

Court No. - 18

Case :- WRIT - A No. - 8984 of 2022

Petitioner :- Rakesh Kumar And Another

Respondent :- State Of U.P. Thru. Its Prin. Secy. Public Works
Deptt. Lko. And 2 Others

Counsel for Petitioner :- Sankalp Dewari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

Heard Sri Sankalp Dewari, learned counsel for the petitioner and learned Standing Counsel for the State.

The present writ petition has been preferred for quashing of the order dated 10.04.2015 passed by the respondent no. 1 and with a further prayer to direct the respondents to provide the benefit to the petitioners of the pay scale of Rs. 37,400-67,000 with Grade Pay of Rs. 8,700/- in Pay Band 4 on notional basis from 01.01.2006 and actual benefit from 18.03.2011 from the date of the issuance of the order dated 18.03.2011.

Learned counsel for the petitioner has submitted that petitioners were appointed on the post of Assistant Engineer and retired from the post of Superintending Engineer & Chief Engineer on different dates of the year 2019 & 2022.

Learned counsel for the petitioner has submitted that the identical controversy has been decided by this Court by its judgment and order dated 19.07.2022 passed in Bunch of writ petitions, the leading one is Writ A No. 2000222 of 2015 (Kuldeep Kumar and ors. vs. State of U.P. through Prin. Secy. Irrigation Deptt. Lko and Ors.) where also the prayer was made for quashing of the impugned order dated 10.04.2015 and to direct the respondents to provide the benefit as prayed by the petitioners in the present writ petition as mentioned above. The aforesaid judgment and order was passed in pursuance of the judgment passed in the case of Ashok Kanojia vs State of U.P. and Ors., in W.P. No. 17859 of 2016.

Learned Standing Counsel has very fairly submitted that the case of the petitioners are covered by the judgment and order dated 19.07.2022 passed in Writ A No. 2000222 of 2015, which has been relied by the counsel for the petitioners.

After hearing the counsel for the parties and going through the

record of the case, it is found that the present writ petition is covered by the judgment and order dated 19.07.2022 passed in Writ A No. 2000222 of 2015. Relevant paragraphs of the aforesaid writ petition is quoted hereinbelow:-

"11. I have heard learned counsel for the parties and perused the record.

12. It is noticed that the entire factual aspect of the matter was duly considered by the Division Bench of this Court in the case of Ashok Kanojia versus State of U.P. and others (decided on 28.01.2014) and the Division Bench of this Court while allowing the writ petition has returned the finding that the petitioners therein, who were also working in the Irrigation Department, are entitled to the Pay Scale of Rs. 37400-67000 with Grade Pay of Rs. 8700. This argument which has been raised by the State Counsel herein was also raised before the Division Bench while opposing the earlier writ petition that the petitioners therein were entitled only to Grade Pay of Rs. 7600. The Division Bench has returned the finding that the Pay Scale was upgraded firstly to Rs. 14700-18300 and subsequently to Rs. 37400-67000 with Grade Pay of Rs. 8700 pertaining to the selection grade of the Superintending Engineer. Thus, after upgradation of the Pay Scale, there remained only one Pay Scale of Superintending Engineer and thus, the petitioners were entitled to the promotional pay scale / time pay scale of Superintending Engineer which is Rs. 37400-67000 with Grade Pay of Rs. 8700. Thus, the Division Bench had duly considered this argument raised by the State and returned the finding that there is only one pay scale in existence after passing of the Government Order dated 18.03.2011 which is Rs. 37400-67000 with Grade Pay of Rs. 8700.

13. I have also considered the judgment of the Apex Court where liberty was granted to the Standing Counsel to take any or all pleas which they can take in any pending matters. I have gone through the Counter Affidavit and apart from the aforesaid plea raised by the learned Standing Counsel, no other ground has been raised except assailing the judgment of the Division Bench of this Court. It has also been informed by the learned counsel for the petitioners that after the judgment of the Supreme Court dated 14.11.2014, similar matters were engaging the attention of this Court and in similar circumstances another Division Bench of this Court in the case of State of U.P. and others versus Prem Kumar Srivastava & others; Service Bench No.17589 of 2016 affirmed the judgment of the Tribunal which has given the benefit of judgment rendered in the case of Ashok Kanojia versus State of U.P. and others. The Division Bench while passing the judgment noticed

that in the judgement dated 05.09.2017, the Standing Counsel therein also could not dispute with regard to the applicability of the above two judgments which were relied upon by the Tribunal.

14. In view of the aforesaid position, I see no reason as to how the petitioners can be discriminated when the controversy has been settled by the Division Bench of this Court and Special Leave Petition against the said judgment has been dismissed. Not only that, even subsequently, this Court has given benefit to other employees by the judgment passed by a Division of Bench of this Court in Writ Petition No.17859 of 2016. The State has fairly submitted before this Court that the case of persons who were similarly situated to the petitioners would be governed by the judgment of the Division Bench of this Court rendered in the case of Ashok Kanojia versus State of U.P. and others.

