
(2011) 01 AHC CK 0066
In the Allahabad High Court
Case No : Writ Petition No.7289 (S/S) of 2010

Ram Manorath Maurya and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Citation : (2011) 8 RCR(Civil) 3058

Hon'ble Judges : Shabihul Hasnain, J

Judgement

Shabihul Hasnain,J.

1. Heard Dr. L.P.Misra, learned counsel for the petitioners and Sri Anuj Garg for the State.
2. It has been pointed out that an application has been moved by petitioner counsel for deleting the names of petitioner No.s 2, 9 and 13 from the list of the petitioners in the writ petition. Dr. L.P.Misra says that the applicants do not want to press their cases in the writ petition at this stage. The said application although has been served on the opposite parties but it is not available on record.
3. The office is directed to trace the application and place on record. Since Sri Misra makes statement at Bar about the application, this Court giving credence to the statement made by a respectable member of the Bar, allows the oral application and permits that the names of petitioner No.s 2, 9 and 13 may be deleted from the writ petition as petitioners.
4. The petitioners have prayed that their date of appointment may be treated to be 12.5.1994 and accordingly they may be allowed promotional pay scale after completion of fourteen years of their regular service counting their service from that date. The petitioners are regularly selected candidates by the U.P.Public Service Commission after an advertisement of 51 posts. The list was published and the appointment letters were issued whereas these petitioners submitted their joining from 24.5.1994 to 30.5.1994 but they could not be given joining because there was an interim order in writ petition NO.2134 (S/S) of 1994 by the

adhoc junior engineers, whose services were likely to be affected by the joining of the petitioners who were the directly recruited candidates. Although the interim order contained a direction that the directly recruited candidates may be given joining elsewhere but the State Government was put in a dilemma where they could not have given joining to the petitioners because the posts on which the appointment was sought to be made was already occupied by the adhoc employees and they have an interim order in their favour. The petitioners also filed writ petitions bearing No.3109 (S/S)/1994, 3156

(S/S)/1994, 816(S/S) of 1995 and 433 (S/S) of 1995. These petitions were clubbed and heard together. The judgment has been annexed with this writ petition. The petition by adhoc employees was dismissed, however, with a direction that their services may be utilized and absorbed in other places while the writ petition of the directly recruited candidates was allowed in full. Dr. L.P.Misra has shown before this Court the relief clause in writ petition No.3109 (S/S) of 1994, which is as follows:

?(i) To issue a writ order or direction in the nature of mandamus thereby commanding the opposite parties to allow the petitioners to work and discharge their duties by issuing necessary posting orders and to pay them their salary and all other usual allowances with effect from the date they submitted their joining in pursuance of the appointment order dated 12.5.1994 contained in Annexure No.1 to this writ petition.?

5. The main contention of the directly recruited candidates to file the aforesaid writ petitions was to give them appointment/joining from the date when the appointment letters were issued i.e. 12.5.1994. So far the adhoc employees are concerned the present writ petition does not have any conflicting interest with them. The Court, therefore, is not going into the details of the writ petitions filed by the adhoc employees. The simple question involved in this writ petition is whether the appointment of the directly recruited candidates should refer back to the date of their appointment letter issued in their favour i.e. 12.5.1994 or it should refer to their actual date of joining i.e. 16th September, 1995. The petitioners say that the initially when the writ petition was allowed on 22.5.1995 it was not complied with. They filed contempt petition and in pursuance of the orders passed in contempt petition, the petitioners were allowed to join from 16.9.1995.

6. Learned Standing counsel has vehemently opposed the writ petition on three counts. Firstly, he opposes the application moved by the petitioners for deleting the names of three persons namely the petitioner Nos. 2, 9 and 13. He says that this application shows the frivolous manner in which the writ petition has been filed and the petitioners are not serious enough and the writ petition should be dismissed on this count. This plea has been rejected by this Court. Secondly, learned Standing counsel relying on the counter affidavit has maintained that since the petitioner had already filed a writ petition the second writ petition is not maintainable and as such, this petition should be dismissed on that count also.

