

Court No. - 4

"AFR"

Case :- WRIT - A No. - 23736 of 2018

Petitioner :- Sunil Kumar Seth

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Siddharth Khare, Transfer From Lucknow

Hon'ble Ajit Kumar, J.

Petitioner before this Court is aggrieved by order dated 17.5.2010 passed by the Executive Engineer Construction Division-I Public Service Department, Shahjahanpur, whereby his claim for regular appointment at par with one Raghvendra Singh as Supervisor Diploma Holder has been rejected.

Briefly stated facts of the case are that petitioner claimed to have been enrolled as daily-wage Supervisor Diploma Holder with Public Works Department in the year 1988 in similar manner, in which one Raghvendra Dixit was engaged as daily wager in 1984. Vide order dated 10.07.1991, the Chief Engineer of Public Works Department decided that appointments made after 1.1.1990 on daily-wage basis should be placed before him and all those who have been appointed as such even previously, should not be continued after renewal of their service came to an end.

As a consequence to the aforesaid order, Executive Engineer passed an order on 28.12.1991 to the effect that no such daily-wage employee should be appointed after 1.1.1990 and any such appointment if has been made, the same should be immediately terminated and in respect of old daily-wage employees a muster-roll should be issued only after getting their names entered in the office of Assistant Engineer of Public Works Department at Shahjahanpur. As a consequence to the above order petitioner was asked not to continue on 29.01.1992 even though he was appointed/engaged in the year 1984 on a daily-wage basis and was continuing in the department on that date. Petitioner immediately filed a petition before this Court being Civil Misc. Writ Petition (Def) No. 9085 of

1992, in which an interim order was passed with following directions on 20.2.1992:

"Admit.

Notice on behalf of the opposite parties 1 to 5 has been accepted by the learned Chief Standing Counsel. He may file counter affidavit within six weeks. The petitioner will have seven days thereafter to file rejoinder affidavit. On the counter affidavit the opposite parties will specifically indicate the relevance of the cut off date 1.1.90 for the action indicates to be taken in the annexure no. 5 to the writ petition.

The petitioner was appointed as a daily wager supervisor, being a diploma holder. In pursuance of annexure no. 5 to the writ petition the petitioner states that his services have been terminated by opposite party no. 4 with effect from 29.01.1992. The learned counsel for the petitioner has urged that the petitioner's service have been terminated in pursuance of annexure no. 5, whereby Engineer in Chief had directed that after 1.1.1990 no new appointment should be made and if any such appoint has been made they should be terminated. The submission of the learned counsel further is that after by a letter dated 18.8.90 contained in annexure no. 4. Engineer in Chief has specifically provided that after 1.8.90 contained in annexure no. 4 Engineer in Chief has specifically provided that after 1.8.90 the Diploma holders may be appointed on daily wages of Rs. 35/- per day and they will be designated as Daily wager supervisor . This letter of 18th of August, 1990 is clearly after 1.1.1990 and accordingly the services of the petitioners were not required to have been terminated. The argument prima facie appears to be tenable.

It is accordingly directed that the petitioner will be allowed to continue in services on the same status as daily wager provided work and post is available and one Raghuvendra Dikshit who was appointed as daily wager supervisor has been allowed in service. "

(emphasis added)

The said writ petition subsequently stood disposed of in terms of interim order on 13th January, 2016 by S.L. Sarraf, J. which is reproduced hereunder:

"Heard counsel for the petitioner and the learned Standing Counsel.

Counsel for the petitioner submits that the petitioner after obtaining Diploma in civil Engineering from Government Polytechnic was appointed as Apprentice Junior Engineer/Supervisor. The opposite parties in a very illegal manner terminated the service of the petitioner to accommodate the persons of their choice although the work and post was available. He further submits that one Raghvendra Dikshit, who was appointed as daily wager Supervisor has been allowed to continue in service.

This Court while entertaining the writ petition passed a detail interim order dated 29.2.1992 and the learned counsel for the parties stated that the writ petition may be disposed of in terms of the interim order.

