

Neutral Citation No. - 2024:AHC-LKO:65667-DB

High Court of Judicature at Allahabad
(Lucknow)

Reserved on: 05.09.2024

Delivered on: 23.09.2024

Reserved

Court No. - 2

Case :- WRIT - A No. - 7099 of 2022

Petitioner :- State Of U.P. Thru. Prin. Secy. Namami Gange And Rural
Water Supply, Govt. U.P. Lko. And Another

Respondent :- Smt. Parvati Devi

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Shireesh Kumar, Utkarsh Kumar

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per: Rajan Roy, J.)

1. Heard learned Standing counsel for the State and Shri Shireesh Kumar, learned counsel for the respondent.
2. By means of this writ petition, the State has challenged the judgment and order dated 06.05.2022 passed in Claim Petition No.416 of 2019, by which the Tribunal has allowed the claim petition of the opposite party herein.
3. The facts of the case in brief are that the husband of the opposite party was a Mechanical Supervisor in the Minor Irrigation Department of the Government of Uttar Pradesh, who had been appointed as such on 10.11.1956. On 05.04.1973, the husband of the opposite party was given *ad hoc* promotion on the post of Assistant Engineer. On 31.12.1987, he retired from service on attaining the age of superannuation. At the time of retirement, he was only *ad hoc* Assistant Engineer i.e. his services had not been regularised. In the interregnum i.e. on 26.12.1984, a Government Order was issued for grant of time scale/ next promotional scale/ pay scale

to the employees of the Minor Irrigation Department. The husband of the opposite party died on 12.09.1989. After his death, a proposal dated 04.10.1989 was initiated for payment of time scale of Rs.1250-2015 with effect from 01.07.1982 in respect of several *ad hoc* Assistant Engineers including the husband of the opposite party. The said proposal was sent by the office of Chief Engineer, Minor Irrigation Department, U.P., Lucknow to the Joint Secretary, Government of Uttar Pradesh, Regional Development Section-2, Lucknow, however, the State Government did not accept this proposal. According to the State counsel, this was because of the fact that none of the said persons were regular on the post of Assistant Engineer. It is however not in dispute that subsequently other *ad hoc* Assistant Engineers, who were still in service and whose services were regularized under the relevant regularization rules, they were given the benefit of the time scale aforesaid after their regularization, but the husband of the opposite party could not be given the same as he not only retired prior to such regularization, but also died prior to it.

4. It is said that the opposite party- wife moved some application in 2011 seeking some information as to the said proposal whereupon a communication was given some time in 2018 that the said benefit could not be given to her husband on account of the fact that he was still an *ad hoc* Assistant Engineer on the time of his retirement.

5. Being aggrieved, the opposite party filed a claim petition challenging the said communication dated 28.12.2018 under the Right to Information Act, 2005 before the Tribunal. It is a moot point as to whether limitation would accrue to the opposite party for preferring the claim petition in this regard merely on the strength of the said communication under Right to Information Act in the year 2019. The fact however is that the Tribunal has allowed the claim petition of the opposite party and set aside the communication dated 28.12.2018 and ordered the petitioners herein to pay the time scale of 1250-2015 to the late husband of the opposite party with effect from 01.07.1982 with all consequential benefits to her.

6. The contention of the State counsel is that firstly, mere a communication under the Right to Information Act on 28.12.2018 could not have given a cause of action to the opposite party for filing a claim petition challenging such communication under the said Act and claiming the service benefits with effect from 01.07.1982 based on the terms and conditions of her husband especially when, her husband, while he was alive, never raised any such claim. Secondly, even otherwise, his submission is that the Tribunal has misinterpreted the Government Order dated 26.12.1984 and has misconstrued paragraph 2 and 3 thereof, according to which, prerequisite for grant of such time scale/ selection grade is that such person should have been regular on the post in the context of which the said financial benefit was being sought, as if, the regular appointment is not referable to the said post, but in fact it is referable to the initial or lower post on which a person should have been regularly appointed. The submission is that regular appointment had to be on the post of Assistant Engineer, on which the late husband of the opposite party was appointed on *ad hoc* basis *albeit* with pay scale, but had not been regularized and it was not to be seen with reference to the lower post of Mechanical Supervisor, on which he was appointed initially. Such an interpretation is absolutely against the letter and spirit of the Government order dated 26.12.1984. The object of the Government order is to remove stagnation on a particular post and such stagnation would arise only if a person has a right on the said post having been regularly appointed, but has not been promoted thereafter, meaning thereby, if a person is working substantively on a particular post, but has not received promotion to the higher post, then to remove the stagnation, time scale/ selection grade is prescribed. The Government order dated 26.12.1984 is a policy decision and it was not open for the Tribunal to give meaning to such a policy decision which it was not meant to subserve and which was not the object behind it. The Tribunal has not given due weightage to the stand of the State Government which had framed the said policy and is

presumed to know its purport and application. The contention is that the Tribunal has erred in allowing the claim petition of the opposite party.

