

Dr. Ramesh Chand Srivastava vs State Of U.P.Thru Addl.Chief ... on 1 May, 2025

Author: Jaspreet Singh

Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:25001-DB

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 165 of 2021

Appellant :- Dr. Ramesh Chand Srivastava

Respondent :- State of U.P. thru Addl. Chief Secretary, Medical Health and Family Welfare

Counsel for Appellant :- Virendra Mishra, Shradha Mishra

Counsel for Respondent :- Gopal Kumar Srivastava (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per : Arun Bhansali, CJ)

1. This appeal is directed against order dated 09.02.2021 passed in Service Single No. 3784 of 2021, whereby the writ petition filed the appellant against order dated 12.11.2020 passed by the respondents has been dismissed.

2. The matter has a chequered history. The appellant, while posted and working as District Malaria Officer, Shahjahanpur, was suspended on 21.10.1983 and a charge sheet was issued to him, to which reply was filed and enquiry was held. The Enquiry Officer submitted his report dated 28.08.1984 exonerating the appellant from the charges. The suspension of the appellant was revoked on 16.11.1984. Whereafter a show cause notice dated 20.12.1984 was issued to the appellant as to why 1/4th salary of the appellant for the period of suspension be not deducted, to which a reply was filed by the appellant on 22.01.1987. An order was passed indicating that a decision has been taken to pay 3/4th of the salary and emoluments to the appellant for the period of suspension and besides the above, it was ordered that two annual grade increments are stopped, the appellant is deprived of promotion for a period of five years and adverse entry be indicated in his Service Book.

3. Feeling aggrieved of the order dated 22.01.1987, the appellant filed Service Single No. 5051 of 1996, which came to be allowed on 25.02.2013, whereby the order of punishment was set aside with all consequential benefits, with liberty to the respondents to pass a fresh order in terms of the show cause notice dated 20.12.1984.

4. When the order was not complied with, the appellant filed contempt petition, wherein an order dated 07.12.2013 was produced indicating the decision of the State, whereby the notice dated 20.12.1984 and order dated 22.01.1987 were cancelled. Whereafter by order dated 13.11.2014, the appellant was given notional promotion w.e.f. 01.01.1986 and accordingly his salary was fixed.

5. Dissatisfied with the order dated 13.11.2014, whereby only notional promotion was granted, the appellant made representation for grant of monetary benefits pursuant to the High Court order dated 25.02.2013. However, when the representation was not decided, Service Single No. 24861 of 2019 was filed, whereby the petition came to be disposed of requiring the respondents to decide the representation made by the appellant. After repeated reminders, the same came to be decided by order dated 12.11.2020 wherein the representation seeking monetary benefits was rejected. Feeling aggrieved, the present writ petition was filed.

6. Learned Single Judge, by the order impugned, came to the conclusion that the appellant was given notional promotion after retirement, he never worked on the promoted post of Joint Director and, therefore, his contention that though he was willing to work, he could not work because notional promotion was given to him had no substance, finding no legal foundation and relying on judgements in Pularu Ramkrishnaiah and others Vs. Union of India and another : (1989) 2 SCC 541 and Virender Kumar, General Manager Northern Railways Vs. Avinash Chandra Chadha and others : (1990) 3 SCC 472, dismissed the writ petition.

7. Learned counsel for the appellant made submissions that the respondents were not justified in according notional promotion to the appellant from 01.01.1986 inasmuch as the same was denied for no fault of the appellant.

8. Submissions have been made that once the punishment imposed on the appellant came to be quashed by this Court and directions were given to accord all consequential benefits and even the liberty which was granted, was not availed by the respondents and the entire order imposing the

punishment was set aside, there was, thereafter, no occasion for the respondents to deny the actual benefits to the appellant.

9. Further submissions have been made that recommendation of appellant's promotion w.e.f. 01.01.1986 was placed in a sealed cover on account of pendency of the disciplinary proceedings and once the appellant was exonerated / the punishment was quashed, he was entitled to the promotion with all consequential benefits and grant of notional promotion only without any justification, cannot be sustained. Further submissions have been made that the reliance placed by learned Single Judge on judgements in the case of Pularu Ramkrishnaiah (supra) and Virender Kumar (supra), are not applicable to the facts of the present case and in fact, the same have been distinguished in State of Kerala and others Vs. E.K. Bhaskaran Pillai : (2007) 6 SCC 524 and, therefore, the order impugned as well as the judgement of learned Single Judge deserve to be set aside and petition deserves to be allowed. Reliance was further placed on Smt. Rajmati Singh Vs. State of U.P. and others : 2017 (35) L.C.D. 1936 and State of U.P. Vs. Dayanand Chakrawarty & others : (2013) 7 SCC 595.

