
(2010) 08 AHC CK 0358
In the Allahabad High Court
Case No : Writ Petition No.443 (S/B) of 2008

R.N.Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 08 AHC CK 0358

Hon'ble Judges : Devi Prasad Singh, J and Vedpal, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Sri Umesh Narain Sharma, learned Senior Counsel on behalf of the petitioner, learned standing counsel and perused record.

2. The petitioner was appointed as Assistant Engineer in U.P. Jal Nigam on 5.2.1979. Thereafter, he was selected and appointed on the post of Assistant Engineer in Varanasi Development Authority, Varanasi on 20.3.1982. Pursuant to appointment letter, the petitioner joined in Varanasi Development Authority, Varanasi and relieved from Jal Nigam. After his joining in Varanasi Development Authority, Varanasi, the petitioner moved application dated 11.5.1984 for reckoning of his past services with regard to seniority and also claimed that keeping in view the past services, he is entitled for promotion to the post of Executive Engineer. The representation submitted by the petitioner dated 11.5.1984, was not considered by the competent authority. In the meantime, in the year 1984, one Sri Sushil Chandra Dwivedi, who joined Varanasi Development Authority, Varanasi, was given seniority after reckoning his past services i.e., 1992. It has been submitted by the learned standing counsel that Sri Sushil Chandra Dwivedi was an employee of Rajya Niyojan Sansthan.

3. The application moved by the petitioner was recommended by the then ViceChairman, Varanasi Development Authority, Varanasi to the Government. In pursuance of the power conferred by Section 5A of the U.P. Urban Planning and Development Act, 1973, the services of the petitioner were absorbed in Varanasi

Development Authority, Varanasi by the State Government and later on, he was promoted on the post of Executive Engineer on 19.3.1994. The respondents has decided the case of Sushil Chandra Dwivedi and Sri S.B. Mishra and given seniority after reckoning their past services, vide order dated 6.11.1995. However, the order dated 6.11.1995 was withdrawn vide order dated 3.2.1997 but Sri Sushil Chandra Dwivedi was given seniority keeping in view the past services.

4. Reference has been given with regard to one such employee namely, Sri T.P.S. Tyagi, in para28 of writ petition with specific pleading that he was an employee of U.P. Jal Nigam, and services were reckoned by the Development Authority for the purpose of the seniority.

5. So far as the case of Sri Dwivedi and Sri Mishra is concerned, it has been stated in the counter affidavit that they are Government employee hence, no parity can be extended to the petitioner. However, with regard to Sri T.P.S. Tyagi, it has been submitted by the learned standing counsel that the case of Tyagi stands on different ground. As to how Sri T.P.S. Tyagi who was an employee of Jal Nigam, may be treated differently than the petitioner, has not been disclosed in the counter affidavit. Learned standing counsel also could not specify the ground on the basis of which, past services of Sri T.P.S. Tyagi in Jal Nigam, was considered for the purpose of seniority and declined to extend the same benefit to the petitioner.

6. Earlier, the petitioner preferred writ petition which was disposed of finally directing the respondents to decide the representation keeping in view the provisions contained in Section 5A of the U.P. Urban Planning and Development Act, 1973 and Rule 7 (1) of the U.P. Development authorities Centralised Services Rules, 1985 as amended on 9.12.2002.

7. While rejecting petitioner's representation, the reason has been given that petitioner's case is not covered by the Rules. However, no finding has been recorded with regard to parity claimed by the petitioner with that of Sri T.P.S. Tyagi.

8. While submitting reply in para9 of the counter affidavit, it has been stated that the State Government has exercised powers with regard to others conferred on it in pursuance of provisions contained in Subrule (3) of Rule 37 of the U. P. Development Authorities Centralised Services Rules, 1985 which is reproduced as under:

37. Regulation of other matters.(1) If any dispute or difficulty arises regarding interpretation of any of the provisions of these rules, the same shall be referred to the Government whose decision shall be final.

(2) In regard to the matters not covered by these rules or by special orders, the members of service shall be governed by the rules, regulations and orders applicable generally to U. P. Government servants serving in connection with the

affairs of the State.

(3) Matters not covered by subrules (1) and (2) above shall be governed by such orders as the Government may deem proper to issue.?

9. A plain reading of Subrule (3) of Rule 37 of the Rules (supra) shows that that the Government has been given power to deal with the matters which are not covered by SubRule (1) and (2).

10. Admittedly, the State Government has exercised powers while extending benefit of past services in pursuance of Subrule (3) of Rule 37 of U. P. Development Authorities Centralised Services Rules, 1985 to some of its employees (supra).

11. Learned standing counsel took a defence that no parity was extended to the petitioner since earlier, while deciding the matter finally, this Court directed to consider the petitioner's case in accordance with provisions contained in Section 5A of the U.P. Urban Planning and Development Act, 1973 and Rule 7 (1) of the U.P. Development Authorities Centralised Services Rules, 1985 as amended on 9.12.2002. It has also been submitted that the petitioner was not Government employee.

12. Submission of the learned standing counsel seems to be misconceived. Even if this Court directed the respondents to take a decision in pursuance of Section 5A of the U.P. Urban Planning and Development Act, 1973 and Rule 7 (1) of the U.P. Development Authorities Centralised Services Rules, 1985 as amended on 9.12.2002, then it does not preclude the Government to exercise powers conferred on it under Subrule (3) of Rule 37 of the U. P. Development authorities Centralised Services Rules, 1985.

13. The averments contained in para28 of the writ petition, have not been denied by the respondents except submitting vague reply that the case of Sri T.P.S. Tyagi, is based on different footing. Admittedly, Sri T.P.S. Tyagi was an employee of U.P. Jal Nigam. If the Government exercised its power under SubRule (3) of Rule 37 of U. P. Development Authorities Centralised Services Rules, 1985, then the State Government could not have treated the petitioner differently from Sri T.P.S. Tyagi while considering the petitioner's case with regard to extension of benefit of earlier services.

14. Petitioner's counsel relied upon the judgment reported in 2003 (3) AWC 1728: Mani Kant Gupta and others. v. State of U.P. and others, and submitted that services rendered in U.P. Jal Nigam, could have been reckoned for the purpose of seniority in the Development authority.

15. The Government should be a model employer and while discharging its statutory obligations, or following constitutional mandates, it has to act uniformly treating equally all its employees howsoever high or low may be. It is settled law that equals cannot be treated as unequally. Sri T.P.S. Tyagi was also an employee of Jal Nigam who joined in Development Authority and the Government exercised

powers to reckon his services of the Jal Nigam to reckon seniority. It is not fair on the part of the Government to act differently for the same category of employees more so, when the Government is empowered to exercise its powers under the Rules (*supra*). In view of the above, the writ petition deserves to be allowed.

16. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 10.9.2007 and 7.12.2006 contained in Annexure No.1 and 2 to the writ petition. A writ in the nature of mandamus is also issued directing the respondents to reconsider the petitioner's case keeping in view the observations made hereinabove. Let necessary exercise be done within three months from the date of receipt of a certified copy of this order.

No orders as to costs.