
(1995) 04 AHC CK 0056
In the Allahabad High Court
Case No : Special Appeal No. 652 of 1993

Kishan Swaroop Sharma

APPELLANT

Vs

State of U.P.and Another

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 59(3)

Citation : (1995) 04 AHC CK 0056

Hon'ble Judges : Palok Basu, J and R.K.Singh, J

Final Decision : Allowed

Judgement

R. K. Singh, J.—The petitioner has filed this writ petition under Article 226 of the Constitution of India with the following prayers :

- (a) "to issue a writ, order, direction in the nature of mandamus commanding the opposite parties to pay to the petitioner his regular salary of the post of Assistant Engineer from 2251986 till date with consequential benefits ; i
- (b) to issue writ, order, direction in the nature of mandamus commanding the opposite parties to pay salary month by month when fall due regularly ;
- (c) to issue writ, order direction in the nature of mandamus commanding the opposite parties to accord all benefits accruing in favour of the petitioner since 2251986 and further they be directed to consider his seniority since 1974 as employee of Development Authority. When he was absorbed in the department as Junior Engineer under the law."

2. The petitioner was appointed as Junior Engineer in Agra Municipal Corporation in the department of Development in the year 1972. In the year 1974, the Agra Development Authority was constituted and the petitioner opted to merge in the services of the development authority. The petitioner was promoted to the post of the Assistant Engineer by the order, dated 22nd of May, 1986 (AnnexureVII) by the Agra Development Authority, Agra with effect from 22nd of May, 1986 with a clause that he will get the pay scale of the Assistant Engineer from the

date of the sanction accorded by the Government of Uttar Pradesh and till then he will get the pay in the payscale of the Junior Engineer. The petitioner accordingly submitted his joining report on the same day i.e. 22nd of May, 1986 (Annexure 7A). Since then his case was being kept pending by the Government of Uttar Pradesh though the petitioner submitted several representations and once he also filed a writ petition in this court being the Civil Miscellaneous Writ Petition No. 46313 of 1992 which was disposed of with a speaking order on 15th of May, 1993 directing the U.P. Government to dispose of the representation of the petitioner for regularisation of his services as the Assistant Engineer. The matter did not found favour upto now and the petitioner has come to court again for the same grievance.

3. The Agra Development Authority, Agra has appeared through Sri Swami Dayal learned counsel and has supported the claim of the petitioner. The respondent No. 1 has filed counter affidavit and has opposed the prayer on the ground that "On the data of centralisation of Development Authorities services on 22104984, the petitioner was not serving in any post included in the Development Authorities centralised services, he cannot claim any benefit however for his promotion to the post of Assistant Engineer in the Development authorities Centralised Services". A D. O. Letter (Confidential) of the Special Secretary, addressed to the Commissioner, Agra Division, Agra has been annexed as Annexure C.A.I. with the counter affidavit which speaks same facts as noted above. The admitted annexures of the writ petition speak that the petitioner is in service of the Agra Municipal Corporation since 1972 and he opted for merger of his services in the Agra Development Authority when it was created in the year 1974. The Agra Development Authority, Agra has always recommended his case for absorption but upto now the Government has not considered the recommendation of the development authority except a letter Annexure C.A, I noted above in which the ground is that the petitioner was not in service of the Development Authority on 22nd of October, 1984 when the services were taken into centralised services. But this fact does not find support from the annexures of the writ petition which speak that since 1974 when the Agra Development Authority, Agra came into existence, the petitioner by implication of Rule 59 subrule (3) of the U.P. Urban Planning and Development Act, 1973 has become part and parcel of the Agra Development Authority, Agra. As he opted for merger in the centralised services of the Authority, the stand taken by the respondent No. 1 is not based on any cogent reason why the petitioner is not taken in and treated as a servant of Agra Development Authority, Agra Centralised Services. No cogent reason is disclosed in the counter affidavit except that under subrule (4) of Rule 59 it is not covered, but the annexures acted above as well as continued recommendations of the Authority speak that he had already been taken into service of the Centralised Services of the Development Authority, Agra. In this view of the matter, the stand taken by the State of Uttar Pradesh, respondent No. 1 is against the principle of natural justice as well as the principle of propriety and equal treatment. The representations of the petitioner having

not been disposed of since long, has also given the cause of action for this writ petition before this Court.

4. The writ petition succeeds and is allowed and the respondents are hereby directed to treat the petitioner as the member of the Centralised Services of Agra Development Authority, Agra and he be treated as the Assistant Engineer since the date of his* promotion i.e. 2nd of May, 1986. He is also entitled to the salary in the same rank and post since then and of all consequential benefits.