

Neutral Citation No. - 2025:AHC:121208

Reserved on : 21.07.2025

Delivered on : 24.07.2025

Court No. - 5

Case :- WRIT - A No. - 14374 of 2010

Petitioner :- Arvind Kumar Singh And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- G.K. Singh, Hritudhwaj Pratap

Sahi, Samarath Singh, Sankalp Narain

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri V.K. Singh, learned Senior Counsel assisted by Sri Avanish Kumar Rai, learned counsel for petitioner and Sri Brijesh Mani Shukla, learned Standing Counsel for State.
2. Petitioners (162 in number) were initially appointed on the post of Auditor between the year 1991 to 1993 and their services were governed by U.P. Subordinate (Co-operative and Panchayat) Auditor Service Rules, 1980 (hereinafter referred to as 'the Rules, 1980').
3. Rule 25 of the Rules, 1980 provides for process of promotion to the post of Senior Auditor from Auditor on basis of seniority subject to rejection of unfit.
4. State of U.P. in the year 1995, issued a Government Order dated 31.05.1995, whereby a new mode of promotion for the post of Senior Auditor was proposed. However, corresponding amendments in the Act were not carried out.
5. According to the proposed Rules, Auditors who have joined the department after 31.03.1989, they shall be promoted

only after they pass departmental examination. An association has filed a writ petition before this Court in the year 1996, whereby they challenged the Government Order dated 31.05.1995 that their members be considered for promotion in terms of existing Rules.

6. This Court by an order dated 08.12.1997 disposed of the Writ Petition No. 25779 of 1997 and for reference said order is reproduced hereinafter :-

“In this writ petition the validity of the Government Order dated 31 March 1995, Annexure-3 to the writ petition has been challenged. Learned counsel for the petitioner pointed out that similar controversy was raised in writ petition no. 26550 of 1996 as well as writ petition no. 15363 of 1996, which were decided by a common order on 8.7.1997 by Hon'ble R.R. K. Trivedi, J. It was directed that the respondents shall effect the promotion of the petitioners in that case, from the post of Auditor to the post of Senior Auditor in view of Rule 18 of the Rules of 1980. It was further made clear that if the Rules 1980 have already been amended. This direction shall not be binding. In any case as reward the Government Order dated 31.5.1995 it was directed that the provisions of Rules could not be changed by executive order, therefore the order dated 31.5.1995, which is also impugned in the present petition be ignored. Since the controversy clearly covered by the aforesaid decision this writ petition is finally disposed of with the direction that the respondents shall initiate action for promotion of all the incumbents from the post of Auditor to the Senior Auditor in view of Rule 18 of Rules, 1980 as has already been held in writ petition no. 26550 of 1996 and writ petition no. 15363 of 1996.”

7. The State of U.P. has challenged the aforesaid order by way of filing two Special Appeals, which were dismissed by an order dated 18.10.2000, taking a view that statutory Rules cannot be changed by an Executive Orders.

8. In the aforesaid circumstances, petitioners have filed representation for consideration for promotion, however,

meeting of Departmental Promotional Committee did not take place, therefore, they have filed contempt petitions, wherein compliance affidavits were filed and a decision was taken by order dated 19.04.2003 to promote the petitioner and finally by an order dated 27.02.2007, they were promoted.

9. All the petitioners were promoted notionally with effect from 01.07.1995 or 02.01.1996, as the case may be, however, they were granted benefit of salary of promotional post with effect from 01.07.2003 and 02.01.2004, as the case may be. Later on petitioners were granted benefit of selection grade after calculating 8 years service from the date they were granted notional promotion.

10. The petitioners were still aggrieved that due to notional promotion, they were not paid salary from 1995-96 to 2003-04, as the case may be and for that they have filed contempt petitions also, however, the petitions were disposed of with liberty to take other legal remedy.

11. In the aforesaid circumstances, petitioners have filed present writ petition with a prayer that they may be granted salary for the period they were considered promoted notionally Order of promotion qua to above dispute is not under challenge.

12. Learned Senior Counsel for petitioners submits that the petitioners though the association was before the Court in 1996 and learned Single Judge has passed order dated 08.07.1997 to consider the case of petitioners. The Special Appeal thereof was dismissed on 18.10.2000 and thereafter, respondents have

not taken immediate steps and finally they were promoted by an order dated 27.02.2007 with effect from 2003 and 2004.

13. The petitioners ought to have been considered for promotion way back in the year 1996 or when Special Appeal was dismissed in the year 2000, but they were not considered.

14. Thereafter respondents have not taken immediate steps and finally they were promoted by an order dated 27.02.2007. The petitioners ought to have been considered for promotion way back in the year 1996 or when Special Appeals were dismissed in the year 2000.

15. Learned Senior Counsel for petitioner has also placed reliance on **Commissioner Karnataka Housing Board Vs. C. Muddaiah, (2007) 7 SCC 689** and for reference its paragraph No.34 is reproduced hereinafter :-

"34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected"

16. Per contra, learned counsel for respondent has opposed the above submission and placed reliance on paragraph 14 of counter affidavit, which is reproduced hereinafter :-

"यह कि याचिका के प्रस्तर 41 व 42 में वर्णित कथन में किसी उत्तर की आवश्यकता नहीं है।"

17. Heard counsel for parties and perused the record.

18. Petitioners were before this Court from 1996 to 2000. A direction was passed that they may be considered for promotion in terms of earlier Rules of 1980 i.e. they were not required to pass departmental examination. Thereafter matter was remained before this Court since the contempt petitions were filed and during pendency of contempt petition, finally in the year 2007, petitioners were promoted on basis of recommendation made in the year 2003. All petitioners were granted notional promotion from 1996 to 1997, as the case may be, and they were granted benefit of salary with effect from 2003-04, as the case may be.

19. Admittedly, petitioners have not worked on promotional post from 1993-94 till 2003-04, therefore, the principle of 'No Work No Pay' was applied by respondents for not granting salary for the aforesaid period though they were granted benefit of time pay scale from 01.07.2003 and 01.02.2004, after taking 8 years of service, as the case may be.

20. In the present case, there was no order of this Court that petitioners be considered for promotion with all consequential benefits whereas in **Commissioner Karnataka Housing Board (supra)**, there was specific direction of the Court that they may be granted benefit with all consequential benefits, therefore, Supreme Court proceeds that orders passed by High Court shall be complied with, whereas in present case, order of this Court was limited that case of petitioners be considered in terms of

Rules 1980. There was no direction that promotion be granted with consequential benefits.

21. Some benefit have already been granted to petitioners such as benefit of time pay scale. There is another legal impediment that petitioners have not challenged the part of their promotional order, whereby notional promotion was granted with effect from 1995-96, as the case may be and they were granted salary of promotional post only with effect from 2003-04.

22. In the aforesaid circumstances, relief sought cannot be granted on ground that facts and circumstances of present case are distinguishable from **Commissioner Karnataka Housing Board (supra)** as well as principle of 'No Work No Pay' is applicable and also part of promotional order, whereby they have been granted notional promotion is not under challenge before this Court.

23. Accordingly, present writ petition is **dismissed**.

Order Date :- 24.07.2025

P. Pandey