

Court No. - 17

Case :- WRIT - A No. - 18039 of 2016

Petitioner :- Om Prakash And 16 Ors.

Respondent :- State Of Up Thru. The Secy. Public Works
Deptt. And 02 Ors.

Counsel for Petitioner :- Sandeep Dixit, Varadraj Shreedutt
Ojha

Counsel for Respondent :- C.S.C., Shishir Jain

Hon'ble Manish Mathur, J.

1. Heard Mr. Varadraj Shreedutt Ojha, learned counsel for petitioner, learned State Counsel for opposite party no.1 and Mr. Shishir Jain, learned counsel for opposite parties 2 and 3.

2. Petition has been filed seeking direction to opposite parties to grant scale of pay of Rs.1350-2200 with effect from 18.01.1992 (revised Rs.5200-20200 with Grade Pay Rs.2800) and the designation of Assistant Grade I to petitioners with all consequential benefits.

3. The case of petitioners is primarily based on judgment and order dated 23.02.2000 passed in the case of one **Raj Kumar Kanchan v. U.P. Rajkiya Nirman Nigam and others**, Writ Petition No.4688(S/S) of 1997 in which quashing of order dated 30.05.1997 was sought with a direction to regularize the service of petitioner on the post of Office Assistant from the date person(s) next junior to him had been regularized and for grant of benefits of the post of Office Assistant Grade II and thereafter Office Assistant Grade-I from the date juniors were getting the said benefits along with all consequential benefits.

4. It has been submitted that the said Raj Kumar Kanchan was junior to all the petitioners. By means of judgment and order dated 23.02.2000, the order impugned in the writ petition was quashed with a further direction that petitioner was entitled to

salary in the pay-scale of Clerk Grade-I with effect from 18.01.1992 with all consequential benefits.

5. Petitioner, Raj Kumar Kanchan being dissatisfied filed Review Petition No.60 of 2001 which was dismissed vide order 24.05.2001. Special Appeal No.301 of 2001 was also rejected. In the aforesaid Review and Special Appeal, dissatisfaction expressed by petitioner was to the effect that there was no direction for regularization with effect from the date, persons junior to him had been regularized.

6. Subsequently, U.P. Rajkiya Nirman Nigam Ltd. (hereinafter referred to as Nirman Nigam) as well challenged the order dated 23.02.2000 in Review Petition No.161 of 2000 which was dismissed vide judgment and order dated 13.08.2014 on ground that the appellants were attempting to reopen the issue on merits which was impermissible. Special Appeal Defective No.5 of 2015 was thereafter dismissed vide judgment and order dated 09.04.2015 primarily on ground of laches with Special Leave Appeal (C) No.17029-17030 of 2015 also being dismissed vide order dated 10.07.2015.

7. It has been submitted that once the aforesaid benefits have already been provided to persons junior to petitioners with such judgments being upheld up to Hon'ble the Supreme Court, petitioners are also entitled for benefits of the same particularly when directions issued by this Court were complied with.

8. Learned counsel appearing on behalf of the opposite parties has refuted the submissions advanced by learned counsel for petitioners primarily raising preliminary objections regarding maintainability of this petition on the ground of laches as well as fact that petitioners fall in the category of fence sitters and therefore there is a clear distinction between their case and the case on which reliance has been placed. Plea with regard to

estoppel has also been taken since benefits already granted to petitioners with regard to pay-scale on the post of Assistant Grade-II provided to petitioners along with their regularization has been accepted without any demur.

9. Learned counsel has also submitted that the present case is distinguishable from the case of **Raj Kumar Kanchan** primarily on ground that the aspect that petitioners were daily wage employees and could not have been granted the pay-scale of promotional post since prior to the date of their regularization is an aspect which has not been considered in the case of **Raj Kumar Kanchan**(supra).