Considering the peculiar facts and circumstances and the above statement of the counsel for the parties, this writ petition is disposed of in terms of the interim order dated 20.2.1992 and the opposite parties are directed to consider the claim of the petitioner when similarly situated Raghuvendra Dikshit has been allowed to work. "

Petitioner immediately represented the authority and then Executive Engineer wrote a letter to the Chief Engineer on 08th February, 2010 requesting for necessary guidelines to enable him to pass order in compliance of order of High Court. The Secretary required from the Chief Engineer about parity/disparity in the appointment and status of Sunil Kumar Seth, namely, petitioner with that of Raghvendra Dixit whose services were regularized so as to consider the claim of the petitioner in terms of order passed by the Court on 13th January, 2010. The Executive Engineer in turn submitted a report to the Joint Secretary of Public Works Department, Government of U.P. Lucknow on 30th March, 2010 in following terms:

सेवा में,

संयुक्त सचिव लोक निर्माण अनुभाग-7,

उ०प्र० शासन, लखनऊ।

विषय- मा० न्यायालय लखनऊ खण्डपीठ लखनऊ द्वारा रिट याचिका सं०-1184 (एस०एस०)/92. सुनील कुमार सेठ बनाम उ०प्र० सरकार एवं अन्य में पारित आदेश दि० 13.01.2010 के क्रम में दिशा निर्देश दिये जाने के सम्बन्ध में।

संदर्भ-शासन का पत्रांक 1085/23-7-2010 दि० 19.03.2010

महोदय,

उक्त विषयक प्रकरण में श्री राघवेन्द्र दीक्षित एवं श्री सुनील कुमार सेठ में समानता/असमनता का विवरण निम्न प्रकार है:-

1. श्री सुनील कुमार सेठ डिप्लोमा होल्डर, सुपरबाइजर के पद पर मस्टर रोल पर दिनांक 01.09.1988 से दि० 29.01.1992 तक कार्यरत रहे।
2. अधिशासी अभियन्ता नि०ख०, लो०नि०वि०, ०नि०वि०, शाहजहाँपुर के पत्रांक 3722/ई०-5 दि० 28.12.1991 (छायाप्रति संलग्न) द्वारा समस्त सहायक अभियन्ताओं को निर्देश

जारी किये गये थे कि दि० 01.01.1990 के बाद कोई नया कर्मचारी ने रखा जाये, इस पत्र के निर्गत किये जाने के उपरान्त केवल श्री सुनील कुमार सेठ को आगे मस्टर रोल जारी नहीं किया गया।

3. जबकि श्री सुनील कुमार सेठ एवं श्री राघवेन्द्र दीक्षित दोनों ही 01.01.1990 से पूर्व मस्टर रोल पर कार्यरत थे। (छायाप्रति संलग्न)

4. श्री सुनील कुमार सेठ दि० 01.01.1990 से पूर्व सेवारत होने के कारण दि० 29.01.1992 के बाद मस्टर रोल जारी न किये जाने के कारण श्री राघवेन्द्र दीक्षित का आधार मानते हुए एक वाद सं० 1184/एस०एस०/92 दायर किया जिस पर मा० उच्च न्यायालय लखनऊ ने दि० 20.02.1992 को अन्तरिम आदेश पारित किया कि कार्य और पद उपलब्ध हो तो इन्हें भी श्री राघवेन्द्र दीक्षित की तरह दैनिक वेतन पर कार्य करने दिया जाये। परन्तु रिट याचिका विचाराधीन होने के कारण विभाग द्वारा इन्हें सेवा में नहीं लिया जा सका।

5. श्री सुनील कुमार सेठ द्वारा दायर रिट पिटीशन सं० 1184/एस०एस०/92 का अन्तिम निस्तारण दि० 13.01.2010 को कर दिया गया। जिसमें उल्लेख किया गया है कि दि० 20.02.1992 को पारित अन्तरिम आदेश को आधार मानते हुए रिट पिटीशन का निस्तारण किया जाता है तथा विपक्ष को निर्देशित किया जाता है कि याची का प्रकरण श्री राघवेन्द्र दीक्षित की तरह इनके भी क्लेम पर विचार किया जाये।

6. शासन की नीति के अनुसार श्री राघवेन्द्र दीक्षित को उ०प्र०, लो०नि०अनु०-4 के आदेश सं० 2413/23-4-06-5 डी० दि० 15.07.2006 एवं प्रमुख अभियन्ता ३०५०, लो०नि०वि०, लखनऊ के कार्यालय ज्ञाप सं० 6073/ई०डी०/5319 ई०डी०/06 दि० 17.07.06 द्वारा विनियमित कर दिया गया।

