

Court No. - 6

Case :- WRIT - A No. - 4895 of 2016

Petitioner :- Dashrath Lal

Respondent :- State Of U.P. Thru Special Secy.Deptt.Of
Revenue Lko. And Ors.

Counsel for Petitioner :- Salik Ram Tiwari, Manjeet Singh

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner as well as learned Standing counsel for the State-respondent(s).

2. Under challenge is the order dated 16.08.2014, a copy of which is annexure 2 to the petition, whereby the claim of the petitioner for grant of parity with the judgment passed by this Court in Writ Petition No.6453(S/S) of 1996 in Re: Ram Asrey Tripathi Vs. Board of Revenue & Others has been rejected.

3. Bereft of unnecessary details, the facts set forth by learned counsel for the petitioner are that the petitioner had been appointed as untrained Lekpal on 02.05.1983. His services were terminated on 05.10.1983. Being aggrieved, he filed Writ Petition No.5255(S/S) of 1983 in which an interim order dated 01.11.1983, a copy of which is annexure 3 to the petition, had been passed whereby it was provided that in case any other untrained Lekpal, who is junior to the petitioner, had been allowed to continue as Lekpal in the same District then the petitioner should also be allowed to continue. The petitioner claims to have continued in service on the basis of said order as untrained Lekpal. Thereafter, through order dated 12.03.1987, a copy of which is annexure 4 to the petition, the petitioner was sent for training for the post of Lekpal. Upon completion of the training of the petitioner, an order dated 02.05.1990, a copy of which is annexure 5 to the petition, was passed by the

respondents whereby the petitioner was declared to have passed the Lekpal examination. The name of petitioner finds place at serial No.1 in the list of candidates. The result of petitioner was cancelled vide order dated 13.12.1990, a copy of which is annexure 7 to the petition.

4. As the petitioner was not permitted to join as Lekpal despite having passed the examination, he was constrained to file Writ Petition No.8053(S/S) of 2003 praying for a mandamus commanding the respondents to consider and appoint the petitioner on the post of Lekpal. A counter affidavit was filed in the said petition whereby the respondents have indicated that the services of the petitioner have been terminated vide order dated 13.12.1990 and a challenge to the said termination order has not been raised by the petitioner in the said petition. The petitioner amended the writ petition and raised a challenge to the order dated 13.12.1990.

5. In the meanwhile, the case of another person namely Ram Asrey Tripathi which was pending before this Court in **Writ Petition No.6453(S/S) of 1996 in Re: Ram Asrey Tripathi Vs. Board of Revenue & Others** was decided by the Court. In the said case, Ram Asrey Tripathi also claimed to be an untrained Lekpal who had been sent for Lekpal training examination and passed the same but subsequent thereto, his result was cancelled and the services of Shri Tripathi had been terminated vide order dated 30.07.1991.

6. The writ Court, vide judgment & order dated 12.04.2013, a copy of which is part of annexure 8 to the petition (page 27), allowed the writ petition and upheld the result of Shri Tripathi which was the result of Lekpal training examination.

7. In the meanwhile, writ petition filed by the petitioner was

disposed of vide judgment & order dated 29.05.2014, a copy of which is part of annexure 8 to the petition (page 30), wherein the writ Court directed the respondents to consider and decide the claim of the petitioner in the light of the judgment of **Ram Asrey Tripathi (supra)**.

8. In pursuance thereof, the claim of the petitioner was rejected vide order impugned dated 16.08.2014, a copy of which is annexure 2 to the petition.

9. Although the order is voluminous, yet a perusal of the same would indicate that the respondents had primarily rejected the claim of the petitioner on three grounds namely (a) the petitioner has not challenged his termination order dated 13.12.1990 (b) in the case of **Ram Asrey Tripathi (supra)**, his result dated 18.01.1991 has been upheld and (c) in the writ petition filed by the petitioner, the writ Court has not passed any order pertaining to the termination order dated 13.12.1990.

10. Learned counsel for the petitioner contends that so far as the ground (a) namely the petitioner having not challenged his termination order dated 13.12.1990 is concerned, the same is patently belied from records inasmuch as, a perusal of the amended petition would indicate that the petitioner has raised a challenge to the termination order dated 13.12.1990 which, thus, represents non application of mind by the respondents on this aspect of matter.

11. So far as grounds (b) that in the case of **Ram Asrey Tripathi (supra)** his result dated 18.01.1991 has been upheld and (c) that in the writ filed by the petitioner, the writ Court has not passed any order pertaining to the termination order dated 13.12.1990 are concerned, it is contended that although in the case of **Ram Asrey Tripathi (supra)** the writ

Court has upheld the result dated 18.01.1991 which has not been done in the case of the petitioner, the same cannot depart from the fact that the writ Court in the case of the petitioner while passing the judgment & order dated 29.05.2014 had required the respondents to consider the claim of the petitioner in the light of the judgment passed by this Court in the case of **Ram Asrey Tripathi (supra)** and thus, the respondents were required to consider the claim of the petitioner strictly in terms of the direction issued by this Court in the case of **Ram Asrey Tripathi (supra)** without going into the technicalities inasmuch as, the writ Court while passing the judgment & order dated 29.05.2014 was conscious of the termination order dated 13.12.1990 having been challenged by the petitioner, yet was of the view that the claim of the petitioner should be examined in the light of the judgment of **Ram Asrey Tripathi (supra)** which appears to have escaped the notice of the respondents.

