

(2012) 02 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6984 of 2012

Viddya Dhar Shukla

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 02 AHC CK 0150

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble V.K. Shukla, J.—Petitioner has rushed to this court questioning the validity of the order dated 18.5.2009 wherein Secretary, Madhyamik Shiksha Parishad, U.P. At Allahabad has proceeded to communicate that petitioner is not at all entitled for grant of Selection Grade and Promotional Pay Scale, as his work and conduct has not been found to be satisfactory, during the relevant period.

2. Record in question reflects that petitioner had been charge sheeted in criminal case and departmental proceedings have also been undertaken against him. Chief Judicial Magistrate, Allahabad on 1.6.1994 passed order of acquittal and thereafter, disciplinary authority proceeded to pass order on 4.12.2009 giving serious warning to the petitioner not to repeat such action. Item no.4 of the said order clearly mentions that conduct of the petitioner was not at all befitting the conduct of government servant and, said entry was directed to be maintained in confidential record. Item No. 6 proceeded to mention that other benefit would be admissible as per the same. The other benefits have been made admissible except for selection grade and promotional pay scale and petitioner has rushed to this court by preferring Civil Misc. Writ Petition No. 76756 of 2005 and this court proceeded to pass following, which is being quoted below:-

Heard learned counsel for the parties.

Vidyadhar Shukla, the petitioner , can Assistant Clerk working in the U.P. Board

of High School and Intermediate, Allahabad has again approached this court by filing this writ petition in the same series of litigation claiming certain service benefits admissible to him. Criminal as well as Departmental enquiries were initiated against the petitioner. In the criminal trial, the petitioner was acquitted giving benefit of doubt by the competent court vide judgment dated 1.6.1994. During certain period, that is, from 27.12.1977 to 28.7.1981, the petitioner has remained absent from duty. Further, on submitting representations and approaching this Court, this issues was dealt with by the aforementioned Board and the petitioner was granted extraordinary leave without pay vide order dated 4.12.2004. As far as departmental enquiry is concerned, the petitioner was given a serious warning and an adverse entry was also recorded in his Character Roll after assessment of his work, conduct and performance from the period 1977 to 1994-95. However, the period of absence from duty (later on regularised by granting leave without pay) was ordered to be counted for the purposes of allowing pension to the petitioner. It was also indicated in the order dated 4.12.2004 that "Sewa Sambandhi Anumanya Sabhi Labh Ukt Nirnay Ke Adhin Niyamausar Dai Honge". The order dated 4.12.2004 has been passed in furtherance of a judgment rendered by this Court on 16.7.2004 while disposing of the Writ Petition No. 18773 of 2000.

The petitioner has filed this writ petition seeking relief for allowing him promotional grade from the year 1987 and the Selection Grade from the year 1992. The main thrust of the submission of the learned counsel for the petitioner during the course of the argument is that criminal trial and departmental enquiry both have come to an end. Criminal trial has resulted in acquittal and the departmental enquiry has also concluded by awarding an adverse entry and issuance of a warning to the petitioner. The Board has overlooked these work reliefs which were sought by the petitioner, that is, Promotional Grade and the Selection grade with effect from the aforementioned years. Since in Clause (6), the Secretary of the U.P. Madhyamik Shiksha Parishad, Allahabad has already indicated that the other benefits may be admissible to the petitioner in the light of the decision taken on 4.12.2004, it would be appropriate that the matter may be reconsidered as far as grant of promotional grade and Selection Grade to the petitioner is concerned.

Accordingly, the writ petition is disposed of finally with a direction to the Secretary, U.P. Board of High School and Intermediate, Allahabad to reconsider the matter of the petitioner in respect of grant of Promotional Grade and Selection Grade as claimed by the petitioner from the year 1982 to 1992 and take an appropriate decision in accordance with law by passing a reasoned and speaking order within three months from the date of presentation of a certified copy of this order after taking into consideration judgement and order passed by the Court as well as the order dated 4.12.2004 passed by the Board.

3. Pursuant to the said order in question, claim of the petitioner has been considered and it has been found that as his work and conduct has not been

found to be satisfactory, as such he is not entitled for Selection Grade and Promotional pay scale. Opinion formed cannot be said to be incorrect opinion for the simple reason that at point of time when the punishment order has been passed, petitioner has given warning not to repeat such activity and further precise mention was that his work and conduct was not at all befitting conduct of government servant and same forms part of the Character Roll of the petitioner. Once such was the factual situation in respect of the petitioner wherein petitioner's record has not at all been found to be satisfactory, then In view of this, refusal to accord selection grade and promotional pay scale suffers from no infirmity whatsoever as pre requisite terms and conditions for getting said benefit is satisfactory service, which admittedly is lacking and missing in the fact of the case.

Consequently, present writ petition is dismissed.