7. इस प्रकार श्री सुनील कुमार सेठ को श्री राघवेन्द्र दीक्षित की तरह कार्य पर ले लिये जाने से समानता एक हो जाये तथा मा० न्यायालय के आदेशों का भी अनुपालन हो जायेगा।

8. प्रान्तीय खण्ड, लो०नि०वि०, शाहजहाँपुर द्वारा जारी ज्येष्ठा सूची के अनुसार श्री राघवेन्द्र दीक्षित एवं श्री सुनील कुमार सेठ दोनों दि० 01.01.1990 से पूर्व कार्यरत होने से पूर्व कार्यरत होने से समानता की पुष्टि होती है।

9- इस प्रकार इस याचिका के विरुद्ध कोई भी बिन्दु पोषणीय प्रतीत नहीं होता है।

संलग्नक- उपरोक्तनुसार

अधिशायी अभियन्ता
निर्माण खण्ड-1, लो०नि०वि०
शाहजहाँपुर

(emphasis added)

After the above report was submitted, the executive engineer and law officer of the department had appeared before the concerned Secretary of the State Government on 12.5.2010 and got him perused all the relevant papers and after perusing the same the Secretary on a telephone conversation had asked the competent officer to pass suitable order in compliance of the order of High

Court. The Chief Engineer referring the above wrote following letter again in the Secretary that he was sending concerned competent appointing authority namely, the Executive Engineer, Construction Division 1st of PWD, Shahjahanpur to explain difference in the appointments of two employees' namely Sunil Kumar Seth and Raghvendra Dixit for passing reasoned order. The copy of the letter was also marked to the concerned executive engineer with a direction to pass order citing this fact that for want of post and work Sunil Kumar Seth could not be counted. The said letter is reproduced hereunder:

"सेवा में.

संयुक्त सचिव, लो०नि० अनुभाग-7 उ०प्र० शासन, लखनऊ।

विषय:- मा० उच्च न्यायालय, लखनऊ खण्डपीठ, लखनऊ द्वारा रिट याचिका सं०-1184 (एस०एस०)/92 सुनील कुमार सेठ बनाम उ०प्र० सरकार एवं अन्य में पारित आदेश दि० 13.1.2010 के कम में दिशा निर्देश दिये जाने के संबंध में।

संदर्भ: शासन का पत्र सं०-1968/23-7-10 दि० 11.5.2010

महोदय,

कृपया उपरोक्त विषयक प्रकरण में शासन के संदर्भित पत्र का अवलोकन करने की कृपा करें। शासन से प्राप्त निर्देशों के अनुपालन में दि० 12.05.2010 को श्री जागेश्वर सिंह, अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि०वि०. शाहजहाँपुर एवं इस कार्यालय के विधि अधिकारी राम सिंह आपके समक्ष सुसंगत अभिलेखों सहित उपस्थित हुए थे और सुसंगत अभिलेखों का आपको अवलोकन कराया गया था। आप द्वारा प्रश्नगत प्रकरण में सुसंगत अभिलेखों के आधार पर रिट याचिका सं०-1184 एस०एस०/92 सुनील कुमार सेठ बनाम उ०प्र० राज्य एवं अन्य में पारित अंतिम निर्णय दि० 13.01.2010 के कम में श्री सुनील कुमार सेठ के प्रत्यावेदन को नियमानुसार निस्तारित किये जाने के वार्ता के दौरान निर्देश दिये हैं।

लोक निर्माण विभाग में चतुर्थ श्रेणी / दैनिक वेतन फील्ड कर्मियों के नियुक्ति अधिकारी / सक्षम अधिकारी, अधिशासी अभियन्ता स्तर के अधिकारी हैं। इसलिए अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि०वि०. शाहजहाँपुर को याची श्री सुनील कुमार सेठ के मामलों से तथा श्री राघवेन्द्र दीक्षित के मामलों के अन्तर को स्पष्ट करते हुए, सकारण आदेश पारित करने हेतु भेजा जा रहा है।

अतः उपरोक्त वर्णित तथ्यों एवं परिस्थितियों में शासन से अनुरोध है कि उक्त आख्या को विचार कर अभिलेख में लेने की कृपा करें।

