

Court No. - 2

Case :- WRIT - A No. - 7912 of 2022

Petitioner :- Rakesh Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt. Govt. Of U.P. Civil Sectr. Lko. And Others

Counsel for Petitioner :- Shailendra Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Shri Shailendra Kumar Singh, learned counsel for the petitioner and Shri Gopal Kumar Srivastava, learned Standing Counsel for the State.

2. By means of this writ petition the petitioner has challenged the judgment and order dated 15.09.2022 passed in Claim Petition No. 448 of 2021; Rakesh Singh Vs. State of U.P. and Ors. by the U.P. Public Service Tribunal, Indira Bhawan, Lucknow.

3. The petitioner herein had filed a claim petition seeking the following reliefs:-

"A. that this Hon'ble Tribunal may graciously be pleased to direct the opposite parties to set-aside the order dated 07.12.2020 contained in Annexure No. 1 & 1-A to the extent of denial of arrears of pay w.e.f. the date of juniors i.e. 15.05.2012 with all consequential service benefits of arrears of pay alongwith interest @ 18% p.a till the date of actual payment with heavy cost.

B. That any other and further relief which this Hon'ble Tribunal may deem fit and proper may also be awarded in favour of the petitioner."

4. By the order dated 07.12.2020 the claim of the petitioner for arrears of salary with effect from the date of his regularization i.e. by which the pay of the petitioner has been fixed but denied him actual arrears of salary with effect from the date of regularization on the ground of 'No Work' and 'No Pay', meaning thereby, the actual arrears of salary with effect from the date of regularization of his services i.e. 15.05.2012 vide order dated 03.08.2019 was impliedly declined.

5. The facts of the case in brief are that the petitioner herein was working as Seasonable Collection Amin. Services of persons junior to him were regularized in the cadre of Collection Amin as per Rules known as U.P. Collection Amin Service Rules, 1974 on 15.05.2012, a fact which is not disputed. The petitioner

herein filed a claim petition before the Tribunal bearing No. 885 of 2012 seeking a direction to the opposite parties to consider his case for regularization in the regular cadre on the post of Collection Amin with effect from date his juniors were regularized with all consequential service benefits. The said claim petition was allowed on 28.02.2013 and the opposite parties were directed to consider the petitioner for regularization on the post of Collection Amin with effect from the date his juniors had been regularized. The order was to be complied within four months. The said judgment of the Tribunal was challenged by the State by means of Writ Petition No. 1046 (S/B) of 2013 which was dismissed on 04.07.2013 as being devoid of merit, however, with liberty to approach appropriate forum for redressal of his grievance. The last line of the order was obviously superfluous and appears to have been an inadvertent inclusion in the order. Be that as it may, the State of U.P. challenged the said judgment before Hon'ble the Supreme Court by means of S.L.P. (Civil) No. 32354 of 2013; State of U.P. and Ors. Vs. Rakesh Singh which was converted into Civil Appeal bearing No. 16832 of 2017. Initially, as informed by the petitioner, some interim order was passed in favour of the State. Ultimately, the Civil Appeal came to be disposed of on 12.10.2017. The order of the High Court referred hereinabove was set-aside. The interim order granted by it was continue till disposal of the writ petition afresh. The writ petition itself came to be decided on 03.05.2018 and in fact, it was dismissed, as, the High Court did not find any error in the judgment of the Tribunal. This judgment dated 03.05.2018 passed in Writ Petition No. 1046 (S/B) of 2013 was not challenged before the Supreme Court and attained finality between the parties. Even then, the State of U.P. and its Officials did not comply the judgment of the Tribunal which was passed way back on 28.02.2013. It was only on 03.08.2019 an order was passed regularizing the services of the petitioner and treating him as regularly appointed Collection Amin, however, even in this order his case was not considered for grant of the said benefit with effect from the date of his juniors have been regularized. On account of this and also as arrears of salary had not been ordered to be paid, therefore, a contempt petition was filed and during pendency of the Contempt Petition the order dated 07.12.2020 was passed regularizing the services of the petitioner w.e.f. 15.05.2012 i.e. the date of regularization of his juniors and also granting him consequential seniority but arrears of salary were denied on the ground of 'No Work' and 'No Pay'. It is this order dated 07.12.2020 which was put to challenge before the Tribunal by means of Claim Petition No. 448 of 2021 which has been dismissed on 15.09.2022 on the ground that the petitioner not having actually worked as regular

Collection Amin w.e.f. 15.05.2012 is not entitled to actual arrears of salary but only the notional benefit.

