

Court No. - 1

Case :- WRIT - A No. - 6834 of 2023

Petitioner :- Dileep Kumar

Respondent :- State Of U.P. Thru. Prin./Addl. Chief Secy.
Deptt. Energy U.P. Govt. Lko. And Others

Counsel for Petitioner :- Ram Nath Pandey, Phool Badan
Singh

Counsel for Respondent :- C.S.C.,Harendra Prasad
Singh,Neerav Chitravanshi,Nishant Kumar Shukla,Rahul
Srivastava

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Subhash Vidyarthi,J.

(1) Heard Shri Ram Nath Pandey, learned counsel for the petitioner, Shri Rajesh Chauhan, learned Counsel appearing for the State and Shri Neerav Chitravanshi, learned counsel for the respondent nos.2 to 4/U.P. Power Corporation Ltd.

(2) Since respondent nos.5 to 8 are proforma parties, who were co-petitioners before the Tribunal, issuance of notice to them is dispensed with.

(3) Documents placed on record reveal that vide order dated 04.12.2010, the petitioner, who belongs to the Scheduled Caste category, was promoted on the post of Junior Engineer by availing the benefit of reservation.

(4) At the relevant point of time, the issue as to whether the reservation would apply to promotions in the Government/Public Service was under consideration before Hon'ble the apex Court in the case of **U. P. Power Corporation Ltd. vs. Rajesh Kumar and others, SLP (C) No.10217 of 2011** which controversy was set at rest by the apex court on 27.04.2012, wherein it was declared that the benefit of reservation would not be available to the reserved category

candidates in the matter of promotions.

(5) As a consequence of the aforesaid judgment, the petitioner, who was promoted vide order dated **04.12.2010** came to be reverted to his parent post, i.e., Technical Grade - II. It is however true that the petitioner continued to work in the higher grade from the date of his promotion till the date of reversion relying upon the decision rendered by the Hon'ble Apex Court in **Rajesh Kumar and others (supra)**.

(6) Later on, the petitioner was considered for promotion again as per his seniority and vide order dated 05.10.2015 he was regularly promoted as per the rules and has been enjoying all the benefits since the date of promotion. Although promotion order was issued in the year 2015 yet the benefit of notional seniority was given at the bottom along with the batch recruited in the year 2013 in which the petitioner could not compete. In this manner, the petitioner was placed at the bottom of the candidates, who were recruited in the year 2013.

(7) The Tribunal while considering the grievance of the petitioner for granting him the benefit of seniority w.e.f. the initial date of his promotion in the year 2010 has clearly opined that such a promotion not being permissible as per rules has since been set aside by Hon'ble the Apex Court and therefore, no such benefit would flow in favour of the petitioner on the basis of his previous functioning. Having regard to the elaborate discussion made by the Tribunal with regard to the claim of the petitioner, we do not find ourselves in disagreement with the opinion arrived at by the Tribunal.

(8) Once the right of consideration of the petitioner for promotion has been secured as per rules, any departure therefrom being impermissible, cannot be appreciated and

granted contrary to what has been decided by the Tribunal. The contention of the petitioner that promotion is by selection, therefore, the dictum of the Apex Court in the case of **Rajesh Kumar and others (supra)** could not be applicable in the facts and circumstances of the present case, in our considered opinion is misconceived and cannot be accepted.

(9) The writ petition being devoid of merit is accordingly **dismissed**.

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[Subhash Vidyarthi, J.] [Attau Rahman Masoodi, J.]

Order Date :- 18.12.2024

akhilesh/-