

Court No. - 4

Case :- WRIT - A No. - 5133 of 2024

Petitioner :- Chhattis Kumar Yadav

Respondent :- State Of U.P. Thru. Prin. Secy. Sericulture
Development Deptt. U.P. Lko. And 3 Others

Counsel for Petitioner :- Salil Kumar Srivastava, Rahul
Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

Heard Sri Salil Kumar Srivastava, learned counsel for the petitioner and Sri Diwakar Singh, learned Standing Counsel for the State.

By means of this petition, the petitioner has prayed for the following reliefs:-

"i). issue a writ, order or directions in the nature of certiorari quashing the impugned order dated 03.05.2024 passed by the opposite party no. 4 so far as it provides for refusal of pension, gratuity and commutation of pension to the petitioner, as contained in Annexure No. 1 to this writ petition

ii) To issue a writ, order or direction in the nature of mandamus commanding the opposite parties to extend all the consequential service benefits including post retiral benefits like pension, gratuity and commutation of pension by treating the petitioner as in continuous service from the date of initial regular appointment order dated 14.09.1987 by giving effect to the judgment and order dated 04.07.2006 and also the appellate order dated 13.02.2020 in letter and spirit.

iii) To issue a writ, order or direction in the nature of mandamus commanding the opposite parties to dispose of the representation dated 29.6.2024 by reasoned and speaking order within the time as may be prescribed by this Hon'ble Court, as contained in Annexure No. 10 to this writ petition, in order to meet the ends of justice".

Learned counsel for the petitioner has stated that the opposite parties have discriminated the petitioner with similarly placed employees having no cogent reasons to that effect and denied all the service benefits for which he was legally entitled.

Attention has been drawn towards Annexure No.4 which is writ petition of the petitioner bearing No.3604 (S/S) of 1991 filed against the termination order dated 12.10.1987 and that writ petition was allowed vide judgement and order dated 04.07.2006 which reads as under:-

"Heard Mr. P.K. Trivedi, learned Advocate holding brief of Mr. Salil Kumar Srivastava, learned counsel for the petitioner and learned Counsel for the respondents.

By means of present writ petition, the petitioner has assailed the order dated 12th October. 1987 (Annexure-5 to the writ petition) passed by Deputy Planning Officer (Resham), Bahraich, whereby the petitioner's services have been terminated with immediate effect.

The learned counsel for the petitioner has assailed the aforesaid order on the ground that the said order was passed absolutely in violation of principles of natural justice and moreover, since he was appointed against the substantive vacancy as is evident from the appointment order dated 14.09.1987 which is annexed as Annexure-3 to the writ petition, his services should not have been terminated in such manner.

In the counter affidavit, the respondents have submitted that there was no vacancy in class IV in District Bahraich and the petitioner was engaged temporarily as a daily wager who was never appointed in the permanent capacity.

Through the supplementary counter affidavit, the respondents have admitted that vide order dated 14.9.1987 the petitioner was appointed on the post of 'Keet Palak in the pay scale of Rs. 305-390. The District Planning Officer, Bahraich has cancelled the aforesaid appointment order on the ground that there was no vacant post in class IV category.

The petitioner has also assailed the appointment of opposite parties 5 to 10 on the ground that they are much juniors to the petitioner but they have been retained in service, in reply of which the respondents have submitted that since those persons have been appointed against a clear vacancy, they have been retained in service and they are working as such.

From perusal of the appointment order, it is obvious that the petitioner was appointed against the substantive post of 'Keet Palak (Mali) in the pay scale of Rs. 305 390 in the certain terms and conditions mentioned in the appointment order itself. The respondents so not complain regarding violation of any of the terms and conditions mentioned in the appointment order but the appointment of the petitioner has been cancelled absolutely on the basis that there is no post which appears to be contrary to the appointment order dated 14.9.1987.

(Annexure-3 to the writ petition). Under the circumstances. I am of the view that the order for cancellation of appointment order dated 12th October 1987 issued by the Deputy Planning Officer (Resham), Bahraich is not sustainable in the eye of law and the same is hereby quashed by issuing a writ of certiorari. Further a writ of mandamus is also issued to the respondents to allow the petitioner to continue on the post along with all consequential benefits except the back wages for the period during which he has not discharges the duties.

In the aforesaid terms, the writ petition is allowed."

