

Court No. - 4

Case :- WRIT - A No. - 12139 of 2025

Petitioner :- Kandarp Singh And 3 Others

Respondent :- State Of Uttar Pradesh And 2 Others

Counsel for Petitioner :- Imran Ali,Murtuza Ali

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Imran Ali, learned counsel for the petitioners and learned Standing Counsel for the State.

2. Learned counsel for the petitioners has placed reliance upon a judgment in Writ A Nos.42206 of 2012, 40045 of 2012 and 57746 of 2015. Relevant part of the judgment passed in Writ A No.3186 of 2020 is reproduced hereunder:

"An identical matter came up before this Court in Writ Petition No. 42206 of 2012, Basant Prasad Vs. State of U.P. and Others as well as in Writ Petition No.40045 of 2012, Shankar LaL & Others Vs. State of U.P. and Others wherein the Court held the rule prescribing required height of 162 cms. for Excise Inspector to be arbitrary and ultra vires. An identical matter was also considered by this Court in Writ Petition No.57746 of 2015, Raj Kumar Vs. State of U.P. and Others and the said writ petition was disposed of in the light of the directions given by this Court in Writ Petition No.40045 of 2012. The order of the Court dated 08.10.2015 reads as under:

"The petitioner is working as a Personal Assistant Grade-II in the office of the Excise Commissioner, Allahabad.

His grievance is that he is entitled for promotion in terms of U.P. Subordinate Excise Service Rules, 1992 as amended in 2015. Rule 5 of The Uttar Pradesh Subordinate Excise Services (First Amendment) Rules, 2015 provides the source of recruitment. One of the condition for promotion from Senior Assistant Grade-II to the Excise Inspector, is Rule 13 (3) which requires that requisite height should not be less than 162 cms.

It is contended on behalf of the petitioner that the said requirement was also in the unamended Rules of 1992 which

has been declared to be arbitrary and ultra vires.

Writ Petition No.36264/1995 was filed by one Krishna Kumar Sharma who was working in the department on the post of Senior Assistant which was connected with Writ Petition No.32014 of 1996 and both the writ petitions were allowed on 28.5.1997.

It is stated that against the said order Special Appeal is still pending.

Learned counsel for the petitioner has drawn the attention of this Court to some of the orders passed by this Court in the matter of similarly placed persons. He has placed reliance in the case of Basant Prasad Vs. State of U.P. & Ors, Writ Petition No.42206 of 2012, wherein this Court disposed of the said writ petition relying on Writ Petition No.40045 of 2012 (Shankar Lal & Others Vs. State of U.P. & Ors) wherein following order was passed:

"Heard Shri M.C. Chaturvedi, learned counsel for the petitioner and learned Standing Counsel.

On a mention being made by learned counsel for the petitioner that the matter is of extreme urgency, inasmuch as the departmental promotion committee is going to be held today, the record of this petition is called for from the office.

In view of the peculiar facts and circumstances of the case and with the consent of the learned counsel for the parties, the writ petition is being finally disposed of at this stage without calling for a counter affidavit.

The petitioners, who are working on the post of Senior Clerk, Senior Assistant and Stenographer in the office of Excise department, are claiming promotion to the post of Excise Inspector. Their claim is not being considered on the ground that they do not qualify the minimum requirement of height of 162 cm. prescribed for the post of Excise Inspector.

It is contended by the learned counsel for the petitioners that this condition in the service rules was declared arbitrary and violative of Article 14 of the Constitution of India vide judgment and order dated 28.05.1997 passed in Writ Petition No. 36264 of 1995 connected with Writ Petition No. 32014 of 1996. It is further contended that another Writ Petition No. 31240 of 2008 involving identical question was allowed vide judgment and order dated 19th February, 2009 with the direction to promote the petitioner of the said writ petition with effect from the date she was considered for promotion by the selection committee and was denied the same because she did not meet the requirement of the height for

the purpose of selection.

In reply, learned Standing Counsel has pointed out that a Special Appeal No. 429 (D) of 2010 challenging the judgment and order dated 19.02.2009 passed in Writ Petition No. 31240 of 2008 is pending, however, he has failed to demonstrate any interim direction or stay of the operation of the order of the learned Single Judge passed in the special appeal.

It is well settled that mere pendency of an appeal does not suspend the effect and operation of the order impugned therein.

Since the condition prescribed in the rules that candidate should have the minimum height of 162 cm. has been held to be unreasonable and unconstitutional by the judgment of this Court, which is still operating and the case of the present petitioners is squarely covered by the said decision, in such view of the matter, the writ petition stands disposed of with the direction to the respondents that they shall consider the case of the petitioners for promotion for the post of Excise Inspector ignoring the height consideration as laid down in Rule 13 (2) (ii) of the U.P. Subordinate Examination Service Rules, provided they are otherwise eligible.

However, such consideration for promotion of the petitioners shall be subject to the final decision in Special Appeal No. 429 (D) of 2010."

In view of the above, the writ petition is disposed of with the consent of the parties in light of the above directions contained in Writ Petition No.40045/2012.

It is made clear that any decision taken shall abide the result of the Special Appeal No.429 (D) of 2010."

This writ petition is also disposed off with the consent of the learned counsel for the parties in the light of the aforesaid directions. It is made clear that Special Appeal No. 429 (D) of 2010 has been dismissed by this Court on 21 January 2016.

Office is directed to issue a certified copy of this order to the counsel for the petitioner today itself on payment of usual charges."

3. It is contended by learned counsel for the petitioners that the present petition may also be directed to be disposed of in accordance with the judgment laid down by this Court which has come to be discussed in the order passed in Writ A No.3186 of 2020 (*supra*).

4. Learned Standing Counsel submits that the petitioners may make individual representations which may be directed to be considered and disposed of in accordance with law.

5. In view of the above, this petition stands ***disposed of*** with direction to the petitioners to make individual representations regarding his claim within a period of four weeks from today before the competent authority i.e. Excise Commissioner, Uttar Pradesh which shall be looked into and considered and shall also be decided as expeditiously as possible preferably within a further period of two months taking into consideration the authority cited before this Court, by passing individual orders in respect of different representations.

Order Date :- 23.8.2025
Deepika