

**Court No. - 4**

**Case :-** WRIT - A No. - 50923 of 2008

**Petitioner :-** Anwar Ahmad Siddqui

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** Anoop Kumar Srivastava, Ajeet Singh, Jitendra Rana, P.C. Srivastava

**Counsel for Respondent :-** C.S.C., B. Dayal, Kuldeep Singh Chauhan

**Hon'ble Ajit Kumar, J.**

1. Heard Shri Jitendra Rana, learned counsel for the petitioner and Shri Ramesh Kumar Singh, learned Advocate holding brief of Shri B. Dayal, learned counsel for respondents No. 2 and 3.

2. Petitioner before this Court who had been working as accounts clerk with the concerned local body has assailed the order passed by the vice-chariman of the Meerut Development Authority dated 12.09.2008 whereby the pay fixation and the promotional pay scale awarded to the petitioner taking him to have been regularized with effect from 27.09.1991 has been cancelled.

3. The submission advanced on behalf of the petitioner is that once the petitioner was given regularization with effect from 27.09.1991 when other persons junior to him were regularized as accounts clerk by the development authority, the natural consequence was to

give him pay protection in terms of promotional pay scale and incidental benefits as per Acquired Career Progression Scheme. He submits that since regularization order was passed by the development authority and approved by the then secretary of the development authority and the vice president also clearly provided that the petitioner would not be given any salary benefit, it was clear that the petitioner would not be paid any arrears of salary for the period 27.09.1991 to 29.01.2001, however, he further submits, the selection made and the promotional avenues that were conferred upon the petitioner, were only made admissible upon his attaining requisite period of service i.e. 10 years and 14 years and these service time period has naturally fallen after the petitioner was given his first posting on 29.01.2001. According to him, therefore, period running from 27.09.1991 and 29.01.2001 was certainly to be reckoned with as there was no such rider in the order and the resolution adopted by the development authority regarding benefits to be conferred upon him by way of seniority for his retrospective regularization. Thus, according to learned counsel all the pecuniary benefits of time scale selection, etc. stood conferred upon him taking into consideration his service period between 27.09.1991 and 29.01.2001 and there was no fallible error on part of the development authority in doing so which may have warranted interference by the vice chairman under the impugned

order and yet he has been penalized. It is also argued that the order impugned definitely had adverse consequences and, therefore, the petitioner ought to have been served upon with prior notice much less a show cause notice, at least, to offer his explanation before passing any such order.

4. Learned counsel for the contesting respondent has sought to defend the order impugned herein this writ petition on the ground that since there no pecuniary benefit was to be given under the earlier order of regularization dated 23.02.2007 giving seniority to the petitioner wef 27.09.1991, the petitioner was definitely not entitled to any benefit in terms of time scale pay, etc. However, in the entire counter affidavit not a single averment has come up that the petitioner was conferred with any pecuniary benefit as such towards the arrears or increment between the period 27.09.1991 to 29.01.2001. All that he has argued is that even the time scale and other benefits could not have been conferred upon taking the service in question into account. Learned counsel for the local body has, admitted this fact that there is no such averment in the counter affidavit that the order did not confer upon the petitioner with regularization w.e.f 27.09.1991, had never been recalled at any point of time.

5. Having heard learned counsel for the respective parties and

having perused the records particularly the order dated 16.05.2008 as approved by the vice Chairman, I find that petitioner though was given effective appointment on 29.01.2001 upon retirement of one Ravindra Kumar the then accounts clerk but the development authority detected a serious error in not giving regularization to the petitioner on 14.02.1991 when instead of four persons in the general category, two persons in the SC category and one person in the OBC category, five persons were appointed in the general category leaving the OBC quota completely unfilled and diverting the OBC category posts to the general category. It is an admission in the resolution adopted by the development authority itself that this was a serious error that had occurred and petitioner deserved regularization in the year 1991 itself and this was how by means of the said resolution the error was sought to be rectified at later point of time.

6. From the perusal of the resolution it clearly transpires that no pecuniary benefits were liable to be given to the petitioner only for the reason that since regularization was being given effect to retrospectively, as well as the seniority. However, the resolution does not say that the period for which the petitioner is given regularization i.e. between 27.09.1991 and 29.01.2001, would not be counted for future benefits, time scale, selection pay, ACP

benefits, etc. The words "वेतन आदि का लाभ नहीं देय होगा" salary benefits, etc. would not be admissible, would be taken to mean only that no arrears of salary shall be given to the petitioner for simple reason that he was being regularized with retrospective effect. This obviously would be the correct interpretation of resolution for the simple reason that the petitioner did not work as accounts clerk during the relevant period. The settled legal principle 'no work no pay' would certainly be attracted. But while the resolution gives retrospective regularization and protects seniority of the petitioner, as such it would definitely mean that this period could be accountable for the purposes of future pay scale and other service benefits like ACP benefits, time scale benefits and selection grade benefits. In the impugned order which has been passed, there is no mention, nor I find to be any recital to this effect that petitioner was given any pecuniary benefit and thereby arrears of salary or arrears otherwise of dues for the period running between 27.09.1991 till 29.01.2001. All these fixation of selection grade, etc. has been done only after 29.01.2001 when the petitioner got substantive appointment as accounts clerk and started working as such.

7. Even otherwise a retrospective regularization if restores seniority, then fixation of salary/ pay scale of an employee cannot

be lower than that of other employee/ employees who is/ are junior to him. This if is permitted will lead to arbitrariness and discrimination and so should be hit by Article 14 of the Constitution petitioner is to be protected considering entire period of service, may be arrears of salary for the period are not paid .

8. In view of the above, therefore, the resolution adopted by the development authority and the approval thereof by the vice chairman dated 12.09.2008 impugned herein this writ petition cannot be sustained.

9. It is stated at the Bar that the petitioner has already attained the age of superannuation. Accordingly, resolution of the board and and the approval thereof by the Vice Chairman dated 12.09.2008 annexure No.12 to the writ petition is hereby quashed. Whatever the dues have remained withheld only on account of impugned order which has been set aside today, shall be paid to the petitioner forthwith within a period of three months from the date of production of certified copy of this order. If the petitioner is receiving pension, the same shall be revised and fixed, accordingly. It is made clear that if the arrears as directed herein above, are not paid within the stipulated period of time as prescribed above, petitioner shall be entitled to interest at the rate of 12% from the date of expiry of three months till actual payment

is made.

10. This petition thus, stands allowed accordingly.

**Order Date :- 5.7.2024**

Nadeem