
(2010) 01 AHC CK 0268
In the Allahabad High Court

Mangal Sen

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (2010) 3 AWC 2578(1) : (2010) 124 FLR 969 : (2010) 2 UPLBEC 1629

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the petitioner.

2. Learned Counsel relies on Regulation 93 of the U.P. Sugar Cane Staff (Societies and Sugar Mill Workers) Regulation, 1986 to contend that since he was holding charge of two posts, therefore, he is entitled to the payment, which is wrongly being recovered from the petitioner. Regulation 93 is being quoted hereunder:

93. The recruiting and appointing authority concerned may appoint an employee to hold substantively, as temporary measure or to officiate in, two independent posts at one time. In such cases his pay will be regulated as below:

(a) the highest pay, to which he would be entitle if his appointment to one of the posts stated alone may be drawn on account of tenure of that post,

(b) for other posts he shall draw such reasonable pay, in no case exceeding one-fifth of the presumptive pay of the post as the recruiting and appointing authority concerned may fix.

Explanations. - (1) Presumptive pay for the purposes of Clause (b) of the Regulation should be taken to be what the employee who is placed in the time-

scale of the additional post under regulation No. 49 where he formally transferred to it. Where the maximum pay of the lower post should be taken as the presumptive pay for the purpose of Clause (b) of the Regulation;

(2) This regulation will not apply when an employee is not formally appointed to the additional post;

(3) This recruiting and appointing authorities shall not ordinarily fill up vacancies of less than one month's duration unless there are special reasons to do so and such appointment is wholly justified.

3. A perusal of the regulation aforesaid, would indicate that there has to be a formal appointment against both the posts in order to enable the employee to claim the additional salary as is sought to be done by the petitioner.

4. Learned Counsel for the petitioner contends that, as a matter of fact, the matter was taken up on an earlier occasion and the benefit of additional pay was extended, which is now sought to be recovered.

5. Keeping in view the provisions of Regulation 93, it is evident that in order to avail the said benefit the appointment of an employee has to be substantive or as a temporary measure or to officiate on two independent posts at one time.

6. In the instant case, the petitioner was allowed only to hold charge and it was not a formal appointment either in substantive capacity or any other temporary measure.

7. In the absence of any such condition available or any other document on record to substantiate the said pleadings, there is no claim made out for interference under Article 226 of the Constitution of India.

8. The writ petition is dismissed.