7. On the other hand, Shri Shireesh Kumar, learned counsel appearing for the opposite party submitted that the Tribunal has rightly interpreted the Government order and the word "Regularly appointed" used therein in fact is a reference to the initial appointment or to the appointment on a lower post and not to the post on which the husband of the opposite party was working.

8. Learned State counsel further emphasised that in fact the other persons, who has been promoted as Assistant Engineer on *ad hoc* basis were given the benefit of the said Government order only after their services were regularized which was after the retirement/ death of the husband of opposite party and not while their services were still *ad hoc*, which also goes to show as to how the Government understood the said Government order, which had been authored by it, therefore, due weightage should have been given to this aspect. The interpretation given by the Tribunal is not only apparently erroneous, it has far reaching consequences and is bound to generate unnecessary litigation.

9. Having heard learned counsel for the parties and having perused the record, we find force in the submissions of the learned counsel for the State. The purpose of providing Selection grade/ time scale, which may be in the form of the next promotional pay scale or the next pay scale is to remove stagnation to a particular post in cases where a person has been regularly appointed/ regularly promoted, but is stagnating for a particular period of service without any further promotion, thus, to remove this stagnation, the aforesaid provision has been made. Now, an *ad hoc* Assistant Engineer does not have any claim to the post and it was not the case of the opposite party before the Tribunal that in fact the *ad hoc* promotion was incorrect and for all legal and practical purposes it was a regular promotion in accordance with the Rules. We have perused para 2

and 3 of the Government order and we have no doubt in our mind that the word "Regular appointment" referred therein is in the context of the post on which the officer is stagnating which can only be a post on which he has been regularly appointed and from which, he had a channel of promotion to the higher post, but had not been promoted or from which he did not have a channel promotion. The said words do not mean the initial appointment nor the appointment on the lower post i.e. post lower than the one on which the concerned officer is working and in respect of which the time scale is being sought.

10. It is an admitted factual position that the husband of the opposite party was getting the ordinary scale of Rs. 850- 1720 of Assistant Engineer on which he had been promoted on *ad hoc* basis. Under the Government order dated 26.12.1984 he would have been entitled to the Senior grade/ time scale of Rs.1250-2050. Now, this senior grade/ time scale was in the context of the post of Assistant Engineer, therefore, obviously the reference to regular appointment under the Government order dated 26.12.1984 is in the context of the said post of Assistant Engineer, meaning thereby, a person should have been regularly appointed/promoted as Assistant Engineer and must have had satisfactory and continuous service of ten years, so as to entitle him to the senior grade of Rs.1250-2050. The rationale behind such policy is that if a person has been working on the same post without further promotion, then he should at least get the higher pay scale or the promotional pay scale even if he does not get the higher rank of the post.

11. In our opinion the Tribunal has misread the Government order and. in doing so, it has also given a go-by to the well settled principle of "*Contemporaneo Exposito*" i.e. how the Government which has issued the Government order has understood and has been applying the said Government order for the past several years.

12. We also take note of the fact that others appointed with the husband of the opposite party as *ad hoc* Assistant Engineers were given the aforesaid senior grade/ time scale only after they were regularized on the post of Assistant Engineer and not one incidence has been placed before us wherein an *ad hoc* Assistant Engineer may have been given the said benefit without being regularised on the said post. This is apart from the fact that it is highly questionable as to how a mere communication under the Right to Information Act in the year 2018 could form the basis for filing a claim petition 2019, that too, by the wife of the erstwhile employee, and how the point of limitation could be ignored in such a matter before the Tribunal which has been prescribed in Section 5 (1) (b) as one year, especially when, the husband of the opposite party never raised any such claim while he was alive, even though, he retired in 1987 and died in 1989. But even if this later aspect is ignored, we have no doubt in our mind that on merits also, the Tribunal has clearly erred in passing the impugned judgment.

13. We accordingly set aside the judgment of the Tribunal and dismiss the claim petition of the opposite party. The instant petition is *allowed* in the aforesaid terms.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 23.09.2024

Gurpreet Singh