भवदीय
ह० अपठनीय
(ए०के० सिन्हा)
13.5.2010
मुख्य अभियन्ता (ई०-3)
लो०नि०वि०, लखनऊ

1. प्रतिलिपि मुख्य अभियन्ता, बरेली क्षेत्र, लो०नि०वि०, बरेली को उपरोक्तानुसार कार्यवाही कराये जाने हेतु प्रेषित।
2. अधीक्षण अभियन्ता, बरेली वृत्त, लो०नि०वि०, बरेली को उपरोक्तानुसार कार्यवाही कराये जाने हेतु प्रेषित।
3. अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि०वि०, शाहजहाँपुर को इस निर्देश के साथ प्रेषित कि आप प्रश्रुत रिट याचिका में पारित निर्णय दि० **13.01.2010** के क्रम में खण्डीय अभिलेखों के अनुसार एवं अवमानना याचिका सं०-**3228(सी)/1992** में विपक्षी श्री जी०सी० गर्गेश, तत्कालीन अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि०वि०, शाहजहाँपुर एवं श्री ए०के० जैन तत्कालीन अधिशासी अभियन्ता, प्रान्तीय खण्ड, लो०नि०वि०, शाहजहाँपुर द्वारा दाखिल किये गये प्रतिशपथ पत्र में अंकित तथ्यों के आधार पर श्री सुनील कुमार सेठ के मामले से तथा श्री राघवेन्द्र दीक्षित के मामले के अन्तर को स्पष्ट करते हुए सकारण याची के प्रत्यावेदन को निस्तारित करना सुनिश्चित करें। जिससे असमंजस एवं अवमानना की स्थिति उत्पन्न न हो पाये।

मुख्य अभियन्ता (ई०-3)
लो०नि०वि०, लखनऊ"
(emphasis added)

It is soon-after the above instructions were issued under the note addressed to the Executive Engineer passed an order on 17th May, 2010, which is under challenge. It is necessary here also to reproduce the order dated 17th May, 2010, which runs as under:

कार्यालय ज्ञाप

मा० उच्च न्यायालय इलाहाबाद की खण्डपीठ लखनऊ द्वारा रिट याचिका सं० 1184/एस०एस०/92) सुनील कुमार सेठ वनाम उ०प्र० सरकार व अन्य में पारित आदेश

दिनांक 13.01.2010 में वर्णित कर प्रमुख अभियन्ता व्यवस्थापन "ग" वर्ग लो०नि०वि० लखनऊ के पत्रांक 481 व्यग शा०/3 व्यग (3) / 10 दि० 13.05.2010 में दिये गये निर्देशानुसार निस्तारित करते हुए निर्देशित किया गया है कि श्री राघवेन्द्र दीक्षित व श्री सुनील कुमार प्रकरण में समानता के अनुसार कार्यवाही की जाये, के अनुपालन में अभिलेखों के परीक्षणोपरान्त श्री राघवेन्द्र दीक्षित सुरपवाइजर डिप्लोमा होल्डर एवं श्री सुनील कुमार सेठ सुरपवाइजर डिप्लोमा होल्डर में निम्न अन्तर प्रकाश में आये है:—

1. श्री राघवेन्द्र दीक्षित सुरपवाइजर डिप्लोमा होल्डर की विभाग में दैनिक वेतन पर नियुक्ति तिथि 17.09.84 है। जबकि श्री सुनील कुमार सेठ सुरपवाइजर डिप्लोमा होल्डर की विभाग में दैनिक वेतन पर नियुक्ति की तिथि जनपद की ज्येष्ठता सूची के अनुसार 19.10.89 है।

2. श्री राघवेन्द्र दीक्षित सुरपवाइजर डिप्लोमा होल्डर की सेवाये दैनिक वेतन पर कार्य एवं पद की उपलब्धता तथा वरिष्ठता के अनुसार निरन्तरता बनी रही है जबकि श्री सुनील कुमार सेठ की सेवा में पद की अनुपलब्धता तथा कनिष्ठता के अनुसार दि० 29.01.1992 के पश्चात इन्हें नहीं रखा जा सका जैसा कि तत्कालीन अधिशासी अभियन्ता, श्री ए०के० जैन अधिशासी अभियन्ता प्रान्तीय खण्ड, लो०नि०वि०. शाहजहाँपुर एवं श्री डी०सी० गर्गेश अधिशासी अभियन्ता निर्माण खण्ड-1, लो०नि०वि०, शाहजहाँपुर ने अवमानना याचिका सं० 3228 (सी०)/1992 में प्रतिशपथ पत्र में भी स्पष्ट किया है, कि पद व कार्य उपलब्ध न होने के कारण श्री सुनील कुमार सेठ को दैनिक वेतन पर रखा जाना सम्भव नहीं था।