12. It is thus prayed that the order impugned be set aside with a direction to the respondents to consider the claim of the petitioner in terms of the judgment of this Court passed in the case of **Ram Asrey Tripathi (supra)**.

13. On the other learned Standing counsel, on the basis of averments contained in the counter affidavit, has justified the order impugned dated 16.08.2014 on the basis of the aforesaid grounds and states that writ petition deserves to be dismissed as the petitioner has belatedly approached this Court by filing Writ Petition No.8053 of 2003 after a period of almost of 13 years from the date the order dated 13.12.1990 has been passed.

14. Heard learned counsels for the parties and perused the record.

15. From a perusal of record, it emerges that after the petitioner

had initially been appointed as untrained Lekpal, his services were terminated. This Court in Writ Petition No.5255(S/S) of 1990 had granted an interim order whereby the petitioner was directed to be continued in service in case any person junior to the petitioner was continuing in service. On the basis of the said order, the petitioner continued in service. Through an order dated 12.04.1983, he was also sent for training of Lekpal which was successfully qualified by him as per the result dated 02.05.1990. However, his services were terminated through the order dated 13.12.1990 and the result was cancelled. The petitioner sat quiet in the matter and only approached this Court in the year 2003 by filing Writ Petition No.8053(S/S) of 2003. He also challenged his termination order dated 13.12.1990 by means of an amendment. In the meanwhile, the writ Court had decided the case of **Ram Asrey Tripathi (supra)** wherein a person similar circumstanced namely Shri Tripathi, who had also passed the Lekpal examination successfully but his services had been terminated, had approached this Court and the writ Court had upheld the result of the Lekpal Examination.

16. The petitioner's writ petition was disposed of vide judgment & order dated 29.05.2014 by directing the respondents to consider the claim of the petitioner in terms of the direction of this Court in the case of **Ram Asrey Tripathi (supra)**.

17. In pursuance thereof, the respondents have rejected the claim of the petitioner on the three grounds as enumerated above.

18. All three grounds taken by the respondents while rejecting the claim of the petitioner are patently misconceived inasmuch as, the petitioner had in fact challenged his termination order dated 13.12.1990 in the writ petition filed by him. The writ Court was of the view that as the judgment of **Ram Asrey**

Tripathi (supra) has already been delivered as such, the claim of the petitioner be also considered in light of the judgment of **Ram Asrey Tripathi (supra)**. Thus, merely because the termination order in the case of the petitioner was not itself set aside by the writ Court while passing the judgment & order dated 29.05.2014 and that in the case of **Ram Asrey Tripathi (supra)**, his result has been upheld which has not been done in the case of the petitioner, the same cannot resile from the fact that the respondents had been required to consider the claim of the petitioner in accordance with law and in terms of the judgment of this Court passed in the case of **Ram Asrey Tripathi (supra)**. It is also apparent that the judgment in the case of the petitioner dated 29.05.2014 has attained finality as the said judgment has not been challenged by the respondents in order to indicate either that the claim of the petitioner was not similar with that of Shri Ram Asrey Tripathi or that the writ Court was in error in directing the respondents to consider the claim of the petitioner in the light of the judgment of **Ram Asrey Tripathi (supra)**.

19. As regards, the objection taken by the learned Standing counsel that the petitioner has challenged the order dated 13.12.1990 after 13 years, the said objection is patently misconceived inasmuch as, no challenge has been raised to the order dated 13.12.1990 in the instant petition. The challenge had been raised in the writ petition filed in the year 2003 and if at all an objection was to be raised and considered, the same would have been done in the petition filed in the year 2003 and accordingly, cannot allowed to be raised in the instant petition. Accordingly, the said objection is rejected.

20. Keeping in view of the aforesaid discussion, it is apparent that the order impugned dated 16.08.2014 has not been passed

with due application of mind by the respondents and the order cannot be said to be legally sustainable in the eyes of law. Accordingly, the writ petition is **allowed**. The order impugned dated 16.08.2014, a copy of which is annexure 2 to the petition, is **quashed**. The respondents are directed to consider the claim of the petitioner in the light of the judgment passed by this Court in the case of **Ram Asrey Tripathi (supra)**. Let such consideration be done within a period of eight weeks from the date of receipt of the certified copy of this order.

Order Date :- 21.5.2024/S. Shivhare