

Sanjay Jauhri vs Dy. Director Animal Husbandary ... on 28 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:28464

Court No. - 49

Reserved

Case :- WRIT - A No. - 31752 of 1996

Petitioner :- Sanjay Jauhri

Respondent :- Dy. Director, Animal Husbandry, Bareilly

Counsel for Petitioner :- A.N. Singh, Santosh Kumar Tripathi

Hon'ble J.J. Munir, J.

1. This writ petition is directed against an order passed by the Deputy Director, Animal Husbandry, Bareilly dated 19.09.1996, to the extent that it reverts the petitioner from the post of Assistant Accountant, describing him as ad hoc, to his substantive post of a Junior Clerk.

2. The petitioner was appointed as a Junior Clerk in the office of the Deputy Director, Animal Husbandry on 01.06.1990. He possessed a degree of Bachelor of Commerce. He was asked by the Deputy Director to acquire training in Accounts. The petitioner says that he secured the necessary training in Accounts and was given a certificate dated 01.05.1993 by the Finance and Accounts Training Institute, Lucknow. He has annexed a testimonial to the above effect to the writ petition. The petitioner pleads that being the only eligible person in the Accounts Department, he was given ad hoc promotion on the post of Assistant Accountant in the office of the Deputy Director, Animal Husbandry, on 23.11.1992. Vide order dated 24.12.1992, the petitioner was given a permanent posting on the promotion post of an Assistant Accountant. In consequence, he was given the pay-scale of Rs.1200-2040/-, to wit, the scale attached to the promotion post. The petitioner asserts that he performed his duties without cause of complaint and with remarkable efficiency. All of a

sudden, the petitioner was informed that he is being reverted to his substantive post and another Clerk, Kallu Mal Lodhi, is being promoted to the post of an Assistant Accountant.

3. The case of the petitioner further is that Kallu Mal Lodhi does not possess the requisite qualifications to function in the Accounts Department and also he is junior to the petitioner. The petitioner asserted that he was duly promoted without objection, after securing the required training in Accounts from the Government Training Institute. The cause, the petitioner says, is that he is now being reverted to his substantive post without any opportunity of hearing. He has pleaded violation of the principles of natural justice. The categorical case of the petitioner is that he was confirmed and regularized on the promotion post of an Assistant Accountant and fixed in the pay-scale of Rs.1200-2040/- attached to the promotion post. He asserts that the petitioner cannot be arbitrarily reverted to his substantive post, depriving him of his rights without following a procedure, known to law. It was, more or less, on these grounds that the writ petition was instituted.

4. On 10.10.1996, this Court, while issuing a notice of motion, granted an order, directing parties to maintain status quo as on that day. In compliance with the aforesaid order, the petitioner continued on the post of Assistant Accountant. After 10.10.1996, when the interim order was passed, the writ petition came up for the first time before the Court on 16.01.2013, when it was treated as having become infructuous with lapse of time and dismissed as such. The petitioner says that he did not know of this order and he filed an application to recall the order, bearing C.M. Recall/ Restoration Application No.2 of 2018 on 01.10.2018. It was filed with a delay condonation application as there was a delay of more than five years. The restoration application was allowed vide order dated 03.03.2021 and the order, dismissing the writ petition as infructuous, was recalled. The petition was again dismissed in default on 04.07.2022 and a restoration application was filed on 19.09.2022 along with a delay condonation application. Both the delay condonation and the restoration applications were allowed on 11.11.2022. The writ petition was dismissed for non-prosecution a third time on 10.01.2023 and the restoration application was promptly made, that was allowed by an order dated 24.01.2023. While these proceedings were going on, as it appears, a counter affidavit in answer to the writ petition was not filed for a very long period of time. The first was filed on 16.10.2019 on behalf of the Deputy Director, Animal Husbandry by the Veterinary Officer, Bilsand, District Pilibhit. The petitioner filed a rejoinder dated 22.11.2019 to the said counter affidavit.

5. This Court, while passing orders on 22.08.2023, did not notice the counter affidavit and the rejoinder filed in the year 2019 and directed the parties to exchange affidavits. Accordingly, another counter affidavit on behalf of the sole respondent was filed on 12.10.2023, to which a rejoinder dated 04.12.2023 was filed, apparently in Court. The reason why this Court thought that the parties had not exchanged pleadings on 22.08.2023 was that the affidavits of 2019 were not on record before the Court. These were restored to record through an office report dated 03.09.2024. Apart from these affidavits, another supplementary affidavit was filed on 07.12.2023. When the petition came up on 30.08.2024, parties having exchanged affidavits, this Court admitted the petition to hearing, scheduling it for 04.09.2024. On 04.09.2024, the matter was heard and judgment reserved.

6. Heard Mr. Santosh Kumar Tripathi, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel, appearing on behalf of the State.

