19881 (SB) 2016; order dated 09.09.2016 issued by Office of Engineer-in-Chief (Development) & Head of Department, Public Works Department, Nirman Bhawan, Lucknow and order dated 21.09.2015 passed by the State Government in Writ Petition No.3607 (SB) 2017; order dated 28.07.2015 & Clarification Order dated 10.04.2015 passed by State Government in Writ Petition No.3169 (SB) 2016; order dated 01.07.2015 passed by State Government & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.1112 (SB) 2015; order dated 28.05.2015 passed by State Government & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.1051 (SB) 2015; order dated 28.05.2015 passed by State Government & Government order dated 10.04.2015 passed by Principal Secretary,*

*Finance, Govt. of U.P. in Writ Petition No.1050 (SB) 2015; order dated 13.03.2015 passed by Principal Secretary, Irrigation Department & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.569 (SB) 2015; order dated 27.10.2017 issued by Office of Engineer-in-Chief (Development) & Head of Department, Public Works Department, Nirman Bhawan, Lucknow and order dated 21.09.2015 passed by the State Government in Writ Petition No.32212 (SB) 2017; order dated 16.06.2016 passed by Principal Secretary, Public Works Department in Writ Petition No.20134 (SB) 2016; order dated 12.08.2014 passed by Principal Secretary, Rural Engineering Department in Writ Petition No.87 (SB) 2015; order dated 14.02.2017 issued by the Office of Engineer-in-Chief (Development) & Head of Department, Public Works Department, Nirman Bhawan, Lucknow and order dated 21.09.2015 passed by the State Government in Writ Petition No.3060 (SB) 2017 and order dated 11.07.2016 passed by Principal Secretary, Energy Department, Civil Secretariat, Lucknow is hereby quashed. The respondents are directed to give the benefit of the aforesaid judgment rendered in Ashok Kanojia (supra).*

*18. Since it has been brought to my notice that during pendency of the aforesaid bunch of writ petitions, large number of petitioners have attained the age of superannuation and are no longer in service. Therefore, the respondents are directed to refix the pay of such petitioners and issue revised Pension Pay Order. The respondents are further directed to complete the process of fixation of pay, payment of arrears of salary and revised Pension Pay Order within a period of four months. In the event, the aforesaid benefit is not extended in the period prescribed above, the petitioners will be entitled for simple interest at the rate of 7%.”*

- (8) An occasion to file review application of the judgment dated 19.07.2022 arose on account of the fact that this Court in the order dated 13.03.2023 of previous intra-Court Appeal No. 71 of 2023 was of the opinion that the contentions raised by the State were not duly considered in the light of the order dated

14.11.2014 passed by the Hon'ble Supreme Court in S.L.P. (Civil) No. 17297 of 2014, *State of U.P. v. Birendra Kumar Maurya and another*; therefore, permission for filing review application was granted partly to overcome the stand of which a concession was made by the earlier counsel contrary to record. The operative portion of the order dated 13.03.2023 passed in Special Appeal Defective No. 71 of 2023 reads as under:-

*“When we peruse the judgment and order passed by the learned Single Judge, which is under challenge before us what we find is that in para 14 the learned Single Judge has recorded that "the State has fairly submitted before this Court that the case of persons, who were similarly situated to the petitioners, would be governed by the judgment of the Division Bench of this Court rendered in the case of 'Ashok Kanojia v. State of U.P. and others'”.*

*When we drew the attention of the learned State counsel to the aforesaid finding recorded and observation made by the learned Single Judge in the judgment and order under challenge before us, it has been submitted by the learned State counsel that no such case was ever set up by the State before the learned Single Judge and it appears that the said observation has crept in on account of some misconception.*

*Be that as it may, the observations made or findings recorded in respect of factual aspects of the matter by the Court in its order/ ordersheet is treated to be sacrosanct in law. Though it is not that any party denying such statement having been made before the court concerned can not controvert the same, however, such opportunity of controverting will be available before the court which records any such statement. Reference in this regard may be had to the judgment of Hon'ble Supreme Court in the case of *State of Maharashtra vs. Ramdas Shrinivas Nayak and another*, reported in (1982) 2 SCC 643.*

*In view of the aforesaid, we are of the opinion*

***that the appellants-State authorities will be better advised to seek review of the judgment and order, which is under challenge before us in this special appeal.***

*Thus, this special appeal is disposed of with the aforesaid liberty.”*

- (9) Taking the aid of the order dated 13.03.2023 passed by a Co-ordinate Bench of this Court in Special Appeal Defective No. 71 of 2023, the State went to file Civil Misc. Review Application Defective No. 197 of 2023 before the learned Single Judge, wherein the learned Single Judge while dismissing the review petition on 21.09.2023 has observed as under:-

***22. This Court has gone through the judgment of the Division Bench dated 13.3.2023 and reaffirms the statements made before this Court as discussed and recorded in the judgment dated 19.7.2022.***

