

(2005) 11 AHC CK 0186

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2877 of 2004

Dr. Rajendra Prasad, Dr. (Mrs.) Vedwati Prasad, Dr. Vijai
Kumar Chopra and Dr. Jai Kishan Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-11-2005

Acts Referred:

Citation : (2006) 5 AWC 4585 : (2006) 1 UPLBEC 656

Hon'ble Judges : Prakash Krishna, J; Amitava Lala, J

Bench : Division Bench

Advocate : Navin Sinha, N.K. Pandey, Swapnil Kumar and Sudha Pandey, for the Appellant; S.M.A. Kazmi, K.D. Kushwaha, C.K. Pandey, R.K. Saxena and C.S.C., for the Respondent

Judgement

Amitava Lala, J.—Several writ petitions have been filed before this Court for the similar reliefs as follows:

A. to issue writ, order or direction in the nature of mandamus commanding the respondents to immediately grant all consequential benefits including promotion position and pay on the basis- of final seniority list prepared by the State Govt. of P.M.U.S. Cadre.

B. to issue writ, order or direction in the nature of mandamus commanding the respondents to immediately make payment of salary on the basis of the promotion alongwith interest at the rate of 12% per annum.

C. to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the present case.

D. to award the cost of the petition to the petitioners.

2. The moot point of argument as advanced by learned Senior Counsel appearing for the petitioners is that in view of the Supreme Court judgement reported in Dr. Chandra Prakash and Others Vs. State of U.P. and Another, the petitioners herein

are entitled to consequential benefits including the promotion to the post of Joint Director and order for consideration of further promotion beyond the post of Joint Director. The relevant portion of the Chandra Prakash's case (supra) is as follows:

The State Government will fix the seniority of all doctors in the PMHS cadre from the date of the orders of their initial appointment within a period of six weeks from the date of this order and give all consequential benefits including promotions and positions on the basis of such seniority list.

3. Admittedly the petitioners were retired from the service at the time of delivering judgment but the same was not informed to the Court.

4. The State respondents appeared and filed two affidavits. Relevant portions at paragraphs 5,8 and 11 of the first affidavit being dated 16th March,2005 are as follows:

5. That it is relevant to mention here that the Hon"ble Supreme Court has directed to the "State Government for deciding the seniority list and all consequential benefits including - promotion/position regarding the provincial Medical and Health Services cadre and the same are binding upon the State Govt. It is further submitted that the State Govt. has constituted a committee in the Chairmanship of Principal Secretary, Medical and Health, U.P. Govt. Lucknow according to the Rules of U.P. Medical Health (Group-A) Services Rules, 1990 and already prepared the seniority list on dt. 5.6.03 and promoted all the retired medical officer P.H.M.S. Cadre including the petitioners as Class-I Medical Officer (Senior Scale) and It. Director as notional basis according to the decision of the Hon"ble Supreme Court and the petitioner is at serial No. 439 in the seniority list. It is further submitted that the petitioner has already promoted on dated 2.2.2005 as Joint Director on the basis of seniority as notional list. A photostat copy of the notional list (it, 2.2.05 issued by the State Government is being filed herewith and marked as Annexure CA-1.

**** * 8. That in reply to the contents of paras 1 to 10 of the writ petition, it is submitted that the seniority list has been prepared and also promoted all the retired Medical Officers P.H.M.S. Cadre including the petitioner as Joint Director as Notional (notional) basis on dated 2.2.2005 by the State Government according to the decision of the Hon"ble Supreme Court.

**** * 11. That in reply to the contents of para No. 14 to 21 of the writ petition, it is submitted that the State Govt. has already prepared seniority list on dt. 5.6.200} in compliance of decision of the Hon"ble Supreme Court dated 4.12.2002 including the petitioners and the name of the petitioner Nos. 1 to 4 are at serial No. 422, 503, 467 and 203 respectively in the seniority list. It is further submitted that all the retired Medical Officers P.H.M.S. Cadre including the petitioners have promoted on dt. 2.2.2005 as Joint Director as notional basis by the State Govt. according to the decision of the Hon"ble Supreme Court.

5. In a further affidavit dated 11th April, 2005 they have stated as follows:-

That although the notional promotion was provided to 1276 retired Medical Officer, but in between copy of various other writ petitions were received in the office of Answering Respondents by which the consequential benefits were claimed by the retired officers. The final decision in connection with the consequential benefits could not be taken by the State Government and the matter has already been referred to the law Department for its opinion. In fact the Department was of the view that a final and conclusive stand may be brought to the notice of this Hon"ble Court by means of counter affidavit after final decision in the subject matter in the light of observation made by the Hon"ble Supreme Court vide order dated 4.12.2002 but in spite of best effort, the final decision in connection with the consequential benefits has not yet been taken at the State level. The contesting Respondents left no option to file the counter affidavit in the above noted writ petition and ultimately in six writ petitions the counter affidavit was filed on 16.3.2005 and in remaining four writ petition on 4.4.2005.

6. Learned Standing Counsel contended that the retiral benefits has already been revised and forwarded to the Finance Department of the State for the purpose of payment.