3. श्री राघवेन्द्र दीक्षित सुरपवाइजर डिप्लोमा होल्डर की निरन्तर सेवाये होने के फलस्वरूप उनका विनियमितीकरण विभाग द्वारा माह 7/2006 में किया जा चुका है। जब कि श्री सुनील कुमार सेठ की दैनिक वेतन की सेवाओं में व्यवधान होने के कारण इनके विनियमितीकरण पर विचार नहीं किया जा सका।

अतः उपरोक्त से स्पष्ट है कि श्री सुनील कुमार सेठ तत्कालीन सुरपवाइजर डिप्लोमा होल्डर दैनिक वेतन भोगी एवं श्री राघवेन्द्र दीक्षित सुरपवाइजर डिप्लोमा होल्डर की सेवाओं में कोई समानता नहीं पायी गयी। अतः मा० उच्च न्यायालय के अन्तरिम निर्णय की प्रति के साथ श्री सुनील कुमार सेठ, द्वारा प्रस्तुत किये गये सेवा में रखने का प्रार्थना पत्र दि० 25.01.2010 पर किया गया दावा औचित्य पूर्ण न होने के कारण निरस्त किया जाता है।

जागेश्वर सिंह)
अधिशासी अभियन्ता
निर्माण खण्ड-1, लो०नि०वि०,
शाहजहाँपुर।
17.5.2010
(emphasis added)

From the above quoted correspondences between the Secretary to State Government, the Chief Engineer and Executive Engineer, PWD, Lucknow, it transpires that with the disposal of writ petition on 13th January, 2010 finally by the High Court, the Executive Engineer vide his letter dated 08th February, 2010 asked the Chief Engineer, Establishment, U.P. PWD Lucknow to give a sympathetic consideration to the grievance raised by petitioner and appropriate orders may be passed so that contempt liability as to compliance of the order of the High Court could not be avoided. The Chief Engineer, P.W.D. Lucknow wrote a letter to the Joint Secretary, Public Works Department, U.P. Lucknow on 22.2.2010 seeking appropriate direction/guidance in the matter at the level of State Government so that Court's order could be complied with. The Joint Secretary wrote back to the Chief Secretary on 19th March, 2010 asking him to submit report regarding parity between Raghvendra Dixt and Sunil Kumar Seth by appearing before him on any working day with an advance copy to the Executive Engineer, Construction Division, P.W.D. Shajahanpur take immediate steps. The Executive Engineer accordingly prepared a report and submitted the same to the Joint Secretary on 1.4.2010. It was concluded in the report that the case of the petitioner and that of Raghvendra Dixit were identical and there was no point of difference between the two employees as to their initial appointment and status of service. The Joint Secretary, Government of U.P. Lucknow again wrote a letter to the Chief Engineer, P.W.D. Lucknow on 11.5.2010 to appear himself before him on 12.5.2010 at around 11:00 am. and matter was fixed on priority basis. Suddenly on 13th May, 2010 referring to the Government Letter dated 11th May, 2010 Chief Engineer, Public Works Department sent Executive Engineer, Construction Division, Nalkoop Khand on 13th May, 2010 to meet the concerned Secretary of Government of U.P. Lucknow so as to apprise him similarities/difference in the status of the two employees to pass a reasoned order. It is worth noticing here that while the Executive Engineer, Construction Division Nalkoop Khand, P.W.D. Gorakhpur and Law Officer had appeared before Secretary to Government on

12.5.2010 and had apprised him similarities in appointment of opportunity of petitioner and that of Raghvendra Dixit and yet Chief Engineer sent him again to the concerned Secretary within an advance copy of the letter to the Executive Engineer asking him to pass order citing difference in employment and continuance in service between the two employees on the basis of counter affidavit filed in contempt petition and Executive Engineer mechanically passed order on 17.5.2010 rejecting petitioner's claim which is impugned herein this petition.