On a careful perusal of the matter, it transpires that the earlier writ petitions were to the effect that they should be allowed to join in pursuance of their selection and further the joining should be treated from the date of their appointment letters. The present writ petition is regarding demand for promotional pay scale which off course is a different cause of action. There is one common question but that will not render the second writ petition not maintainable. This plea is not sufficient enough to throw?? the writ petition out of Court. Learned Standing counsel has argued that there was no fault on the part of the State Government in not giving the joining w.e.f. 12.5.1994. There was an interim order operating against them and they could not have given joining to the petitioners in defiance of the interim order of the Court. Further the direction of the interim order could not have been carried out because there were no available vacancies with the State Government where the petitioners could have been absorbed or given appointment by the State Government. Moreover, in paragraph 17 of the counter affidavit the opposite parties have categorically and clearly mentioned that there are reservations rules and there were categories under which the appointment was to be given and, therefore, they were constrained to give joining to the petitioners as the adhoc employees were also continuing on the same position and there is no fault of the State Government and the benefit could not accrue to the petitioners on the basis of an interim order which was operating against the State Government.

7. Dr. L.P.Misra, on the other hand, has argued that there is no question of any illegal enrichment of the petitioners if the date of joining of the petitioners is referred back to 12.5.1994 no financial loss will accrue to the opposite parties in as much as no salary is being claimed for that period. He further says that he undertakes that they will never claim any salary or allowance etc. for the said period on the principle of no work no pay. At the same time he argues that when the writ petition of the directly recruited candidates has been allowed in full by the Court after considering the case of the adhoc employees also, no authority remains with the opposite parties to say that their appointment/joining shall not refer back to a particular date of 12.5.1994. There is a specific demand in the prayer clause of the writ petition No.3109 (S/S) of 1994 that their joining may be considered from the date of their appointment letter i.e. 12.5.1994 and the same writ petition has been allowed by this Court vide its judgment and order which has exhaustively dealt with the whole matter. Dr. L.P. Misra has referred to case law of Rabindra Kumar Battick and another v. State of Orissa and others, (1998) 8 Supreme Court Cases 769 in which the Hon''ble Supreme Court has observed that if there is no fault of the employees in joining and for certain reasons the joining has not been allowed, then his initial appointment will be referred back to the date of appointment letter. Learned Standing counsel has disputed this proposition and he says that the facts of the case will not be applicable in the matter of the petitioners. The Court is not satisfied with his argument . It is not the facts rather the ratio and the principle laid down by the Hon''ble Supreme Court which is binding on the courts below. In the present case, taking all the

circumstances into consideration, the Court feels that unfortunately neither the petitioners nor the State Government were at fault. It was due to litigation that the petitioners could not be given joining from the date the appointment letters was issued. Ultimately, the writ petition was allowed meaning thereby that whatever interim orders were operating in the meanwhile evaporate and the petition has to be allowed in terms of the original prayer made in the writ petition. While interpreting such orders the interpretation?? which is most likely?? to favour the petitioners may be adopted by the Courts. This Court is convinced that only because of the intervention of the adhoc employees?? the matter of the petitioners was delayed. The case of the adhoc employees was ultimately dismissed. No adverse civil consequence should visit the petitioners who were not at fault. Moreover, if the promotional pay scale is given to the petitioners from a particular date, it is not going to affect the State Government in any manner. There can not be any adversarial approach by the State Government, which is a model employer of its employees as well as the guardian of the citizens.

8. Accordingly, being convinced by the petitioners' arguments, the Court allows the writ petition and directs the opposite parties to consider the case of the petitioners for allowing them promotional pay scale considering their initial date of joining between 24.5.1994 to 28.5.1994.

(Petition allowed)