7. The petitioners made a miscellaneous application before the Supreme Court after the disposal of the matter in Re: Chandra Prakash (Supra) wherein the Supreme Court was pleased to pass order on 17th November, 2003. The relevant part is as follows:

At the hearing today the learned counsel appearing on behalf of the petitioners has contended that although the seniority list has been published the consequent in benefits as directed by this court have; not been granted to all, the persons who are been filed by this court's judgment we do not find from the petition that any particulars of such non-compliance have been given. Besides it is not an issue that this court would go into in the exercise of its contempt jurisdiction. The grievance, if any, an individual person can be ventilated before any appropriate forum as such person may be advised, for relief in terms of this court's judgment.

In the circumstances, having regard to the facts of the case we drop the contempt proceedings against the respondents. However, we make it clear that we have not gone into the Question whether the seniority list has in fact been prepared in terms of this court's judgment several I. As have been filed by the persons having individual grievances in respect of the seniority list which they claim has not been prepared in accordance with this court's decision in Dr. Chander Prakash's case (Supra). These individuals claimed that they have filed writ petitions in this context before the High Court. Since we are not determining the validity of the seniority list as such, the applications are infructuous and are disposed of accordingly.

The contempt proceedings are accordingly dropped.

The contempt petitions are thus disposed of.

8. Now the matters are before this High Court to decide individual grievance. Naturally in the process of considering such grievance, a question arose whether the petitioners were in service or retired at the time of obtaining the order from the Supreme Court. If any person is in service his consequential benefit will be one when any person not in service his consequential benefit will be other. If one is not in the service at the time of delivering the judgment he will be eligible for consequential retiral benefit on the promotion notionally. Actual financial benefit during service period of such petitioners will be hit by the principle of no work no pay which can not be avoided. Possibly for such reason the Supreme Court did not want to intervene into the issue under the miscellaneous application. When the Supreme Court did not consider anything in this regard or even in the miscellaneous application it can be safely presumed that Supreme Court refused to pass such order. In the original Supreme Court order consequential benefit is specific with regard to promotions and positions on the basis of the seniority list. But other consequential relief is silent or meant residuary in connection with the service condition. When the service is no more such consequential benefit will obviously merge with retiral benefit. Therefore, no fault has been committed by the respondents in considering their benefit during the service period notionally, Ratio of the reported case in R.K. Dubey Vs. State of U.P. and others, is factually different because Court had given all the consequential benefit including the retiral benefit. Therefore, both the benefits either for the service period or after the service period were allowed by the Court specifically. Therefore, it is very difficult to come to a conclusion by directing the respondents to pay the actual monetary benefit ignoring the principle of no work no pay.

9. For an example earlier law courts were entertaining writ petitions and passing orders for reinstatement with back wages at the time of setting aside the order of dismissal/removal etc. as a matter of course. But now the view has been changed. The order of back wages is not passed without verification either by such Court on affidavit or by the Courts of appropriate jurisdiction of industrial/labour matter by evidence to the effect whether the person to be reinstated was gainfully employed elsewhere during the interregnum period or not. The latest view is far more logical from the socio-economic point of view. One can not be doubly benefited that too without any work. When the order of consequential actual financial benefit during the service period is silent, it has to be construed that it is silent with its proper perspective otherwise exchequer will suffer unnecessarily without availability of their service.

10. A separate argument in connection with Writ Petition No. 7742 of 2004 Dr. Chandra Prakash and Ors. v. State of U.P. and Anr. is made saying that the actual financial benefit has been received by the petitioner but there is no whisper to that extent is available in the writ petition. On the other hand reference has been made in respect of the annexure being Annexure -1 to the writ petition which

prescribes for notional promotion upon indicating that the retired Medial Officers shall be treated as adjusted in the pay of Additional Director. Under such circumstances, we are not in a position to accept the argument of the petitioner that he is entitled for the actual financial benefit from the date of their retrospective promotion in spite of their retirement.

11. Learned Senior Counsel appearing for the petitioners then confined their argument to the extent that the respondents are not giving enhanced pensionary benefit as a consequential benefit to such promotion. But since the respondents have already stated that the matter has already been forwarded to finance department we can only make it a time bound programme for payment of such pensionary benefit.

12. So far as the argument of further promotion beyond the post of Joint Director up to the post of Director etc. is concerned we cannot interfere with the same because now the relevant Rules are available in respect of such selection on merit.

13. Therefore, Court thinks no order can be passed and not passed in respect of giving actual financial benefit up to the post of Joint Director and also referring the matter to the authority for consideration beyond the post of Joint Director. Only affirmative order can be passed and passed hereunder that the actual arrear enhanced pensionary benefit will be given to the petitioners within two months from the date of communication of this order with simple interest @ 12% per annum. Thereafter the payment of enhanced pensionary benefit will be made regularly month by month per month as current. However, this order will not prevent the petitioners in getting present pensionary benefit for the interregnum period. Thus, the writ petition stands disposed of. No order is passed as to costs.

14. I agree