7. The stand taken in the counter affidavit, filed way back in the year 2019, is in substance this and no more that the petitioner was appointed a Junior Clerk vide order dated 01.06.1990. He was given ad hoc promotion on the vacant post of Assistant Accountant vide order dated 23.11.1992, but the Deputy Director, Animal Husbandry, has, according to the terms of the Government Order dated 28.02.1987 after division of the clerical posts on the basis of percentage, reverted the petitioner to his original post vide office order dated 19.09.1996. The petitioner was promoted on the post of a Senior Clerk on the basis of his seniority by the same order dated 19.09.1996. The substance of the respondent's case is that the petitioner was never substantively promoted to the post of an Assistant Accountant, but to a Senior Clerk's. His promotion to the post of an Assistant Accountant was ad hoc, to which he had no right.

8. In the rejoinder affidavit dated 22.11.2019, the petitioner has emphasized the position that he was appointed a Junior Clerk and was qualified for appointment to the post of an Assistant Accountant as he held a B.Com. Degree. He was asked to undergo training at the Finance and Accounts Training Institute, U.P. in accordance with the Government Order dated 31.08.1985. The petitioner completed that training between 01.10.1992 to 23.11.1992. It was after the aforesaid training that the petitioner was promoted on the post of Assistant Accountant in the office of the Chief Animal Husbandry Officer, Pilibhit. The Deputy Director, Animal Husbandry, confirmed him on the promotion post and fixed him in the pay-scale of Rs.1200-2040/- vide order dated 24.12.1992, annexed as Annexure No.4 to the writ petition. It is the petitioner's further case in the rejoinder that there are two separate cadres in the Ministerial Staff, to wit, the Accounts Cadre and the Clerical Cadre, both of which comprise of staff of Class-III employees, who possess minimum qualifications of a B.Com. Degree and training in Accounts. Such employees alone are appointed to the position of Accounts Clerk.

9. In the further affidavits, that were filed in the year 2023, the counter affidavit dated 12.10.2023, to be precise, does not depart from the stand that the petitioner was substantively appointed a Junior Clerk and promoted on ad hoc basis as an Assistant Accountant. The only promotion that he earned was that to the post of a Senior Clerk. It is further said that when the Senior Clerk, who was incumbent, was promoted to the post of the Assistant Accountant, the petitioner was reverted to the substantive position and by the same order given his regular promotion as a Senior Clerk. There is a further stand in the counter affidavit dated 12.10.2023 that the petitioner's reversion to his original post was not a measure of punishment, but the result of division of work. The petitioner's rejoinder to this affidavit details the proceedings of the case and the accidents of default orders with their recall. It says more or less that on 30.09.2023, the petitioner has retired, but his retiral benefits are lying withheld on account of pendency of this writ petition. He asserts his rights to receive his retiral benefits. For the rest of the averments that the petitioner has come up with in his relatively contemporary rejoinder, it is the same old stand that he put forth in the earlier rejoinder.

10. A perusal of the supplementary affidavit dated 07.12.2023 would show that an order dated 23.11.2023 was passed, which shows that on restoration of the writ petition, the petitioner's status to

the higher post that he was holding was restored. It is not in dispute that the petitioner has retired pending this petition on 30.09.2023.

11. The question is if the order impugned is bad and the petitioner entitled to be considered an Assistant Accountant at the time he retired from service on 30.09.2023. There is little doubt about the fact that the order impugned was not an order that visits the petitioner with any adverse civil consequences. The appointment orders, upon which the petitioner relies to show that he was promoted to the post of an Assistant Accountant, are by no means orders, substantively promoting the petitioner. The first of these order dated 23.11.1992, the petitioner admits, granted him ad hoc promotion to the post of an Assistant Accountant in the pay-scale of Rs.1200-2040/- in the office of the Chief Veterinary Officer, Pilibhit. The next order dated 24.12.1992, which the petitioner says, has confirmed him on the post of an Assistant Accountant, is by no standards an order of confirmation on the promotion post. For one, it defies all logic as to how a promotee on an ad hoc post could be confirmed in that position within the course of a month. The order dated 24.12.1992 on its own terms also does not say that the petitioner is confirmed on the post of an Assistant Accountant. It only says that for the promotion post of Assistant Accountant, against which the petitioner has been promoted and the pay-scale is Rs.1200-2040/- , would entitle the petitioner to be fixed in the pay-scale of Rs.1200/- w.e.f. 26.11.1992. In substance, the order dated 26.11.1992 is a pay fixation order for the petitioner while he functioned on the promotion post on an ad hoc basis. Neither the order dated 23.11.1992 nor the one dated 24.12.1992 conferred upon the petitioner a status of a permanent promotee to the post of an Assistant Accountant. Upon division of work, as the respondent says, or to be precise, placement of staff against posts to which they were entitled, the petitioner was reverted to his substantive post as the Senior Clerk, who seems to be occupying the post that would serve as the feeding cadre for the post of Assistant Accountant, was promoted to that post. In the meantime, the petitioner too by his seniority became entitled to be promoted as a Senior Clerk. Therefore, by one part of the impugned order dated 19.09.1996, while the petitioner was reverted to his substantive post of a Junior Clerk, with the promotion of Kallu Mal Lodhi, the Senior Clerk to the post of an Assistant Accountant, the petitioner was promoted to the post of a Senior Clerk by the other part of the order dated 19.09.1996 (not impugned). This promotion was according to the petitioner's entitlement in seniority and the post of a Senior Clerk falling vacant upon the promotion of one Parmeshwari Prasad to the post of a Senior Assistant. The edifice of the petitioner's case, that he was substantively promoted to the post of an Assistant Account, is absolutely without basis. The petitioner was never promoted in accordance with Rules against the substantive post of Assistant Accountant nor was it his turn to be promoted way back on 23.11.1992, or for that matter on 24.12.1992. He was just officiating. Since, the petitioner had no right to the promotion post, his reversion to his substantive position would not entitle him to opportunity of hearing. None of the grounds urged in the writ petition, in the considered opinion of this Court, would entitle the petitioner to relief as the petitioner's rights stood way back in time when he instituted this writ petition. However, the petitioner was granted an interim order on 10.10.1996, that entitled him to retain his promotion post. On the strength of the interim order with some hiccups on account of the dismissal of the writ petition in default followed by restoration on more than one occasion, the petitioner was able to retain that status until his superannuation on 30.09.2023. It is generally well settled for a proposition that any right that flows entirely from an interim order, where at the hearing the petitioner is not able to establish a right to substantive relief,