10. It has been submitted that although a Notification was issued on 06.05.1988 that designation of Office Assistant and Junior Office Assistant would be changed to Assistant Grade-I with effect from 01.01.1988 was taken but the same was never implemented and on the contrary Office Order dated 25.02.1989 was issued whereby the posts of Head Assistants and Senior Office Assistants were abolished with a further direction that the set up of Personnel Section would be detailed in Appendix B in place of existing set up. It is submitted that in pursuance thereof, the administrative set up was restructured with two posts of Assistant Grade-I and Assistant Grade-II/Typist being created with the post of Assistant Grade-I being the promotional post for Assistant Grade-II. It is therefore submitted that since petitioners were regularized in service only with effect from 1995 onward, they cannot be granted benefit of promotional pay-scale with effect from the date prior to their regularization.

11. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that petitioners' case is based primarily on benefits

granted by this Court to Raj Kumar Kanchan. The judgment and order dated 23.02.2000 passed in his case reveals that the only benefit granted was of salary in the pay scale of Clerk Grade-I with effect from 18.01.1992 with all consequential benefits. Review Petitions and Special Appeals filed thereagainst by petitioner as well as the Corporation have thereafter been dismissed with such dismissal being upheld up till Hon'ble the Supreme Court.

12. However, it also evident from a perusal of judgment and order dated 23.02.2000 that the aspect as to whether a Daily Wage Employee can be granted regular pay-scale along with consequential benefits from a date prior to his regularization in service was an aspect which was not considered at all. Neither the Review Petitions, Special Appeals nor even order of Hon'ble the Supreme Court appear to have delved on this aspect. It is settled law that an employee is entitled only to benefits of a post in a cadre only after he is borne in the cadre.

13. A perusal of material on record makes it quite evident that the Corporation in its 64th Meeting held on 21.01.1989 in Agenda Item No.9 clearly abolished the post of Head Assistants and Senior Office Assistants and in pursuance of such a decision, Office Order dated 25.02.1989 was also issued whereby restructuring of the cadre was entailed with posts of Assistant Grade-I and Assistant Grade-II being created with post of Assistant Grade-I being the promotional post of Assistant Grade-II.

14. It is noticeable that the aforesaid restructuring has taken place prior to regularization of petitioners in the service. It is also evident as indicated in paragraph-7 of writ petition itself that petitioners were regularized in service with effect from 29.07.1995 and subsequently as Assistant Grade II with the

pay-scale being indicated in the Regularization order itself.

15. It is thus evident that petitioners' initial entry into cadre itself was with effect from 1995 onward on the post of Assistant Grade II. No Service Regulation has been brought to notice of this Court as applicable upon petitioners which would entail provision of regular pay-scale of the promotional post to a Daily Wage employee prior to his regularization in service. In view thereof, this Court does not find any occasion to grant such a relief as has been prayed for.

16. It is also evident that petitioners have accepted their regularization on the post of Assistant Grade II and in the scale of pay indicated in the regularization orders without any demur and therefore also would be bound by principles of estoppel.

17. Another factor which is required to be considered is the aspect of providing benefit to fence-sitters as has been enunciated by Hon'ble the Supreme Court in **State of Orissa and another v. Mamata Mohanty** reported in (2011) 3 SCC 436 in which it has been so held in paragraph 54:-

"54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See Rup Diamonds v. Union of India [(1989) 2 SCC 356 : AIR 1989 SC 674] , State of Karnataka v. S.M. Kotrayya [(1996) 6 SCC 267 : 1996 SCC (L&S) 1488] and Jagdish Lal v. State of Haryana [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550 : AIR 1997 SC 2366] .) "

18. This court is of the considered opinion that the aforesaid judgment is squarely applicable in the facts and circumstance of the case irrespective of the law enunciated with regard to recurring cause of action in the case of *M. R. Gupta v. Union of India* and others reported in (1995) 5 SCC 628 since recurring cause of action also has to be agitated within a reasonable time period.

19. In view of discussions made herein above, this Court does

not find any good ground to entertain this petition which being devoid of merit is accordingly **dismissed**. The parties to bear their own costs.

Order Date :- 20.2.2024

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