(2013) 10 AHC CK 0055

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 53562 and 58810 of 2011

Dhrampal Singh Sesodiya APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2014) 3 ADJ 79

Hon'ble Judges : Rajes Kumar, J;Mahesh Chandra Tripathi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri Rishi Kant, learned counsel holding brief of Shri Sanjay Singh and Shri Pankaj Rai Additional Chief Standing Counsel. In the writ petition No. 58810 of 2011 the petitioner has challenged the order dated 30.6.2011 passed by the respondent No. 1 and further by way of amendment challenging the order passed by the Board of Revenue dated 1st August, 2012 and further seeking a mandamus directing the respondents to consider the case of the petitioner for providing promotional benefits alongwith other service benefits in accordance with law from the date of promotion granted to the respondent No. 4.

2. In the writ petition No. 53562 of 2011 petitioner is challenging the order passed by the Board of Revenue dated 1.8.2012.

3. The petitioner has been appointed as Supervisor in the year 1983. The petitioner has been dismissed by order dated 16.4.1990. The petitioner challenged the dismissal order by way of writ petition No. 10496 of 1990. By interim order dated 25.7.1990 the effect and operation of the order dated 16.4.1990 has been stayed. Against the dismissal order, the petitioner has also filed an appeal, which has been rejected on 19.10.1991 on the ground that the matter is pending before the High Court. The aforesaid writ petition has been disposed of by order dated 14.5.2001 asking the appellate authority to decide the appeal afresh.

4. The appellate authority remanded the matter back to the District Magistrate to pass a fresh order. The District Magistrate by order dated 24th May, 2003 awarded a minor punishment and has also made certain adverse entry. Against the said order, the petitioner filed an appeal, which has been rejected, against which, a revision was filed, which was allowed on 19.10.2010 setting aside the order of the District Magistrate with consequential benefits.

5. It appears that during the pending of revision, the petitioner was given an option on 23.2.2006 for promotion on the post of Assistant Revenue Officer, which has been accepted by the Board, by order dated 9.3.2006 and the petitioner has been promoted permanently on the post of Assistant Revenue Officer on 23.3.2007. Thereafter, the petitioner has been promoted on 3rd of November, 2010 by the Board''s order on the post of Tahsildar under the Tahsildar Sewa Niyamawali, 1966. By a representation, the petitioner has made a claim that since his revision has been allowed with consequently benefits, the petitioner was entitled to be promoted on the post of Naib Tahsildar and, thereafter, Tahsildar, and accordingly, his pay should be fixed. The said claim has been rejected by the State Government by order dated 30.6.11 on the ground that on the option being given by the petitioner for the promotion on the post of Assistant Revenue Officer, the petitioner has been promoted. The cadre of Assistant Revenue Officer and Naib Tahsildar are two separate cadres. For the promotion on the post of Naib Tahsildar to Tahsildar, the petitioner had to appear in the examination, which has not been done. Therefore, the petitioner could not be promoted on the post of Tahsildar and the petitioner has been promoted on the post of Tahsildar under the quota provided to the Assistant Revenue Officer, and, accordingly, the representation of the petitioner has been rejected.

6. By order dated 1st August, 2012, the Board has considered the case of the petitioner for the pay fixation after giving an opportunity of hearing. The Board found that the petitioner has been promoted on 3rd of November, 2010 on the post of Tahsildar on the pay-scale of 15600-39100 with a grade pay of Rs. 5400/- after giving an opportunity. The claim of the petitioner has been partly allowed and it was found that prima facie the report of the Chief Accounts Officer, Ghaziabad was incorrect and, accordingly, a direction has been issued to fix the pay-scale at 15600-39100 with a grade pay of Rs. 5400/-.

7. We do not find any error in the order of the Board respondent No. 1 dated 30.6.2011 and order of the Board of Revenue dated 1.8.2012. The petitioner himself has opted to be promoted on the post of Assistant Revenue Officer on 23.2.2006 and, accordingly, the petitioner was promoted on the post of Assistant Review Officer on 23.3.2007 and has been shifted to different cadre. Accordingly, petitioner was entitled to be promoted on the post of Tahsildar under the quota provided to the Assistant Review Officer under the Tahsildar Sewa Niyamawali, 1966. In the circumstances, petitioner could not claim promotion through the cadre of Naib Tahsildar. Learned counsel for the petitioner has not been able to demonstrate that the pay fixation is not on the basis of the entitlement of the

petitioner for the post of Tahsildar promoted from the Assistant Revenue Officer.

8. However, in case the petitioner is able to clarify that the pay-scale of Rs. 15600-39100/- with grade pay of Rs. 5,400/- was incorrect for the post of Tahsildar on which he was promoted on 3rd of November, 2010 from Assistant Revenue Officer, it is open to the petitioner to make such representation before the Board of Revenue for review of the order dated 1.8.2012 and in case if such representation is being made, the same may be decided in accordance with law.

9. It is made clear that we have already upheld the promotion of the petitioner on the post of Tahsildar through the cadre of Assistant Revenue Officer and therefore, the petitioner is entitled for the pay-scale of the Tahsildar coming through the cadre of Assistant Revenue Officer. In view of above, both the writ petitions fail and are dismissed subject to the above observations.