no right can flow or enure to the petitioner's benefit. Notwithstanding the fortuitous long life that the interim order has had, with the dismissal of the writ petition, all benefits flowing from the interim order would evaporate. At this stage to say that the petitioner is entitled to post retiral benefits for the post of an Assistant Accountant that he held by virtue of the interim order is clerally unacceptable. Learned Counsel for the petitioner has placed reliance upon the authority of the Supreme Court in *Nani Gopal Dutta v. Union of India and others*, (2002) 10 SCC 312. The judgment of their Lordships, as it appears from the report, is short and may be quoted for every word of it. It reads:

"1. The appellant before us was an employee in Small Industries Services Institute at Calcutta. He claimed that he is entitled to continue in service until he attained the age of 60 years in terms of Rule 56(b) of the Fundamental Rules, 1922.

2. The Tribunal before whom he made that claim noticed that for becoming a workman in such an establishment he has to establish that he is employed in an industrial or a work-charged establishment. It was accepted that the institute where the appellant is working is not a work-charged establishment. It was not very clear from the material placed before the Tribunal as to whether it amounted to an industrial establishment or not. However, the Tribunal came to the conclusion that there is no material to come to the conclusion that the said establishment is not an industrial establishment. In these circumstances, the view taken by the Tribunal though appears to be correct, the facts in this case are rather glaring.

3. The appellant having continued in employment up to the age of 60 years pursuant to the interim order granted and he having received the full benefits of salary, we do not think it would be appropriate to deny him the benefits of pension arising from enhanced pay for that period of two years either. In special features of this case, we think such a relief should be ordered irrespective of whether the said institute is an industrial establishment or not. The appeal is allowed accordingly."

12. A perusal of the authority of their Lordships in *Nani Gopal Dutta* (supra) would show that the decision was rendered to do complete justice in exercise of their Lordships' jurisdiction under Article 142 of the Constitution. There is no such principle discernible from *Nani Gopal Dutta*, that may entitle the petitioner to claim relief of pension for the post of Assistant Accountant, that he held under interim orders of this Court and to which he was ultimately not found entitled, as far as his cause of action goes. But, this is one part of the controversy, to which a chapter has to be logically added. The writ petition remained pending before this Court for a period as long as almost 29 years. While it is true that the interim order passed in the writ petition would not enure to the petitioner's benefit, the petitioner would have earned by virtue of his seniority either promotion to a higher post or may be a promotion pay-scale or some higher grade on account of the Assured Career Progression. He was acknowledged to have been promoted to the post of a Senior Clerk. The respondents are absolutely silent about the petitioner's entitlement to promotion, promotion pay-scale or Assured Career Progression during these long years of service that he put in as a Senior Clerk. The benefit of that service would have to be determined by the respondents as most certainly

the petitioner would not be permitted to stagnate on the post to which he was promoted by the other part of the impugned order, that is to say, the post of a Senior Clerk.

13. In the circumstances, while this Court declines to quash the impugned order and refuses to issue a mandamus directing that the petitioner be permitted to continue as an Assistant Accountant in terms of the orders dated 23.11.1992 and 24.12.1992, the respondent would certainly be under a command to determine the petitioner's entitlement to any promotion in the course of his long employment as a Senior Clerk, and if no promotion was open or can be given now under the Rules, his entitlement to promotion pay-scale, selection grade or Assured Career Progression, whatever is admissible. The respondent shall also, in the event of an upward revision of the petitioner's emoluments on account of promotion, pay-scale, selection grade etc., revise the petitioner's post retiral benefits, including pension, gratuity etc. The petitioner's post retiral benefits, which are said to be withheld, shall be re-determined and paid to the petitioner within a period of eight weeks of communication of this judgment.

14. This petition is disposed of in terms of the aforesaid orders.

15. There shall be no order as to costs.

16. Let a copy of this judgment be communicated to the Deputy Director, Animal Husbandry, Bareilly through the learned Civil Judge (Sr. Div.), Bareilly by the Registrar (Compliance).

Order Date :- 28.2.2025 Anoop (J.J. Munir) Judge