The State Government filed appeal challenging the order of learned Single Judge bearing Spearing Appeal No.853 of 2006 and the said appeal was dismissed vide judgment and order

dated 13.02.2020 which reads as under:-

"1. Heard learned Standing Counsel for appellant.

2. This intra Court appeal under Chapter VIII, Rule 5 of Allahabad High Court Rules, 1952 (hereinafter referred to as "Rules, 1952") has arisen from judgment dated 04.07.2006 passed by learned Single Judge in Writ Petition No.3604(S/S) of 1991 whereby order dated 12.10.1987 passed by Deputy Planning Officer (Resham) Bahraich (hereinafter referred to as "DPO") terminating petitioner-respondent Chhatis Kumar Yadav has been set aside.

3. Learned Single Judge has set aside order dated 12.10.1987 on the ground that persons junior to petitioner-respondent were retained in service on account of their appointment against clear vacancy, while admittedly in view of longer length of service petitioner-respondent was liable to be retained in service, but still he was terminated from service, despite the fact that his appointment was on a substantive post of "Keet Palak" (Mali). Admittedly, persons junior to petitioner-respondent were retained on the ground that they were appointed against clear vacancy. Learned Single Judge has taken a view that if any clear vacancy was available, it must have gone to a senior person and not to persons junior to him, and therefore, order passed by DPO terminating petitioner-respondent was arbitrary and illegal and it was accordingly set aside.

4. Before us also, learned Standing Counsel could not show any provision under which persons junior to petitioner-respondent could have been retained in service and he also could not explain as to why petitioner-respondent having longer length of service was not retained in service against a clear vacancy, while persons junior to him were retained in service.

5. In these circumstances, we do not find any manifest error in the judgment passed by learned Single Judge. This appeal is devoid of merit.

6. Dismissed accordingly. Interim order, if any, stands vacated."

The Division Bench in paras 3 and 4 has categorically observed that since the petitioner was appointed against the clear vacancy, therefore, he may not be discriminated with similarly placed persons and the junior persons, therefore the petitioner may be given all consequential benefits which have been paid to the juniors strictly in accordance with law.

Learned counsel for the petitioner has stated that when the order of learned Single Judge has not been complied with, the petitioner filed Contempt Petition bearing No.2051 (C) of 2006 which was decided on 12.04.2007 for the reason that the opposite party has passed the order dated 03.05.2007 (Annexure No.6). He has stated that the order dated 03.05.2007 was patently illegal and arbitrary and in derogation of the findings and observations so given by learned Single Judge and Division Bench inasmuch the learned Single Judge and Division Bench

has held that the petitioner is continuous in service but the order dated 03.05.2007 has treated the petitioner in service with effect from the passing of the order dated 03.05.2007. He has further stated that the aforesaid order has not been assailed by the petitioner till date but on account of the impugned order dated 03.05.2007 the petitioner has been suffering irreparable loss and injury and his cause of action is recurring in nature for the reason that he has not been paid his post retiral dues e.g. pension, gratuity and commutation of pension etc. in the manner the same has been given to the similarly placed employees. The petitioner preferred a representation dated 29.06.2024 (Annexure No.10) and the same has not been decided by the competent authority i.e. opposite party no.2- Director, (Sericulture) Directorate of Sericulture U.P. LDA, Commercial Complex, Lucknow. Therefore, at this stage he has prayed innocuous request that the direction may be given to the opposite party no.2 to pass speaking and reasoned order strictly in accordance with law considering the aforesaid facts and circumstances.

Learned Standing Counsel has stated that if this Hon'ble Court pleases to issue direction to decide the representation, he has no objection but if this Court wants to interfere with the impugned order, he may be given some time to file counter affidavit.

Having heard learned counsel for the parties and having perused the material available on record and also considering the innocuous prayer of the petitioner, I hereby direct the opposite party no.2 to consider and decide the representation of the petitioner dated 29.06.2024 (Annexure No.10) strictly in accordance with law by speaking and reasoned order considering the judgment and order being passed by learned Single Judge and the Division Bench (supra) with expedition, preferably, within a period of eight weeks from the receipt of certified copy of the order of this Court and decision thereof may be intimated to the petitioner forthwith.

In the aforesaid terms, the petition is disposed of.

Order Date :- 9.7.2024

Renu/-