6. The contention of the petitioner's counsel Shri S.K. Singh is that the petitioner was not at all at fault. He had an order of Tribunal in his favour dated 28.02.2013 which obliged the opposite parties to consider his claim for regularization of his juniors. The said judgment was challenged before the High Court but the writ petition was dismissed which led to the filing of Special Leave Petition, wherein, an interim order was passed and after being converted into a Civil Appeal the same was disposed of and the order of the High Court along was set-aside. After remand the writ petition was again dismissed on 03.05.2018, therefore, merely because the opposite parties had initiated the legal proceedings challenging the judgment of the Tribunal can not be the basis for denying actual arrears of salary, especially as, ultimately the judgment of the Tribunal was upheld by the High Court on 03.05.2018 and the said judgment had attained finality. It is the opposite parties who committed arbitrariness and grave illegal error in not considering the petitioner for regularization while considering the persons junior to him. For their arbitrariness and illegality the petitioner can not be made to suffer. It is not open for the State to raise this plea that the petitioner would not be entitled to arrears of salary on the ground of 'No Work' and 'No Pay', as, the said principle applies where in spite having an opportunity to work the Officer or employee does not work. It will not apply where he was prevented from working on account of an illegal action by the State Authorities.

7. On the other hand Shri Gopal Kumar Srivastava, learned Standing Counsel opposes the writ petition vehemently and says that the petitioner not having actually worked he can not possibly be given arrears of salary, especially as, it is the right of the State to challenge the judgment of the Tribunal before the High Court and thereafter before Hon'ble the Supreme Court. The State can not be penalized for initiating legal proceedings up to the Supreme Court, therefore, the Tribunal has rightly dismissed the claim petition and this writ petition is also liable to be dismissed.

8. We have heard learned counsel for the parties and perused the records. No doubt the State is entitled to challenge a judgment of the Tribunal or that of the High Court before Hon'ble the Supreme Court but facts before us apparently show that persons junior to the petitioner were considered for regularization/ regular appointment as per Rules of 1974 and their services were regularized in the same district in which they were working. The petitioner was left out. No plausible

explanation has come as to why the petitioner was left out. What else is it but an apparent case of arbitrariness and discrimination causing grave prejudice, especially, financial prejudice to the petitioner who is a low paid Class- III employee. It is an admitted case that juniors were regularized w.e.f. 15.05.2012. On account of such arbitrariness, illegality and discrimination the petitioner was made to approach the Tribunal and incur expenses and also mental trauma in filing a Claim Petition bearing No. 885 of 2012. The Tribunal found merit in the case of the petitioner after hearing the State and giving it an opportunity to file counter affidavit which was considered and then, allowed the Claim Petition way back on 28.02.2013. This was put to challenge by the State before the High Court and its writ petition was dismissed on 04.07.2013. Thereafter, the matter went up to Hon'ble the Supreme Court as already referred. An interim order was passed in favour of the State and ultimately, the Civil Appeal was disposed of as already observed remanding the matter back to the High Court continuing the interim order, but, ultimately, the Writ Petition No. 1046(S/B) of 2013 was dismissed, therefore, the fact of the matter is that all the interim orders merged in the final order and the stand of the State-respondent was not found to be tenable. It is true that the State was entitled to challenge the said judgment before Hon'ble the Supreme Court, but, it is also a fact that the petitioner a low paid employee was made to litigate right up to the Supreme Court and had incurred expenditure also in this regard. The fact of the matter is that all this exercise took place because of the arbitrariness, unfairness and unreasonableness on the part of the State. Article 14 enjoins the State to act fairly. In fact, it should act as a model employer. Arbitrariness is against the constitutional spirit. Why should the petitioner be made to suffer because the State in its wisdom chose to discriminate between its employee and act unfairly. Having said so, we are also conscious of the fact that the petitioner has not actually worked during the aforesaid period, therefore, the equities have to be balanced. The law of course is in favour of the petitioner on the question of arbitrariness meted out to him. The Tribunal has erred in dismissing the claim petition by applying the principle of 'No Work' and 'No Pay'. The said principle would not apply in the facts of this case strictly, as, it is the State which prevented the petitioner from working as a regularly appointed Collection Amin because of its arbitrariness as already referred hereinabove. If fair treatment was given his services would have been regularized, the petitioner would have obviously worked as Collection Amin w.e.f. 15.05.2012 and would have received the emoluments of the said post which he and his family would have enjoyed. The judgment of the Tribunal is set-aside. The claim petition is allowed in the

aforesaid terms. In our wisdom, we are of opinion that the ends of justice would suffice if the opposite parties are directed to calculate the actual emoluments which would have been paid to the petitioner on account of his services regularized w.e.f. 15.05.2012 till they were actually regularized by the order dated 03.08.2019 notionally w.e.f. 15.05.2012 and, based on the said exercise, out of the amount so calculated 1/3 of it shall be paid to the petitioner by the opposite parties. This in our opinion will serviced the ends of justice. It is ordered accordingly.

9. The writ petition is also **allowed.**

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

Order Date :- 9.8.2024
R.K.P.