

In The Hon'ble High Court Of Judicature At Allahabad,
Sitting at Lucknow

Neutral Citation No. - 2024:AHC-LKO:75109-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 560 of 2024

Appellant :- State Of U.P. Thru. Prin. Secy. Deptt. Home Govt. Lko And 3 Others

Respondent :- Chandra Prakash Tewari

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Chandra Prakash Dwivedi

Hon'ble Attau Rahman Masoodi J.

Hon'ble Subhash Vidyarthi J.

(Per: Hon'ble Subhash Vidyarthi J.)

C.M. Application No. 1 of 2024

1. Heard Sri Indrajeet Shukla, the learned Standing Counsel for the appellants-State of U.P. and its officers and Sri Chandra Prakash Dwivedi, the learned counsel for the respondent.
2. This is an application seeking condonation of delay in filing the special appeal.
3. In the affidavit filed in support of the application for condonation of delay, it has been stated that the delay has occurred because the final process for taking a decision for filing the special appeal and preparation thereof took some time.
4. The respondent has filed objections against the application for condonation of delay stating that he had served a copy of the order of the Writ Court on the authorities within time but the special appeal has been filed only after he filed an application under Contempt of Courts Act.
5. Having considered the facts and circumstances of the case, we are of the view that the application for condonation of delay in filing the special appeal deserves to be allowed and accordingly the delay of 146 days in filing the intra court appeal is condoned.

Order on Special Appeal

1. By means of this intra court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, the appellants - State of U.P. and its officers, have challenged the validity of the judgment and order dated 08.04.2024 passed by an Hon'ble Single Judge Bench in Writ A No. 9063 of 2011, whereby the order rejecting the respondent's claim for grant of third Assure Career Progression (hereinafter referred to as the ACP) was quashed and a Mandamus was issued to the appellants to provide third ACP to the respondent with effect from 01.12.2008.
2. Briefly stated, the facts of the case are that the respondent-petitioner was appointed on the post of Sub-Inspector on 26.12.1976. He was promoted on the post of Inspector on 16.06.1997 and he was granted the second promotional pay-scale in the year 2000.
3. On 04.05.2010, a Government Order was issued laying down a new policy for grant of ACP, which inter alia provided for grant of third ACP to employees after completion of 26 years.
4. The respondent submitted a representation claiming grant of third ACP in furtherance of the Government Order dated 04.05.2010. His claim was considered by a screening committee which found that the respondent-petitioner was awarded a censure entry on 08.01.2004, a punishment of deduction of three days' salary was inflicted against him by means of the order dated 13.11.2006 passed by the Superintendent of Police, Sultanpur and a third punishment of deduction of ten days' salary was inflicted upon the respondent-petitioner by means of an order dated 18.04.2007 passed by the Senior Superintendent of Police. Accordingly, the screening committee found that the respondent-petitioner's service was not satisfactorily and it rejected his claim for grant of the third ACP.
5. The respondent-petitioner filed Writ A No. 9063 of 2011 challenging the aforesaid order of rejection of his claim for grant of third ACP. The State filed a counter affidavit to the writ petition stating that the respondent-petitioner has been awarded punishments on 08.01.2004, 30.11.2006 and 18.04.2007 and, therefore, the screening committee

did not recommend grant of third ACP to the respondent-petitioner as his services were not satisfactory.

6. The Writ Court found that the proviso appended to clause 2 kha of the Government Order dated 04.05.2010, which provides for grant of third ACP after 26 years of service or after 8 years of grant of second ACP, whichever is earlier, would be applicable in the present case. The Writ Court held that the second ACP was granted to the respondent-petitioner in the year 2000 and therefore respondent became entitle for grant of third ACP in the year 2002 counting his services since 1976. The Writ Court further held that the adverse entry awarded in the year 2004 and the punishment inflicted in the year 2006-07 cannot be considered for grant of third ACP when the petitioner had already completed 26 years of service in the year 2002 i.e. prior to the imposition of the punishments.
7. While challenging validity of the order passed by the Writ Court, the learned Standing Counsel have submitted that the Writ Court has wrongly held that the proviso appended to clause 2 (kha) of the Government Order dated 04.05.2010 would apply to the respondent-petitioner as he has already been granted two promotions as well as the second promotional pay-scale. The learned Standing counsel further submitted that the respondent-petitioner's case would not be covered by clause 2 of the aforesaid Government Order, rather it would be covered by Clause 3 thereof, which provides for grant of the third ACP to such employees, as have already been granted the benefit of time scale under the previous scheme as it existed on 01.12.2008. This clause provides for calculation of the eligibility service for grant of the third ACP under the new scheme, as per which the employees who have been granted second promotional scale/next higher pay scale after 24 years of service, will be granted the third ACP after completion of 26 years of service along-with a minimum of two years of service after grant of the aforesaid benefit or 01.12.2008, whichever is later. As the respondent - petitioner completed 26 years of service in the year 2002, he would be eligible for grant of third ACP with effect from 01.12.2008.

