

Court No. - 17

Case :- CONTEMPT APPLICATION (CIVIL) No. - 18 of 2021

Applicant :- Dr.Smt.Shanti Sati Rai

Opposite Party :- Prashant Trivedi Prin.Secy.Apper Chief Secy.Ayush Anubhag

Counsel for Applicant :- Mohammad Tauseef Siddiqui

Hon'ble Rajeev Singh,J.

1. Heard.

2. The present contempt application is filed for willful disobedience of the judgment and common order dated 18.12.2019 passed by this Hon'ble Court in Writ Petition No.1109 (S/B) of 2008 & Writ Petition No.566 (S/B) of 2005, "Dr. Smt. Shanti Sati Rai Vs. State of U.P. & Ors".

3. Affidavit of compliance filed by Sri Mohit Jauhari, learned Standing Counsel duly sworn by Ms. Leena Johari, Principal Secretary, Ayush Department, Civil Secretariat, Govt. of U.P., Lucknow is taken on record.

4. Learned counsel for the applicant submits that advertisement was issued and applicant applied against the substantive vacancy as part time Medical Officer and after interview, formal order was passed for ad-hoc appointment on 28.5.1996, thereafter, she attained the age of superannuation on 30.9.2005. He further submits that as the pension is not being paid, then petition was filed but her earlier services from 28.10.1986 upto the year 1996 was not considered, even aforesaid services were against the substantive vacancy. He also submits that Dr. Shivnandan Singh also applied for appointment against advertisement which was issued on 8.5.1987 for ad-hoc doctors but he was not selected, thereafter, he filed writ petition, which was allowed and Dr. Shivnandan Singh was appointed as ad-hoc Medical Officer on 10.1.2009 and he attained the age of superannuation on 30.4.2010. He further submits that Dr. Shivnandan Singh worked as ad-hoc Medical Officer for the period of 1 year 3 months & 20 days, then he preferred writ petition, i.e.

Service Bench No.1100 of 2007, which was allowed on 26.11.2019 with the direction to the opposite parties to provide services benefits on the post of Medical Officer with effect from 27.3.2000 for counting the said service as qualifying service for grant of pensionary benefits, and this fact was well known to the authorities but the aforesaid order was not challenged and the retiral benefits have been given to Dr. Shivnandan Singh.

5. Order dated 26.11.2019 passed in Service Bench No.1100 of 2007 reads as under:-

1. Heard Sri V.K.Dubey, learned counsel for the petitioner and learned State Counsel appearing on behalf of opposite parties.

2. Although initially petition had been filed against order dated 12.01.2007 and for granting appointment to petitioner on the post of Medical Officer, Ayurvedic and Unani services, subsequently the said prayers have become virtually infructuous by grant of appointment to petitioner and the only prayer surviving for adjudication is for granting same service benefits on the said post with effect from 27.03.2000 when persons allegedly having lesser merit in select list are said to have been appointed.

3. The factual matrix of present dispute is that an advertisement was published on 8.5.1987 inviting applications for selection of Medical Officer in Ayurvedic and Unani disciplines for 1400 posts. Selection process was undertaken and candidates were selected which was thereafter challenged by filing writ petitions before this Court regarding allocation of marks in written examination and viva voce. The said petitions were disposed of by judgment and order dated 12.04.1994 against which special leave petition was filed and the same was also dismissed at admission stage on 08.04.1996. Review Application was also rejected on 21.07.1997. Thereafter a spate of petitions were filed with regard to grant of appointment.

4. In view of directions issued time and again by this Court and Hon'ble the Supreme Court, selection process was completed by issuance of a select list in which petitioner found place at serial no.28 in general category. The said selection was thereafter challenged in Writ Petition No.19695 of 1999 which was disposed of by means of judgment and order dated 26.10.1999 indicating the procedure of filling up the posts. It was directed that firstly, the benefits of order passed by this Court should be given to those persons in whose favour the earlier judgment was passed as well as to those persons who had filed writ petition. It was provided that after filling up the post in the said manner, other candidates would be appointed on the remaining posts.

5. In view of said directions issued by this Court, the opposite parties issued another advertisement on 10.08.2002 seeking representations of persons so selected whose candidatures were required to be seen in terms of directions of this Court. Due to the said advertisement, petitioner also applied and was placed at serial no.2 in the fresh select list issued in 2002 after consideration of representation. The said fact that petitioner was placed at serial no.2 of the fresh select list has been admitted by opposite parties in paragraph 16 of the counter affidavit.

6. Apparently, inadvertently, nine persons who secured lesser marks than petitioner were granted appointment on the said post on 27.03.2000 ignoring petitioner's claim due to which he filed Writ Petition No.939 (SB) of 2006 which was disposed of by means of judgment and order dated 20.07.2006 permitting him to make a fresh representation putting forth his grievances regarding non-issuance of appointment order. The State Government was directed to decide the

representation in case petitioner was finally selected and fell within order of merit.