From the above discussion, it is clear that while Chief Engineer P.W.D. Lucknow wanted the State Government to give him guidelines and directives in the matter of claim of the petitioner under his letter dated 22nd February, 2010 and Joint Secretary also directed the Chief Engineer to prepare a report and submit before it and consequently report was submitted by the Executive Engineer, P.W.D. Shahjahanpur on 1st April, 2010 and Joint Secretary concerned had asked the Chief Engineer to meet him on 12th May, 2010, but the Chief Engineer suddenly took a U-turn and letter to the Joint Secretary that Executive Engineer Officer was being sent to highlight the difference between status of Raghvendra Dixit and present petitioner and surprisingly at the same time without awaiting any direction/ guidelines in writing from the Government the Chief Engineer directed also the Executive Engineer to pass order citing and clarifying the difference in the appointment of two employees disposing of petitioner's representation. The then Chief Executive Engineer without even discussing his own report dated 1st April, 2010 held that petitioner's appointment was different from that Raghvendra Dixit as was averred in the counter affidavit and so also for non availability of work and post and so the claim was not tenable.

The sole question that has arisen for consideration of the Court is, as to what was distinguishing feature noticed by the Executive Engineer in the appointment and status of petitioner from that of Raghvendra Dixit to reject the claim of the petitioner and

whether there was sufficient material available with the then Executive Engineer Jageshwar Singh, to ignore his own earlier report dated 1st April, 2010.

The other question that arises for consideration is, once the matter was referred to the State Government for its necessary guidelines and the same was still awaited, was the Chief Engineer justified in directing the Executive Engineer to pass final order.

In order to appreciate and find answers to the above questions, I proceed to discuss the report of the Executive Engineer dated 1st April, 2010, which is already reproduced above.

From the perusal of the aforesaid report, it is clear that both the petitioner and Raghvendra Dixit had worked with the respondent establishment since 1988 . Thus, both were employees since prior to 1.1.1990 but since muster roll was not issued after 29th January, 1992 and Raghvendra Dixit had been regularized in the establishment and petitioner was on fixed pay,, he had no other opinion left but to file petition before this Court. His petition was entertained by this Court and an interim order was passed to continue petitioner in employment and thereafter petition was disposed of finally issuing directions in his favour.

The point no. 6 of the report as submitted, clarifies that Raghvendra Dixit was regularized under order of the Public Works Department dated 15th July, 2006 and that of Chief Engineer, P.W.D. Lucknow dated 17.7.2006. Point no. 7 shows that had S.K.Seth, namely petitioner been likewise taken on permanent roll regularizing his services, this would have ensured compliance of the order of the High Court. Point no. 8 shows that seniority report prepared at the division level of Public Works Department, Shahjahanpur established that both petitioner and Raghvendra Dixit were working with the same establishment on a daily-wage since prior to 1.1.1990. Point no. 9 shows that both the employees stood on same footing.

It is, thus clear that there was no difference in the status of initial appointment between petitioner and Raghvendra Dixt. The only difference was that petitioner was discontinued after 1992 whereas Raghvendra Dixit was continued and was also regularized. Petitioner had to file writ petition before this Court and upon filing the same he did obtain a positive direction to be continued in service and the said petition was also subsequently disposed off with the same direction but respondent Chief Engineer and Executive Engineer instead of complying the order of the Court, referred the matter to the State Government to obtain guidance which was not at all required.

The first point, therefore, stands in favour of the petitioner that there was no difference between the initial appointments of the two employees inasmuch as the Executive Engineer had not be able to give any reason as to why he took a different view altogether from what he had taken in his earlier report dated 19.3.2010.

In so far as other point is concerned, I find that Secretary to the Government even after receiving the report dated 19.3.2010 did not give any guidance. As a matter of fact no such letter was written at the end of the government to reject the representation of the petitioner stating claim of petitioner to be untenable. Under the circumstances while Chief Engineer himself had sought guidance from the Secretary to the government vide his letter dated 22.2.2010, he had no occasion to direct the Executive Engineer vide letter dated 13.5.2010 to pass final order. Letter of Chief Engineer dated 22.2.2010 is reproduced hereunder:

" पत्र संख्या: 1024/ 3 व्यग (3)/2010

दिनांक: 22.02.2010

सेवा में,

संयुक्त सचिव

लो०नि० अनुभाग-7

उ० प्र० शासन, लखनऊ।

विषय:- मा० उच्च न्यायालय, लखनऊ खण्डपीठ, लखनऊ द्वारा रिट याचिका सं०- 1184 (एसएस)/92 सुनील कुमार सेठ बनाम उ० प्र० सरकार एवं अन्य में पारित आदेश दि० 13.01.2010 के क्रम में दिशा निर्देश दिये जाने के संबंध में।

