
(2011) 01 AHC CK 0023
In the Allahabad High Court
Case No : Writ Petition No. 28 (S/B) of 2011

State of U.P. and others	Vs	APPELLANT
Ram Lal Upadhyaya and another		RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Citation : (2011) 6 ADJ 6217

Hon'ble Judges : Uma Nath Singh, J; Satish Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Uma Nath Singh and Dr. Satish Chandra, JJ.—We have heard learned counsel and perused the pleadings of writ petition.

2. Petitioner State by way of this writ petition has assailed the impugned judgment and order dated 12.7.2010, passed by the U. P. State Public Services Tribunal. Lucknow. in Claim Petition No. 519 of 2010.

3. Learned State counsel submitted that the respondent suffered adverse entries in his A.C.R. dossier while working as Jailor since 8.10.1998. That is why, his juniors were promoted over his head on 16.2.2009 as Superintendent (Jail). It is also submitted that his promotion was denied, in particular, on account of 4 censure entries dated 8.12.1999, 10.2.2006, 23.1.2009 and 23.3.2009. Learned counsel further submitted that the Tribunal should not have observed that on grant of selection grade to the respondent, the aforesaid adverse entries prior to that date namely 8.10.2006 stood automatically washed off, and thus the same could not have been made a basis for denying him promotion to the next higher post. It is also a submission of learned State counsel that the Tribunal has wrongly directed the petitioner State to consider the case of respondent afresh for promotion to the post of Superintendent (Jail) with effect from 16.2.2010, the date when his juniors were granted promotion, and to grant him all consequential benefits as permissible under the Rules.

4. We have considered the submission of learned State counsel in the light of impugned judgment. The direction to consider the case of respondent for promotion to the higher post is contained in paragraph 6 of the judgment, which on reproduction reads as :

6. Accordingly, this reference petition is finally disposed of with a direction to the opposite parties to consider the case of the petitioner afresh for promotion to the post of Superintendent. Jail with effect from 16.2.2010, the date of promotion of his junior and to grant him all consequential benefits as permissible under rules. The promotion, if made shall be subject to final decision of Claim Petitions Nos. 387 of 2010 and 388 of 2010. which are pending at present, but interim stay has been granted.

5. There is no dispute that the respondent was granted selection grade of Rs. 5,500-175-9,000 vide the order dated 15.12.2006 with effect from 8.10.2006. Thus, following the dictum of judgment rendered in the case of Dr. Girish Bihari v. State of U.P. 1984 UPLBEC 953. wherein it was held that the doctrine of washing off adverse entries on promotion of an officer is a good doctrine which ensures justice to the public servant, the Tribunal held that adverse entries, if any, awarded to the officer prior to his promotion to the selection grade will lose its sting after such promotion and thus the ratio of judgment would apply in the case of respondent as well. This view also finds support in a three Judge Bench judgment of Hon"ble the Apex Court rendered in Writ Petition (C) No. 382 of 2003. Pyare Mohan Lal v. State of Jharkhand. on September 10, 2010. In this judgment Hon"ble the Apex Court held that though the washed off theory does not have universal application, yet it may have relevance while considering the case of a Government servant for further promotion.

6. Besides, the Tribunal has only given a direction to consider the case of respondent for promotion, afresh. We do not find any infirmity whatsoever. In the case in A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, . Hon"ble the Apex Court in paragraphs 18, 19 and 20 has discussed the meaning of the direction to consider as under :

18. We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the Court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to consider" the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable

time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the Court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the Court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of Court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders "to consider".

20. Therefore, while disposing of writ petitions with a direction to "consider" there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The Court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the Court becomes virtually infructuous as the aggrieved petitioner will have to come again to Court with a fresh writ petition or file an application for fixing time for deciding the matter.

Thus, in view of issuance of only a direction to consider by the Tribunal and the discussion about the meaning of "direction to consider" by Hon'ble the Apex Court available for guidance to the authorities, we are not inclined to grant indulgence by interfering with the impugned judgment.

Hence, this writ petition is dismissed.