*23. Even for a moment it is assumed that the matter can be re-agitated before this Court after determination up to the level of the Supreme Court this Court finds itself bound by the judgment of the Division Bench which admittedly has not been set aside by any higher Court or by any larger Bench.*

*24. This view as taken by the Division Bench in the case of Kanojia has also been rendered in number of other cases as stated in the case of State vs. Birendra Kumar Maurya and also in Narottam Kumar Agarwal vs. State of U.P. in Writ Petition No.1063 (SB) of 2014 decided on 23.9.2014. It has been informed that even in the case of Narottam Kumar Agarwal the SLP No.4776 of 2015 has been dismissed on 23.3.2015.*

*25. In light of the above there is no ground for review.*

*26. It is unfortunate that the Standing Counsel has not disclosed the correct and full facts before the*

*Division bench which has unnecessarily necessitated filing of the present review petition.*

*27. In light of the above, review petition is dismissed with a cost of Rs.10,000/-.”*

- (10) Assailing the impugned judgment and order dated 19.07.2022 as well as the dismissal of review on 21.09.2023, the learned Additional Chief Standing Counsel has made two-fold submissions to the effect that as per Government Order dated 18.03.2011, the two pay scales of Superintending Engineer initial and selection grade were upgraded from Rs.12000-16500 & Rs.14300-18300 to the single pay scale of Rs.37400 – 67000 (Pay Band – 4/Grade Pay Rs.8,700/-) with immediate effect. Secondly, he submitted that the State Government in vivid terms has clarified in the Government Order dated 13.12.2011 that up-gradation of pay-scale of Superintending Engineers will not have any effect on the pay scale of Assistant Engineers & Executive Engineers who are getting time-scale of Superintending Engineer after 18 & 16 years services respectively, as personal pay scale which is equivalent to Pay Band – 3 (Rs.15600-39100), meaning thereby that they are not entitled for Rs.8,700/- Grade Pay.
- (11) On the other hand, learned Counsel appearing for the respondent/petitioner has submitted that the issue has been set at rest by a Division Bench of this Court and by the Hon’ble Supreme Court, as stated above. So far as Government Order dated 13.12.2011 is concerned, learned Counsel for the respondent/petitioner has relied upon an order passed by a Co-ordinate Bench of this Court in Writ Petition No. 578 (SB) of 2012 whereby the Writ Court while allowing the writ petition has set aside the Order dated 13.12.2011 and thereafter, the aforesaid bunch of writ petitions was filed by the respective

petitioners. Against this order, neither the State Government nor any party has approached the superior Court. The operative portion of the order dated 16.05.2012 passed in Writ Petition No. 578 (SB) of 2012 reads as under:-

*“It is well settled proposition of law that a person cannot be deprived of his civil rights in violation of principles of natural justice. Accordingly, the writ petition is allowed and the impugned order dated 13<sup>th</sup> December, 2011, as contained in Annexure No. 1 to the writ petition, is set aside. The matter is remitted back to the State Government to decide the controversy afresh after serving a show cause notice on the petitioners and seeking reply thereon, expeditiously say preferably within a period of three months from the date of receipt of certified copy of the present order.*

*It is clarified that we have not entered into the merits of the case.”*

- (12) Learned Counsel for the respondent/petitioner has submitted that if the above orders are read consecutively, it is aptly conspicuous that though the issue has already been settled by the superior Courts, yet the respondent/petitioner and similarly situated persons are not able to reap the benefits of the judgments passed by the Apex Court as well as by this Court.
- (13) Considered the submissions made by the rival parties and perused the record extensively including the relevant orders passed by the Hon’ble Supreme Court and this Court.
- (14) After hearing learned Counsel for the parties, the question that arises for consideration is, **“whether the respondent/petitioner is entitled for salary in the upgraded pay scale of Pay Band 4 Rs.37400-67000/- Grade Pay Rs.8,700/- w.e.f. 20.05.2011 on actual basis and w.e.f. 01.01.2006 on notional basis or not?”**

- (15) The reply is in the **affirmative** and in order to arrive at the conclusions, it is necessary to delve into the contents of Government Order dated 18.03.2011 upgrading the pay scale of Superintending Engineer from Rs.12000-16500 (revised as Pay Band Rs.15600-39100 Grade Pay Rs.7,600 w.e.f. 01.01.2006) to Rs.14300-18300 (revised as Pay Band – 4 Rs.37400-67000 Grade Pay – Rs.8,700).
- (16) Pursuant to the Government Order dated 18.03.2011, the State Government vide order dated 20.05.2011 has upgraded the pay scale of Superintending Engineer as stated in the preceding paragraph, however, with a stipulation that the said benefit would be granted w.e.f 01.01.2006 on hypothetical/notional basis and with immediate effect i.e., 20.05.2011 on actual basis.
- (17) When the aforesaid benefit was denied to the persons similarly situated as compared to the petitioner in Writ Petition No. 578 (SB) of 2012, one Mr. Ashok Kanojia, an Executive Engineer, Public Works Department and one Mr. Birendra Kumar Maurya, an Executive Engineer of Irrigation Department filed Writ Petition Nos. 236 (SB) of 2013 and Rs.1440 (SB) of 2014 respectively before this Court which were allowed with the directions to the respondents to grant/release salary in Pay Band – 4 of Rs.37400-67000 Grade Pay Rs.8,700/- to the petitioners vide common judgment and order dated 28.01.2014, as corrected vide order dated 06.02.2014.
- (18) Aggrieved by the aforesaid judgment and order dated 28.01.2014, as corrected vide order dated 06.02.2014, the State filed two Special Leave Petitions. The earlier Special Leave Petition No.15453 of 2014, *State of U.P. and others v. Ashok Kanojia*, which was filed before the Apex Court, was dismissed vide order dated 14.07.2014 and the order reads as under:-