संदर्भ:- कार्यालय अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि० वि०, शाहजहाँपुर के पत्र सं०- 277/कोर्ट केस दि० 1.02.2010, पत्र सं०- 344/कोर्ट केस दि० 8.2.2010 एवं (छाया प्रति संलग्न)।

महोदय,

कृपया उपरोक्त विषयक प्रकरण में उपरोक्त संदर्भित पत्रों का अवलोकन करने की कृपा करें। अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि० वि०, शाहजहाँपुर के उपरोक्त संदर्भित पत्रों द्वारा आख्या प्राप्त हुई है आख्या के अनुसार श्री सुनील कुमार सेठ, डिप्लोमा होल्डर को सुपर वाईजर के पद पर दैनिक वेतन (मस्टर रोल) पर दि० 1.9.88 से कार्यालय अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि० वि०, शाहजहाँपुर में रखा गया था। श्री सुनील कुमार सेठ को दि० 29.1.92 के बाद मस्टर रोल पर रखे जाने की अनुमति नहीं प्रदान की गयी थी, जिस कारण श्री सुनील कुमार सेठ ने एक रिट याचिका सं०- 1184 (एसएस)/92 सुनील कुमार सेठ बनाम उ० प्र० सरकार एवं अन्य मा० उच्च न्यायालय लखनऊ खण्डपीठ, लखनऊ में योजित की थी। उक्त रिट याचिका में दि० 20.2.92 को अन्तरिम आदेश पारित किये गये थे। उक्त अन्तरिम आदेशों के अनुपालन कराये जाने हेतु श्री सुनील कुमार सेठ ने एक अवमानना याचिका सं०- 3228/92 सुनील कुमार सेठ बनाम श्री के०के० जयसवाल एवं अन्य योजित की थी जिसमें श्री डी० सी० गर्गेश, तत्कालीन, अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि० वि०, शाहजहाँपुर द्वारा प्रतिशपथ पत्र दाखिल किया गया था। रिट याचिका सं०-1184 (एसएस)/92 दि० 13.1.2010 अंतिम रूप से निस्तारित की गयी है, जिसमें मा० न्यायालय द्वारा पारित निर्णय की छाया प्रति संलग्न है तथा निर्णय का क्रियाशील भाग निम्न है:-

"This Court while entertaining the writ petition passed a detail interim order dated 29.2.1992 and the learned counsel for the parties states that the writ petition may be disposed of in terms of the interim order.

Considering the peculiar facts and circumstances and the above statements of the counsel for the parties, this writ petition is disposed of in terms of the interim order dated 20.02.1992 and the opposite parties are directed to consider

the claim of the petitioner when similarly situated Raghuvendra Dikshit has been allowed to work"

"13.01.2010"

उक्त क्रियाशील भाग के अनुसार श्री राघवेन्द्र दीक्षित, डिप्लोमा होल्डर जो श्री सुनील कुमार सेठ के समकक्ष एवं समान रूप से, कार्यालय अधिशासी अभियन्ता, निर्माण खण्ड-1, लो०नि०वि०, शाहजहाँपुर में कार्यरत थे, के अनुसार कार्य करने के आदेश पारित किये गये हैं। उल्लेखनीय है कि श्री राघवेन्द्र दीक्षित दैनिक वेतन पर निर्माण खण्ड-1, लो०नि०वि०, शाहजहाँपुर में कार्यरत थे जिन्हें शासन की नीति के अनुसार अवर अभियन्ता, सिविल के पद पर नियुक्ति की जा चुकी है। मा० उच्च न्यायालय द्वारा पारित निर्णय दि० 13.1.2010 के क्रम में श्री सुनील कुमार सेठ, डिप्लोमा होल्डर को दैनिक वेतन सुपर वाईजर के पद पर सेवा में रखे जाने हेतु शासन स्तर से विचार करके दिशा निर्देश दिये जाने की कृपा करें।

अतः आपसे अनुरोध है कि उपरोक्त वर्णित तथ्यों एवं परिस्थितियों में शासन स्तर पर विचार करके मा० उच्च न्यायालय के आदेशों के अनुपालन हेतु दिशा निर्देश देने की कृपा करें।