10. Learned counsel for the respondents supported the order impugned. Submissions have been made that the appellant had retired long back on 30.09.2004 and the promotion has been accorded to him after retirement and, therefore, there was no question of his having been deprived of working on the promoted post and as such, the grant of notional promotion, cannot be faulted. Submissions have been made that the principle of 'no work no pay' is well established, as has been noticed by learned Single Judge and on that count, the appeal deserves dismissal.

11. We have considered the submissions made by counsel for the parties and have perused the material available on record.

12. It is apparent from the record that the appellant was entitled to be promoted on the post of Joint Director w.e.f. 01.01.1986, however, on account of the show cause notice issued to the appellant pursuant to the enquiry held against him, the recommendation was placed in a sealed cover. After protracted proceedings, wherein by order dated 22.01.1987, the appellant was inflicted with three punishments including postponement of his promotion for five years, against which the writ petition came to be allowed on 25.02.2013 whereby the order dated 22.01.1987 was quashed with all consequential benefits. Pursuant to the further directions given in the order dated 25.02.2013, on 07.12.2013 the entire order dated 22.01.1987 was cancelled. Once the order dated 22.01.1987 was cancelled on 07.12.2013, the appellant was under no disability as on 01.01.1986 in getting promoted on the post of Joint Director. However, by order dated 13.11.2014, finding him eligible for promotion w.e.f. 01.01.1986, though the order granting promotion was passed alongwith fixing his salary as on 01.01.1986 onwards on the promotional post, it was directed that the promotion w.e.f. 01.01.1986 would be notional only. No reason has been recorded in the order impugned dated 13.11.2014 as to why only notional promotion was accorded. When the appellant challenged the same by filing representation and the same was not decided, under directions of the Court, the representation came to be decided by order dated 12.11.2020 relying on the principle of 'no work no pay' which plea has been accepted by learned Single Judge.

13. It would be seen that the appellant, though eligible and entitled for promotion w.e.f. 01.01.1986, which fact is undisputed, as notional promotion from the said date has been accorded to him by the respondents, on account of the punishment imposed, the same was denied to him, which punishment came to be quashed by this Court with all consequential benefits. Once directions were granted to provide all consequential benefits by this Court, apparently it was not open for the respondents to thereafter grant only notional promotion and that also, without recording any reason. The principle of 'no work no pay' sought to be deployed by the respondents for granting the notional promotion, cannot be countenanced in the present circumstances wherein the basis for denying the promotion at the relevant time stands quashed by this Court.

14. Hon'ble Supreme Court in the case of E.K. Bhaskaran Pillai (supra), has in a case of similar nature, wherein the plea raised was that grant of retrospective benefit on promotional post cannot be given to incumbent while he has not worked on the said post, laid down that when the Administration has wrongly denied the due to the employee, then in that case, he should be given full benefits, including monetary benefits subject to there being no change in law or some other supervening factors and that the principle of 'no work no pay' cannot be accepted as a rule of thumb. The judgements relied on by the learned Single Judge were specifically noticed in the said judgement.

15. In view of the above circumstances, as noticed in the present case, the denial of monetary benefits to the appellant and granting only notional promotion w.e.f. 01.01.1986, cannot be sustained.

16. Consequently, the appeal is allowed. The order dated 12.11.2020 passed by the respondents rejecting the representation of the appellant and the judgement of the learned Single Judge are quashed and set aside. The order dated 13.11.2014 passed by the respondents is modified to the extent that the appellant would be entitled to monetary benefits in respect of his promotion w.e.f. 01.01.1986, instead of notional promotion, as granted. The appellant would be entitled to all the consequential benefits on account of the modification of the order dated 13.11.2014. Needful be done by the respondents within a period of two months from the date of this order.

16. No order as to costs.

Order Date :- 01.05.2025

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(Jaspreet Singh, J) (Arun Bhansali, CJ)