8. Per contra, learned counsel for the respondent-petitioner has submitted that the petitioner is eligible for being granted third ACP upon completion of 26 years of service in the year 2002.
9. The learned Counsel for the respondent has relied upon a judgment rendered by a coordinate Bench of this Court in **State of U.P. v. Pramod Kumar Tewari**: 2023 SCC OnLine All 3139, in which case this Court interpreted the provisions of a Government Order dated 30.06.1993, clause 2 (sa) whereof provided that if any censure entry exists during the relevant period of the service records which are relevant for consideration and no other adverse material exists during a period of five years thereafter then that censure entry would not be taken into consideration for assessment of satisfactory service. This Court held that in case during the period in respect of which service record of an employee is under consideration if only solitary censure entry is available which pertains to some previous period and is not coupled with any other adverse material including the adverse entry or punishment etc. awarded within five years from the incident which had resulted in award of censure, such adverse entry is to be ignored and it will have no impact so far as the assessment of the employee concerned for the purposes of determination of satisfactory service is concerned.
10. In **Ram Lalit Dubey versus U. P. Public Services Tribunal**, Writ Petition No. 1979 (S/B) of 2015 decided on 26.07.2018, a Coordinate Bench of this Court held that if any adverse material exists in the service of the employee at the time of consideration of the claim for grant of third ACP, it cannot be awarded to the employee.
11. The provision of third ACP was introduced by the Government Order dated 04.05.2010, with effect from 01.12.2008. Third ACP is admissible to the employees who have completed 26 years regular, continuous and satisfactory service and after completion of 8 years since grant of the second ACP. As per clause 3 of the Government Order dated 04.05.2010, the employees who were getting any benefit of time scale as on 01.12.2008, and who have received the second

promotional pay scale / next higher pay scale upon completion of 24 years' service, will become entitled to get the third ACP upon completion of a total of 26 years' service, including 2 years' service since grant of the aforesaid benefit, or with effect from 01.12.2008, whichever is later.

12. The respondent-petitioner was appointed on the post of Sub-Inspector on 26.12.1976. He was promoted on the post of Inspector on 16.06.1997 and he was granted the second promotional pay-scale in the year 2000. He completed 26 years of service on 25.12.2002 and two years' period since grant of the second promotional pay scale also completed in the year 2002. As per the provision contained in Clause 3 of the Government Order dated 04.05.2010, the third ACP would be admissible to the respondent-petitioner upon completion of a total of 26 years' service, including 2 years since grant of the aforesaid benefit, or with effect from 01.12.2008, whichever is later. As 01.12.2008 is later amongst the aforesaid two dates, the third ACP would be admissible to him with effect from 01.12.2008, in case his service is found to be satisfactory. For assessing satisfactory service of the respondent, his service records for the past five years would be relevant as per the provision contained in the Government Order dated 30.06.1993 referred to in the State of U.P. Vs. Pramod Kumar Tiwari (Supra). The argument that third ACP being due on completion of 26 years service would restrict the authorities to consider satisfactory service of past 5 years prior to the date of completion of 26 years is misconceived, in as much as, the scheme itself for the first time was made effective w.e.f. 01.12.2008, therefore, the satisfactory service particularly of last five years would be the period preceding the time when the benefit actually fell due.
13. The screening committee found that the respondent-petitioner was awarded a censure entry on 08.01.2004, a punishment of deduction of three days' salary was inflicted against him by means of the order dated 13.11.2006 passed by the Superintendent of Police, Sultanpur and a third punishment of deduction of ten days' salary was inflicted upon the respondent-petitioner by means of an order dated 18.04.2007

passed by the Senior Superintendent of Police. All of the aforesaid punishments were inflicted within a period of five years from the relevant date of consideration for grant of the third ACP, i.e. 01.12.2008. Accordingly, the screening committee rightly rejected the respondent-petitioner's claim for grant of the third ACP on the ground that his service was not satisfactory.

14. The Writ Court has failed to notice the aforesaid provision contained in Clause 3 of the Government Order dated 04.05.2010 and allowed the Writ Petition without taking into consideration the relevant provision of the Government Order. Therefore, we find ourselves unable to agree with the view taken by the Writ Court.
15. In view of the foregoing discussion, the Special Appeal is allowed. The judgment and order dated 08.04.2024 passed in Writ A No. 9063 of 2011 is set aside. The order dated 24.05.2011 passed by the Superintendent of Police rejecting the respondent's claim for grant of third ACP is affirmed.

(Subhash Vidyarthi, J.) (Attau Rahman Masoodi, J.)

Order Date: 12.11.2024
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