

Balkaran vs Union Of India And Others on 28 February, 2025

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

2025:AHC:28046

Reserved - 06.02.2025

Delivered - 28.02.2025

Court No. - 10

Case :- WRIT - A No. - 26736 of 2011

Petitioner :- Balkaran

Respondent :- Union Of India And Others

Counsel for Petitioner :- Ashok Khare,Siddharth Khare

Counsel for Respondent :- Ajay Singh,Hem Pratap Singh,S.C.

Hon'ble Saurabh Shyam Shamshery,J.

1. This case was filed in the year 2011, however, correct facts were neither brought on record by the petitioners nor by the State respondents despite exchange of pleadings till a supplementary counter affidavit was filed by the State respondents on 10th September 2018 in pursuance of an order passed by this Court on 9th August 2018 and therefore, Court is taking facts from the said supplementary counter affidavit which has not been replied by the petitioners till date i.e. even after more than 6 years.

2. This is second round of litigation. In the first round of litigation, the petitioners, working on post of Maali, have approached this Court by way of filing a Writ A No. 22197/2008 that they were not granted benefit of one time upward movement in pay scale in terms of relevant notification after 5, 8 and 10 years. More specific that they were not granted benefit of 5 years and was directly granted benefit of 8 years, therefore, they were denied one upward pay scale which ought to have been granted after 5 years and consequently they received lesser pay scale after 8 years and since their claim was rejected by the Registrar of respondent University by order dated 7/10th December, 2007, above referred writ petition was filed. Said writ petition was dismissed as withdrawn by the order dated 2nd December 2010 with liberty to file a suitable representation to the Vice Chancellor. The order is quoted below :-

"Sri Ajay Singh, learned counsel appearing for Banaras Hindu University, raised a preliminary objection that the petitioner has a statutory alternative remedy of approaching the Vice Chancellor of the University under the Statute, since the order impugned in the writ petition has been passed by Assistant Registrar (Admn.-II). Sri L.B. Lal, learned counsel appearing for petitioner, without disputing the above submission, stated that he may be permitted to withdraw the writ petition so as to avail aforesaid alternative remedy.

The writ petition is, accordingly, dismissed as withdrawn with liberty to petitioner to make suitable representation to the Vice Chancellor. It is provided that in case, such a representation is made within thirty days from today, Vice Chancellor shall consider the same and pass a reasoned order within two months thereafter.

With the aforesaid observation, the writ petition is dismissed as withdrawn."

3. In pursuance of above order, the petitioner have filed a representation which were decided and their claim was rejected by impugned order dated 26/28th February 2011 assigning reasons and for reference, said order is mentioned below in its entirety :-

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5. In above circumstances, further a fact become relevant that in terms of notification dated 23rd April 1996, petitioners were eligible for higher pay scale of Rs. 1200-2040

on completion of 8 years in the pay scale of 825-1200 and Rs. 950-1400, as per the scheme of affording two pay scales and for that, reference be taken of a notification dated 15th May 1997 and at this stage, an option was sought from the petitioners and all the petitioners except petitioner-2 filled up their options which is supported by the photocopies annexed along with supplementary counter affidavit dated 5th December 2018 whereby they elected for upward pay scale of Rs. 1200-2040, however, their option form were received in the office after cut off date i.e. 2nd May 1997, when subsequently, scheme of one time upward movement in pay scale was stopped.

6. Aforesaid fact of filling up belated option was also not disclosed in the writ petition and in the rejoinder affidavit, it was simply denied, therefore, petitioners are guilty that they have not come up before this Court with clean hands.

7. In the above background, argument of Sri Ashok Khare, learned Senior Advocate appearing for petitioners that instead of granting the benefit of upward Movement in pay scale after 5 years, petitioners were granted benefit directly after 8 years and as such, petitioners were denied financial benefit has no force since above referred facts are glaring against these submissions that not only petitioners have already been granted benefit even before said scheme was in force in the year 1994, however later on, it was discontinued in the year 1997 as well as that they have submitted options but undisputedly, these were received in office after cut off date which has been specifically mentioned in the impugned order and has not been dealt with either in writ petition or during oral arguments.

8. In above circumstances, Court is of considered opinion that reasons assigned in the impugned order are based on the documents and has been legally passed on basis of various notifications issued and annexed along with this case. All arguments of learned Senior Advocate have no force since he is not able to contradict facts of present case which were not dealt with in the writ petition or in rejoinder affidavit whereas they are being supported by documents annexed in the counter affidavit as well as in the supplementary counter affidavit filed in the year 2018 which has not been contradicted by filing a rejoinder affidavit.

9. In above circumstances, since reasons assigned in the impugned order are supported by the facts and has legal basis also, therefore, there is no ground to interfere with the impugned order.

10. Accordingly, petition lacks merit, hence, dismissed.

Order Date :- February 28, 2025 Sinha_N.

[Saurabh Shyam Shamsbery, J.]