

Court No. - 18

Case :- WRIT - A No. - 1050 of 2024

Petitioner :- Neeraj Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home
Guard Civil Sectt. Lko And 2 Others

Counsel for Petitioner :- Girish Chandra Verma

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. The present writ petition has been preferred for quashing of the impugned order dated 26.08.2023 passed by the Deputy Commandant General Home Guards i.e. respondent no.3 whereby the claim of the petitioner for pay protection which has been given to the juniors to the petitioner has not been decided by stating that it is difficult to take decision in the case of the petitioner; and with a further prayer to direct the respondents to pay the salary to the petitioner on the basic pay of Rs.52,000/- w.e.f. February, 2020 equivalent to the juniors after making fixation from the date of appointment of the juniors i.e. 01.12.2011 with all consequential benefits.

2. The learned counsel for the petitioner has submitted that the petitioner had participated in the selection for appointment on the post of Paid Platoon Commander held in the year 2009 under the Other Backward Class (OBC) category. In the said selection the petitioner had scored 57.05 marks but in the select list his name was not shown. On enquiry it was found that the name of the petitioner was not included in the select list as there was some objection regarding the Caste Certificate of the petitioner.

3. It is further submitted that against the non-inclusion of the name in the select list, the petitioner had approached this Court by filing a Writ Petition No.5312 (S/S) of 2011 which was

allowed by this Court vide judgment and order dated 25.11.2019 and directed the respondents to consider the candidature of the petitioner for selection/ appointment on the post of Paid Platoon Commander on the basis of marks obtained by him in OBC category in pursuance of the advertisement dated 19.02.2009.

4. It is further contended that an appointment letter dated 28.02.2020 has been issued in favour of the petitioner and thereafter the seniority has been given to the petitioner by order dated 23.11.2022 below the name of Shri Sarnam Singh, who is at serial no.223 in the seniority list.

5. It is further submitted that after getting the placement in the seniority list the petitioner made a representation to the respondent no.3 for fixation of the basic pay of Rs.52,000/- at present and fix the pay of the petitioner since February, 2020 which is equivalent to the juniors to the petitioner from the date of appointment of the juniors i.e. 01.12.2011 with all consequential benefits according to the judgment of this Court dated 20.03.2023 in ***Special Appeal No.494 of 2018*** passed in the case of ***Rajeev Kumar Gupta Vs. State of U.P. and Others***, wherein the Division Bench of this Court had allowed the claim of the appellant in the special appeal for payment of consequential benefits i.e. seniority, pay protection from the date of appointment of junior persons but in the present case the respondent no.3 has passed the impugned order and taking a decision not to decide the case on the flimsy grounds that the judgment relied by the petitioner is not applicable in the Home Guards Department and there are different facts and circumstances in every case so it is difficult to take decision in the matter.

6. On the other hand learned counsel for the State has submitted

that petitioner was appointed subsequently after the judgment passed in his favour on 25.11.2019 and the persons who are getting the pay scale of Rs.52,000/- they are in service since the date of their initial appointment in the year 2011 but unable to distinguish the judgment of the Division Bench of this Court in the case of ***Rajeev Kumar Gupta*** (*supra*).

7. After hearing the learned counsel for the parties and going through the record of the case, it is found that the petitioner and the persons who were given appointment in the year 2011 were selectee of the same batch i.e. 2009. It is an admitted case that the petitioner has been placed below Shri Sarnam Singh, who is at serial no.223 in the seniority list. The persons who are from serial nos.200 to 236 are the selectee of the same selection from which the petitioner has been selected and the persons after serial nos.224 to 236 are juniors to the petitioner.

8. The judgment given by the petitioner alongwith his representation squarely covers the case of the petitioner as the legal position has been interpreted on the basis of Rule 5 of the U.P. Government Servants Seniority Rules, 1991 which is applicable in all the departments including the Home Guard Department. So there was nothing very special which is to be understood by the respondent no.3. The relevant portion of the judgment dated 20.03.2023 in Special Appeal No.494 of 2018 is quoted here-in-below:-

"Having due regard to the Rule, petitioner admittedly was at serial no.1 in the merit list, therefore, is senior to the fifth respondent. In the circumstances, the petitioner is entitled to protect his seniority vis-a-vis the fifth respondent. It is not in dispute that the fifth respondent came to be appointed on 24 December 2001, whereas, petitioner came to be appointed in 2014 in the same selection. Petitioner cannot be made to suffer for the fault of the respondents in computing the marks of type test which was not permissible under the Rules. The fifth respondent came to be selected as he had qualified the type test. After declaration of the result, excluding type test, petitioner came to be selected and was placed at the top of the select list.

In these circumstances, the petitioner shall not be entitled to salary for the period from which he was out of employment but having regard to the Seniority Rules, petitioner's seniority would have to be protected.

In view thereof, the writ petition is allowed by passing the following orders :-

i. Impugned order dated 25 April 2018, passed by the learned Single Judge, is set aside and quashed.

ii. The petitioner shall be entitled to consequential benefits i.e. seniority, pay protection from the date of appointment of the fifth respondent and also pensionary benefits i.e. with effect from 24 December 2001. However, the petitioner shall not be entitled to arrears of salary for the period.

iii. The impugned order dated 19 February 2018 passed by the third respondent-Commissioner (Gram Vikas), Government of U.P., Lucknow, is set aside and quashed."

9. The facts and the proposition of law in the judgment of Division Bench quoted above quite similar as the facts and law of the case in hand, accordingly, the present writ petition is **allowed.**

10. The impugned order dated 26.08.2023 is hereby quashed.

11. The petitioner shall be entitled to consequential benefits i.e. seniority pay protection from the date of appointment of selectee of the same batch i.e. persons from serial nos.224 to 236. However, the petitioner shall not be entitled to arrears of salary for the period 01.12.2011 that the date of initial appointment of the selectees of the same selection till the appointment of the petitioner dated 28.02.2020.

Order Date :- 5.3.2024

Mohd. Sharif