15. At this stage, it is relevant to quote the findings recorded by the Division Bench of this Court in the case of Ashok Kanojia versus State of U.P. and others as under:

"In view of what has been discussed above, we are of the view that the opposite parties have wrongly denied the benefit of revised pay scale of Rs.37400 to 67000 with Grade Pay of Rs. 8700 which is the only pay scale of the post of Superintending Engineer. After the up-gradation of pay scale there is only one pay scale of the post of Superintending Engineer which is 37400 to 67000 with grade pay of Rs. 8700 and the petitioners being the Superintending Engineers are entitled to get this pay scale.

In view of the Government Order dated 04.05.2010 both the writ petitions succeed.

Both the writ petitions are allowed and the impugned orders dated 21.01.2013 as contained as Annexure No. 1 to the Writ Petition No. 236 (SB) of 2013 and the Government Order dated 14.02.2013 as contained as Annexure No. 1 to the Writ Petition No. 1440 (SB) of 2013, are hereby quashed. The opposite parties are directed to make payment of salary to the petitioners in Pay Band-IV with grade pay of Rs. 8700 with effect from the date they are found eligible alongwith the arrears, if any, within three months."

16. For the reason aforesaid, this Court is of the considered view that the case of the petitioners is duly covered by the judgment rendered in the case of Ashok Kanojia (supra). The petitioners are also entitled for the same benefit which has been given to the petitioners by the Division Bench in the aforesaid

case.

17. In view of the aforesaid facts and legal position, the writ petitions are allowed and the Government Order dated 10.04.2015, reference of which has been given above is hereby quashed, so far as it says that the petitioners are not entitled for the benefit of G.O. dated 10.04.2015. In consequence thereof the order rejecting the representation of the petitioners i.e. order dated 18.07.2016 passed by State Government in Writ Petition No.19881 (SB) 2016; order dated 09.09.2016 issued by Office of Engineer-in-Chief (Development) & Head of Department, Public Works Department, Nirman Bhawan, Lucknow and order dated 21.09.2015 passed by the State Government in Writ Petition No.3607 (SB) 2017; order dated 28.07.2015 & Clarification Order dated 10.04.2015 passed by State Government in Writ Petition No.3169 (SB) 2016; order dated 01.07.2015 passed by State Government & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.1112 (SB) 2015; order dated 28.05.2015 passed by State Government & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.1051 (SB) 2015; order dated 28.05.2015 passed by State Government & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.1050 (SB) 2015; order dated 13.03.2015 passed by Principal Secretary, Irrigation Department & Government order dated 10.04.2015 passed by Principal Secretary, Finance, Govt. of U.P. in Writ Petition No.569 (SB) 2015; order dated 27.10.2017 issued by Office of Engineer-in-Chief (Development) & Head of Department, Public Works Department, Nirman Bhawan, Lucknow and order dated 21.09.2015 passed by the State Government in Writ Petition No.32212 (SB) 2017; order dated 16.06.2016 passed by Principal Secretary, Public Works Department in Writ Petition No.20134 (SB) 2016; order dated 12.08.2014 passed by Principal Secretary, Rural Engineering Department in Writ Petition No.87 (SB) 2015; order dated 14.02.2017 issued by the Office of Engineer-in-Chief (Development) & Head of Department, Public Works Department, Nirman Bhawan, Lucknow and order dated 21.09.2015 passed by the State Government in Writ Petition No.3060 (SB) 2017 and order dated 11.07.2016 passed by Principal Secretary, Energy Department, Civil Secretariat, Lucknow is hereby quashed. The respondents are directed to give the benefit of the aforesaid judgment rendered in Ashok Kanojia (supra).

18. Since it has been brought to my notice that during pendency of the aforesaid bunch of writ petitions, large number of petitioners have attained the age of superannuation and are no

longer in service. Therefore, the respondents are directed to refix the pay of such petitioners and issue revised Pension Pay Order. The respondents are further directed to complete the process of fixation of pay, payment of arrears of salary and revised Pension Pay Order within a period of four months. In the event, the aforesaid benefit is not extended in the period prescribed above, the petitioners will be entitled for simple interest at the rate of 7%."

In view of the above, the present writ petition is allowed. The order dated 10.04.2015 passed by the respondent no. 1 is hereby quashed.

Since it has been brought to the notice of this Court that during the pendency of the present writ petition, the petitioners have attained the age of superannuation and are no longer in service therefore, the respondents are directed to refix the pay of such petitioners and issue revised Pension Pay Order. The respondents are further directed to complete the process of fixation of pay, payment of arrears of salary and revised Pension Pay Order within a period of four months. In the event, the aforesaid benefit is not extended in the period prescribed above, the petitioners will be entitled for simple interest at the rate of 7%.

Order Date :- 24.1.2024

Ashish