संलग्नक:- उपरोक्तानुसार।

(आर० के० गुप्ता)

मुख्य अभियन्ता (मु०-2)

लो०नि०वि०, लखनऊ"

The Executive Engineer has also not referred to any letter of state government pursuant to which he was passing order on 17.5.2010, instead, what is interfering to notice is that he reproduced the observations made by Chief Engineer in his letter dated 13.5.2010 as reason for rejecting the claim under his order dated 17.5.2010. So, there was absolutely no application of independent mind, nor, he had any guidelines from the concerned Secretary to pass such an order. Thus the second point is also decided in favour of petitioner that in the absence of any guidance of Secretary to the Government, the Chief Engineer was not justified in directing Executive Engineer to pass final order, nor Executive Engineer could have taken different view from his own report.

Besides the above, the Uttar Pradesh Regularization of Daily Wages Appointment on Group 'D' posts Rules, 2001, were brought into force and as per law a daily wager, if was working on the cut off date i.e. 30.06.1990 counting in service, he would be entitled to regularization as per order of this Court in the case of **Ravi Raj Singh v. State of U.P. and Others, 2009 SCC OnLine All 915**.

In petitioner's case, I find that he was admittedly working on a dailywage basis as on 30.6.1990 and was only remained, in 1992 and in the event despite High Court's direction if he was not reinstated, respondents were only to be blamed.

Now the question is, once this Court held the termination of the petitioner to be bad and directed for reinstatement and subsequently petition was also disposed off with a direction for reinstatement, the question is about payment of wages for the period petitioner was denied reinstatement and wages . The settled principles of law regarding this is that if an employee is wholly illegally terminated he is entitled for reinstatement with wages (**Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (2013) 10 SCC 324**). However, admittedly in this case petitioner was to be reinstated only on daily-wage basis when regularization rules had not come, and therefore, the issue was adjustment of an employee against availability of work. This situation had remained fluid and could be crystallized in a valid rights only upon rules for regularization being framed and brought into force in the year 2001. Petitioner's claim for regularization lingered on only for the casual approach of the concerned officers who initially deferred the matter in the garb of obtaining guidance from the Secretary but ultimately rejected the claim without there being any guidance at all. This, therefore, appears to be an approach to somehow linger on matter so as to ensure that petitioner ultimately attained the age of superannuation. The State being a model employer, this conduct of its officials cannot cannot be appreciated. However, wages are paid from the fund collected by the State from tax payers, and therefore, if an employee has not

discharged his duties as daily-wager, he may be held entitled to back wages. In the discretion of the Court, petitioner is held entitled to at-least 75 percent of back-wages in the given facts and circumstances of the case. In this case petitioner ought to have been regularized alongwith one Raghvendra Dixit and respondents have not come to be with detailed statistics as per vacancies available at that point of time. The denial by giving reasons about non availability of work and post, the Court, therefore has found this was not a good approach and conduct of the respondents which is held to be discriminatory. In the given facts and circumstances, therefore, I hold the petitioner entitle to regularisation from the date Raghvendra Dixit was regularized and 75 percent of the salary or arrears of salary which would have accorded from the date regularization of Raghvendra Dixit till petitioner would have attained the age of retirement. Since petitioner has been directed to be reinstated in 1992, petitioner would also be entitled to payment of all retirement benefits including benefit of pension, if it was a pensionable establishment, w.e.f. the date he attained age of superannuation.

In view of aforesaid, this writ petition deserves to be allowed. Accordingly, writ petition succeeds and is allowed. The Order dated 17.5.2010, annexure 18 to the writ petition is set aside. Petitioner shall be regularized *ex post facto* under Regularization Rules, 2001 giving notional benefits in terms of pay-scale and pay-grade and accordingly his pension shall be fixed as per old pension scheme as was in existence in the year 2001. He shall be paid regular pension from the date of his retirement and arrears in respect thereof within a period two months from the date of presentation of certified copy of this order. 75 percent of the wages for the period from 1992 till petitioner attained age of superannuation as arrears is to to be paid within the same period of two months from the date of presentation of certified copy of this order and in the event respondents fail to do so, petitioner would be entitled for interest over and above

outstanding dues @ 12 per cent from the the date of expiry period of two months till actual payment is made.

Order Date :- 10.4.2025

Sanjeev