*“We find no merit in this petition. The Special Leave Petition is dismissed.”*

- (19) However, against the same very aforesaid judgment and order when the State Government filed another Special Leave Petition No. 17297 of 2014, *State of U.P. v. Birendra Kumar Maurya and another*, the following order was passed by the Apex Court on 14.11.2014:-

*“Delay condoned.*

*We are not inclined to entertain this special leave petition, inasmuch as against the very same judgment at the instance of the petitioner against another person we declined to entertain the special leave petition in SLP(C) No.15453/2014. The instant special leave petition is dismissed.*

*Mr. P.P. Rao, learned senior counsel appearing for the petitioner contended that there are about 500 others who also state their claim based on the above judgment of the High Court. It is also the submission of the learned senior counsel that the stand of the petitioner is not being considered by the High Court in other pending matters.*

***We only make it clear that the dismissal of this special leave petition shall not stand in the way of the petitioner raising all or any other contentions available to it in law in the pending proceedings.”***

- (20) Relying on the aforesaid observations and order passed by the Apex Court, the judgment rendered on 19.07.2022 was assailed in Special Appeal Defective No. 71 of 2023, *State of U.P. v. Kuldeep Kumar and others*, which was disposed of by order dated 13.03.2023, pursuant to which, the State filed Civil Misc. Review Application Defective No. 197 of 2023 which was dismissed with Rs.10,000/- costs vide order dated 21.09.2023.

- (21) Simultaneous to the pendency of proceedings, the State Government took a decision on 10.04.2015 denying the benefit of upgraded Pay Band – 4 Grade Pay Rs.8,700/- to the Assistant Engineers/Executive Engineers. This action of the State Government on being challenged in the bunch of writ petitions was set aside and the learned Single Judge was of the opinion that the matter has already been set at rest by the superior Courts.
- (22) If the matter is viewed telescopically, it emerges that the action of the State has been agitated by the aggrieved employees initially by two persons, namely, Ashok Kanojiya and Birendra Kumar Maurya in their respective writ petitions and when their writ petitions were allowed, the State chose to file two Special Leave Petitions separately. Though both the Special Leave Petitions have been dismissed, but in the Special Leave Petition filed in the matter of Birendra Kumar Maurya, it has been provided that ***the dismissal of this special leave petition shall not stand in the way of the petitioner raising all or any other contentions available to it in law in the pending proceedings.***
- (23) Since the batch of writ petitions has been allowed by the learned Single Judge, wherein there is a reference in respect of Special Leave Petitions filed by the State, taking the aid of the aforesaid order as also the order passed in Special Appeal Defective No. 71 of 2023, where a Co-ordinate Bench of this Court granted liberty to file review petition, the State Government filed a Review Petition which too was dismissed on merits with costs of Rs.10,000/-.
- (24) In the instant intra-Court appeal, the appellants have raised a plea that as per Government Order dated 13.12.2011, the Assistant Engineers/Executive Engineers are not entitled for

upgradation of Rs.8,700/- Grade Pay. In this regard, it may be apt to mention here that a Co-ordinate Bench of this Court has already allowed the writ petition No. 578 (SB) of 2012, *Birendra Kumar Maurya and another v. State of U.P. and others* and quashed the aforesaid Government Order dated 13.12.2011.

- (25) Neither the learned Additional Chief Standing Counsel nor the learned Counsel for the respondent/petitioner has brought on record to show that the aforesaid order has been challenged by any aggrieved party. Once the discrimination meted out to the respondent was disapproved by this Court as well as by the Apex Court, no scope has been left for us to take a different view.
- (26) Considering all these aspects of the matter, we are of the firm opinion that the State is merely seeking to re-open a decided matter through the instant Appeal, although neither any illegality nor infirmity has been pointed by the learned Additional Chief Standing Counsel either in the order passed in the bunch of writ petitions or on the review petition.
- (27) It is made clear that since it is a decided matter, only relevant facts and law have been considered.
- (28) For all the reasons stated above, the intra-Court appeal filed against the impugned orders passed by the learned Single Judge lacks merit and is hereby **dismissed**.
- (29) There shall be no orders as to costs.

**(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 30.11.2023**

**lakshman**

*State of U.P. and others v. Satya Prakash Gupta*