

Court No. - 18

Case :- WRIT - A No. - 6563 of 2014

Petitioner :- Upendra Nath Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Forest And Anr.

Counsel for Petitioner :- Manish Chaudhary, Chandra Prakash Pal, Manish Chaudhary, Yogesh Chandra Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

Heard learned Counsel for the petitioner and learned Additional C.S.C. for the State.

Learned Counsel for the petitioner has submitted that the petitioner is not pressing the prayer no. 1 in the writ petition which is quoted herein below:-

"(i) To issue a writ, order or direction in the nature of Certiorari by quashing the impugned order dated 07.07.2014 (Annexure No. 1 to this writ petition) passed by respondent no. 1 with all consequential benefits and placement above the junior to the petitioner."

The present writ petition has been filed for quashing of the impugned order dated 12.01.2014 to the extent that services of the petitioner was regularized on the post of Van Daroga w.e.f. 20.08.2011 in place of 08.09.2001, the date from which the juniors to the petitioner have been regularized under the 1998 Rules.

Learned Counsel for the petitioner has submitted that the petitioner was initially appointed on the post of Range Clerk on 01.02.1980 on daily wages. The services of the petitioner was orally terminated vide order dated 10.07.1989 which was challenged by the petitioner by filing a writ petition bearing no. 6834 (S/S) of 1989.

It is further contended that the above mentioned writ petition was finally disposed of by this Court vide its judgment and order dated 24.11.2001 wherein this Court had quashed the order of oral termination and directed that the petitioner will be treated to be in continuous service. Against the said judgment dated 24.11.2001, Special Leave Petition was preferred by the State which was dismissed on the ground of delay on 05.12.2003.

The Counsel also submits that the services of the persons junior to the petitioner were regularized vide order dated 08.09.2001 with effect from the date of taking of charge. In the said list, though all were junior to the petitioner but Shri Bhupendra Nath, who was at Serial No. 2 and Shri Subhash Chandra, who was at Serial No. 59 were of the same district i.e. Kheri where the petitioner was posted. In support of his contention, learned Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Prem Ram Vs. Managing Director, Uttarakhand Pwaj & Nirman Nigam, Dehradun & Others***, reported in (2015) 3 UPLBEC 1766; wherein it has been held that if there is a wrongful termination, the employee is entitled for regularization from the date of Juniors having given regularized.

On the other hand, learned State Counsel has submitted that after the judgment dated 24.11.2001 and the decision of Hon'ble Apex Court, the petitioner was reinstated in service vide order dated 08.01.2003 w.e.f. 03.12.2002 and in the said order, it has also been mentioned that earlier against the vacant post, the regularization had already been made and no post is vacant and the petitioner was granted the minimum pay scale on the post of Van Daroga. The said order has never been challenged by the petitioner till date though 20 years have been passed.

Learned State Counsel further contends that the claim of the petitioner that the juniors were regularized have been denied by the answering respondents in their counter affidavit. It is also submitted that in absence of any vacancy, the candidature of an employee cannot be considered for regularization. Learned State Counsel further submits that the petitioner has already attained the age of superannuation in the year 2017 and retired from services on 31.01.2017.

After hearing the learned Counsel for the parties and going through the record of the case, it is found that the submission of learned Counsel for the petitioner that the petitioner is entitled to be regularized from the date, junior persons have been regularized as this Court in its judgment dated 24.11.2001 had treated the services of the petitioner to be a continuous service is not acceptable for the reason that treating the services of the petitioner to be continuous was for the purposes of payment of emoluments in the minimum of pay scale and for regularization, this Court has observed that it is for the appropriate competent authority to apply his mind in the matter of regularization and take suitable decision. The relevant paragraph of the judgment dated 24.11.2001 is quoted herein below:-

"In view of the aforesaid discussion, it appears that dispensation of the petitioner from

service, was apparently not justified so far as the claim of the petitioner regularization of his services is concerned, that depends on the fulfillment of various requirements as provided under the concerned Rules of which reference has been given by the petitioner himself in the writ petition. It is for the appropriate competent authority to apply his mind in the matter and take a suitable decision.

Accordingly, the impugned action of the respondents is not permitting the petitioner to work, being apparently unjustified, the relief as sought by the petitioner for quashing the oral order of termination of the petitioner dated 10.07.1989 is hereby quashed and the petitioner will be treated to be in continuous in service and will be paid his emoluments in the minimum of pay scale which is being paid to the regular employee w.e.f. 23.08.1989 on which date, this Court permitted the petitioner to continue in service.

In respect to the regularisation of the petitioner's services, the matter will be dealt suitably by the concerned authority by passing speaking order."

The petitioner has accepted the order dated 08.01.2003 which was served upon him regarding his reinstatement in the minimum of pay scale of Van Daroga with a disclosure that no vacancy is available for considering the candidature of the petitioner for regularization and 20 years have passed but till date the petitioner has not challenged the same, though it was in his knowledge since 2003. The non-availability of the vacancy in the year 2003 finds support from the report dated 12.08.2011 enclosed as Annexure No. 7 to the writ petition wherein it has been mentioned that 7 posts of Van Daroga are vacant and it is apparent that the petitioner was therefore regularized w.e.f. the year 2011 by impugned order dated 12.12.2014.

As mentioned above, the petitioner has failed to demonstrate by any document that the persons who have been regularized were junior to the petitioner and mere averment has been made in Paragraph 33 of the writ petition without there being any documentary evidence in support thereof and the same has been denied in Paragraph 18 of the counter affidavit and in reply thereto in the rejoinder affidavit, the petitioner has replied that the contents of Paragraph 33 are reiterated without enclosing any documents in support of his submission. In these circumstances the judgment relied by the petitioner in the case of **Prem Ram (Supra)** is not applicable.

In view of the facts and circumstances and discussion made herein above, no case is made out and the writ petition is devoid of merits hence the same is **dismissed**.

Order Date :- 10.1.2024
Lokesh Kumar