
(2009) 11 AHC CK 0024
In the Allahabad High Court
Case No : Special Appeal No. 996 of 2008

State of U.P. and Others

APPELLANT

Vs

Radhey Shyam Nishad

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Citation : (2010) 124 FLR 647

Hon'ble Judges : R.K. Agrawal, J; Jayashree Tiwari, J

Bench : Division Bench

Advocate : Y.S. Bohra and Addl. C.S.C, for the Appellant; R.P. Ram and B.L. Yadav, for the Respondent

Judgement

R.K. Agrawal and Jayashree Tiwari, JJ.—We have heard Sri Y.S. Bohra, learned Additional Chief Standing Counsel for the appellants and Sri B.L. Yadav, learned Counsel for the respondent.

2. The present appeal has been filed against the judgment and order dated 20th August, 2008 passed by the learned Single Judge whereby while allowing the writ petition the Court quashed the order dated 19th October, 1996 appointing the petitioner on the post of Mate and the order dated 26th August, 2006 appointing the petitioner, respondent herein on the post of Operator. The Court issued a writ of mandamus commanding the respondents, appellants herein to regularise the services of the petitioner-respondent on the post of Operator Grade I, w.e.f. one day before the date juniors to him were regularised in the services. Consequential benefits that will flow from the regularisation will follow and the petitioner's pay would be recalculated accordingly making provision that if the pay of the petitioner-respondent works out to be less than what he was being paid at the relevant moment of time, the difference will not be recovered from the petitioner and pay protection will be granted.

3. The undisputed facts are that the petitioner-respondent was appointed as a work charge Motor Boat Driver/Operator in the irrigation Department in the year

1971 and since then he was working on that post till his retirement. On the ground that 19 other employees junior to him have been regularised the petitioner-respondent also claimed for regularisation which was not granted. However, the petitioner-respondent was regularised on the post of Mate. The bone of contention between the learned Counsel for the parties appears to be as to what nomenclature should be given to the petitioner-respondent, whether it should be Operator Grade I or only Operator. According to the learned Counsel, appearing for the appellants herein there is no post of Operator Grade I in the regular establishment whereas it only exists on work charge basis and, therefore, the petitioner-respondent could not be given the post of Operator Grade I. From records, it is not in dispute that on account of stagnation the petitioner-respondent had been granted pay scale of Operator Grade I in the year 1986 and thereafter, he has continuously been paid the pay scale of Operator Grade I with such increments as may be admissible till his retirement. In the supplementary affidavit filed today it has also come on record that the State Government grants pay protection while making promotion/regularisation. The petitioner-respondent having been granted pay protection also, he is liable to be paid pension on the basis of the last pay drawn with all consequential benefits.

4. The appeal stands disposed of. The order of the learned Single Judge stands modified to the extent indicated above. The payment be made to the petitioner-respondent within two months from the date a certified copy of this order is produced before the authority concerned.