

Umakant Dubey vs State Of U.P. Thru Secy. Higher ... on 28 February, 2025

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Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:28567

Court No. - 10

Case :- WRIT - A No. - 43568 of 2001

Petitioner :- Umakant Dubey

Respondent :- State Of U.P. Thru Secy. Higher Education Lucknow And Others

Counsel for Petitioner :- Vashishtha Tiwari,A.K. Srivastava,B. Chaturvedi,Kunal Ravi Sin

Counsel for Respondent :- C.S.C.,Anil Tiwari,Rizwan Ali Akhter,Sanjiv Singh,V.K. Upadhy

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Rahul Jain, learned counsel for petitioner, learned Standing Counsel and Sri S.P. Rai, learned counsel for respondent-University.

2. Petitioner has set up a case that University Grants Commission has proposed to prepare students to advance social work in University such as respondent-University Mahatma Gandhi Kashi Vidyapeeth to establish a department of Adult Continuing Education and Extension under faculty of social work and accordingly, a proposal was sent to University Grants Commission for such establishment.

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5. Petitioner being aggrieved by aforesaid impugned order that not only his post was down-graded from Accounts Clerk to Junior Accounts Clerk but his pay-scale was also reduced, has filed this writ petition in the year 2001 and an interim order was granted. Later on, on 15.11.2019, this writ petition was disposed of with following observations :-

2. Learned Standing Counsel appearing on behalf of respondent-1 has no objection for the said direction.

3. In view thereof, I do not interfere with impugned order but dispose of the writ petition clarifying that respondent-competent authority shall examine matter of retiral benefits of petitioner and if the same have not been paid only because of pendency of this writ petition, it will not further be withheld and shall be finalized and paid to the petitioner at the earliest and, in any case, within two months from the date of production of certified copy of this order.?
6. At this stage, it would be relevant to refer that this writ petition was filed in the year 2001 and petitioner has disclosed his age to be 44 years, therefore, he must have attained age of superannuation in the year 2016 or 2017.
7. Aforesaid order was thereafter challenged by petitioner in Special Appeal No. 1263 of 2020 which was disposed of that not only impugned order was set aside but writ petition was restored.
8. In pursuance of above order, matter is now being heard and decided finally today.
9. Some recent amendments have already been allowed whereby certain grounds and prayers so far as pension etc. is concerned have been added.
10. Learned counsel for petitioner vehemently refers order of appointment of the petitioner and its approval, that he was appointed on post of Accounts Clerk and was paid salary in higher grade. There is no allegation that any fraud was played or any irregularity was made in process of appointment. The University has approved the appointment also.
11. Learned counsel by referring documents annexed along with this writ petition further submits that University has sought directions that petitioner may be remained continued on said post in higher grade, however, dispute was raised by the State only when post extended for many years i.e. at least for 16 to 17 years and burden of payment shifted on State Exchequer.
12. Learned counsel by referring rejoinder affidavit further submits that in similar circumstances, persons appointed in another colleges are working on post of Accounts Clerk and are getting salary in higher grade.
13. Learned counsel appearing for University has initially supported the claim of petitioner but later on has referred paragraph 8 of counter affidavit which is quoted below that post of Accounts Clerk was not created and instead of it, post of Junior Accounts Clerk was created :-

?8. That after obtaining all the information from University the State Government vide order dated 6.9.2000 took over the liability of the University Grants Commission by sanctioning certain post for the department in question. From bare perusal of this Government Order it is manifestly clear that the post of Junior Accounts Clerk was created in place of post of Accounts clerk on which petitioner was working. After this sanction, the petitioner is getting Pay Scale of Rs. 3050-4590.?

14. Learned Standing Counsel has referred paragraph 8 to 10 of counter affidavit filed by State which are mentioned below :-

8. That in the process of creation of posts equivalent to the post as was mentioned in the U.G.C. scheme it was found that the post of Accounts Clerk does not exist in any of the State University but instead post of Junior Accounts Clerk was sanctioned and created. That in the circumstances instead of the post of Accounts Clerk as recommended in the U.G.C. Scheme, State Government vide order dated 06.09.2000 created post of Junior Accounts Clerk. The photocopy of U.G.C. letter dated 7.3.1984 is being marked and annexed as Annexure No. 2 to this counter affidavit.

9. That the petitioner was appointed as Accounts Clerk in the pay scale of Rs. 470-735 by the Mahatma Gandhi Kashi Vidyapeeth, Varanasi before the creation of the post of Junior Accounts Clerk even though there existed no post of Accounts Clerk at the University sanctioned by the State Government.

10. That the appointment of petitioner on the post of Accounts Clerk under the scheme without there being sanctioned post of Accounts Clerk cannot be considered to be valid. That the basis on which petitioner was appointed on the post of Accounts Clerk even though there being no sanctioned post can aptly be replied by the University.?

15. Heard learned counsel for parties and perused the record.

16. As referred above, it is not disputed that petitioner was appointed under a due process on a post of Accounts Clerk and a salary was fixed in higher grade, however, documents annexed along with this writ petition indicate that appointment was temporary and was extended year to year, however, it remained continued for many years, therefore, it could be considered to be regular.

17. It is also not disputed that for substantial period i.e. 16 to 17 years, petitioner got benefit of pay-scale of Accounts Clerk and there is no order of recovery either, therefore, at that stage, there is no financial prejudice to petitioner.

18. It is well settled that in order to appoint any person on a particular post, said post has to be created in terms of the provisions and with due approval. In present case, admittedly at later stage, salary has to be borne by State Exchequer. The post of Accounts Clerk was required to be sanctioned by State Government, however, in entire pleadings, no document available that such post was ever created by State Government.

19. In aforesaid circumstances, Court is of considered opinion that petitioner has no unfettered right to continue on a post on which he was erroneously appointed and to claim higher salary. The petitioner's appointment was protected so far as that instead of being appointed on post of Accounts Clerk, he could continue on post of Junior Accounts Clerk, a post duly created in a lower pay grade, however, it is admitted case that all other benefits including promotional benefit has been

granted to petitioner and he has attained age of superannuation also.

20. Last argument of learned counsel for petitioner that in similar circumstances, in another University, persons are working on post of Accounts Clerk and are getting salary of higher grade, it is well settled that benefit of negative parity cannot be granted and for that Court takes note of a judgment of Supreme Court in R. Muthukumar vs. Chairman and Managing Director, TANGEDCO and others, 2022 SCC Online SC 151.

21. In aforesaid circumstances, since post of Accounts Clerk was never created and petitioner was rightly directed to continue as Junior Accounts Clerk and accordingly paid salary also, therefore, in absence of any material that post of Accounts Clerk was ever created, relief sought in present writ petition cannot be granted, hence, rejected.

22. However, this writ petition is disposed of with an observation that pension, if still not determined in terms of post on which petitioner was working and got retired, same shall be determined within a short period. In case any legal impediment arises, the concerned State respondent will communicate about it to petitioner.

Order Date :- 28.2.2025 Sinha_N.