7. As a consequence of directions issued by this Court, the impugned order dated 12.01.2007 has been passed rejecting petitioner's representation which was challenged in Writ Petition No.1833(SB) of 2010. The same was disposed of by means of order dated 15.12.2010 directing petitioner to amend the present pending writ petition. Thereafter, the impugned order dated 12.01.2007 has been challenged by means of amendment. In the meantime, 9 other persons ranking lower than petitioner in select list were appointed in the year 2004 but their appointments were cancelled vide order dated 01.08.2007 against writ petitions were filed and interim orders were granted.

8. In case of petitioner, after challenge to impugned order dated 12.01.2007 in present petition, interim order dated 29.01.2008 was passed directing opposite parties to offer appointment to petitioner. In terms of the interim order, petitioner was issued appointment order on 10.01.2009 and has thereafter superannuated on 30.04.2010 without any post retiral benefits.

9. A perusal of impugned order clearly indicates admission on part of opposite parties that petitioner's name was indicated at serial no.2 of the select list but 9 other persons ranking lower than petitioner were given appointment ignoring his claim. However, petitioner's representation has been rejected only on the ground that no other vacancy remains on which petitioner can be accommodated. Attention has also been drawn to paragraph 8 of the supplementary affidavit dated 11.11.2019 and Annexures No.SA4, SA5 and SA6 thereon to indicate that benefit of counting ad-hoc services towards qualifying service for grant of pensionary benefits has been accorded to other similarly situated persons.

10. Upon a consideration of submission raised by learned counsel for parties and material on record, it is evident that opposite parties themselves admit the fact that petitioner was placed at serial no.2 of the revised select list issued in 2002 but was denied appointment although 9 other persons ranking lower in the select list were granted appointment thereby discriminating against petitioner.

11. Once the opposite parties themselves had admitted that petitioner was discriminated against, then rejection of his representation only on the ground that there is no vacancy does not stand to reason since rights of petitioner crystallized on the date of filing of initial petition. Granting indulgence to the stand of opposite parties would amount to permitting them to take benefit of their own wrong.

12. It is quite apparent that petitioner was required to be appointed in terms of selection relating to the year 1987 and the select list in which petitioner was placed at serial no.28. Merely by fortuitous circumstance of selection process being under challenge for the past 23 years cannot deprive petitioner from his rightful claim particularly when the challenges raised time and again to the said selection was negated by Courts.

13. Hon'ble the Supreme Court in the case of Purnendu Mukhopadhyay & Others vs. V.K. Kapoor & Another reported in (2008)14 Supreme Court Cases 403; the relevant portion of judgment is as follows:

"15. In a case of this nature, in particular having regard to the fact that the respondents have granted similar benefits to others, we fail to understand as to how the decision of this Court in J.S. Parihar² and Mittanlal³ could be applicable. The State cannot treat employees similarly situated differently. It cannot implement the orders in relation to one and refuse to do so in relation to others. It is also not a case like J.S. Parihar² where while implementing the orders, a particular stand has been taken by the employer giving rise to a subsequent cause of action. It is also not a case where the order of this Court is capable to two interpretations.(See State of Bihar v. Rani Sonabati Kumari AIR 1961 SC 221, State of Kerala vs. Unni (2007) (2) SCC 365 and Sneh Enterprises v. Commissioner of Customs (2006) 7 SCC 714)."

14. It is also apparent from orders dated 13.12.2018, 30.11.2015 and 23.09.2019 that service benefits to other such persons have been granted for the purposes of pensionary benefits.

15. No other point has been pressed by learned counsel for parties.

16. In view of aforesaid, a writ in the nature of certiorari is issued quashing the order dated 12.01.2007. Further writ in the nature of mandamus is issued commanding opposite parties to provide service benefits on the post of Medical Officer, Ayurvedic to petitioner with effect from 27.03.2000 for counting the said service as qualifying service for grant of pensionary benefits. Appropriate orders for the same shall be passed and actual payment shall be made within a period of six months from the date a copy of this order is produced before the said opposite parties.

17. In view of aforesaid, petition stands allowed.

6. Learned counsel for the applicant submits that claim of the applicant has been rejected in the most arbitrary manner on the ground that if her ad-hoc services are counted, even then she has not completed her qualifying services as she completed her ad-hoc services of 9 years 4 months and 2 days, which is less than 10 years.

7. Ms. Leena Johari, Principal Secretary, Ayush Department, Civil Secretariat, Govt. of U.P., Lucknow is present and informed that there is no provision for giving relaxation in the qualifying services as the writ court directed for considering the claim of pension of the applicant for counting ad-hoc services from 28.5.1996. There is no direction of writ court to consider the case of the applicant in term of Dr. Shivnandan Singh (supra), therefore, she is not entitled to get pension.

8. Considering the submissions of learned counsel for the parties and going through the order passed by the writ court as well as Office Memo dated 29.5.2024 passed by Ms. Leena Jauhari, Principal Secretary, Ayush Department, Civil Secretariat, Govt. of U.P., Lucknow, contempt application is misconceived and is accordingly, **dismissed**.

9. However, it is open to the applicant to take appropriate remedy against the decision of the respondent authorities.

10. Presence of the officer is hereby, discharged.

Order Date :- 5.7.2024

Gaurav/-