

A.F.R.

Court No. - 59

Case :- WRIT - A No. - 56365 of 2015

Petitioner :- Umesh Narain Pandey

Respondent :- State Of U.P. & 2 Others

Counsel for Petitioner :- R.B. Tripathi,R.R. Pandey

Counsel for Respondent :- C.S.C.,Satish Chaturvedi

Hon'ble Vivek Kumar Birla,J.

Heard learned counsel for the petitioner as well as learned Standing Counsel appearing for the respondent no. 1 and Sri Pankaj Srivastava, learned counsel holding brief of Sri Satish Chaturvedi, learned counsel for the respondents no. 2 and 3-Gorakhpur Development Authority and have perused the record.

By means of the present petition, the petitioner is praying that a mandamus be issued to the respondent authority to comply with the decision of the Claims Tribunal dated 21.8.1995.

The petitioner was appointed as Peon under the orders of the Vice President, Gorakhpur Development Authority through its letter dated 31.1.1978. On the allegations that the petitioner was absent from duty since 1.1.1981, his services were terminated by order simplicitor dated 13.3.1981. The said order was challenged by the petitioner before the State Public Service Tribunal by filing a Claim Petition No. 772/II/85, which was allowed by judgement and order dated 21.8.95 setting aside the order of termination dated 13.3.1981 and it was further directed that the petitioner shall be deemed to be in continuous service with all the consequential benefits of pay and allowance etc. The arrears of pay should be paid to him within six months from the date of production of the judgement. Against the aforesaid judgement, the Development filed a writ petition being Writ Petition No. 27350 of 1996 in which interim order dated 23.8.1995 was granted by this Court. Subsequently the said petition was dismissed for non-prosecution on 10.7.2002 and it was also provided that the interim order stands vacated.

It is admitted by the learned counsel for the parties that a time barred restoration application no. 128928 of 2002 is pending till date. The

submission is that although there was no interim order operating as the same stood vacated in the year 2002 itself but the authority is not permitting the petitioner to join the services and is not paying arrears of salary to him. In effect, the petitioner is seeking execution of the decision of the Claims Tribunal dated 21.8.1995.

Admittedly, the petitioner has remedy before the Public Service Tribunal under Section 5 (7) of the U.P. Public Services (Tribunals) Act, 1976, which provides for execution of reference, which stands disposed of finally. This sub-Section was substituted by Act No. 7 of 1992. Section 5 provides for powers and procedure of the Tribunal. For ready reference, Section 5(7) is quoted as under:

"5. Powers and procedure of the Tribunal.-- (a)

.....

.....

(7) The order of the Tribunal finally disposing of a reference shall be executed in the same manner in which any final order of the State Government or other authority or officer or other person competent to pass such order under the relevant service rules as to redressal of grievances in any appeal preferred or representation made by the claimant in connection with any matter relating to his employment to which the reference would have been executed.

....."

In such view of the matter, the present petition seeking direction to the respondent authorities to comply with the judgement of the Claims Tribunal dated 21.8.1995 is not maintainable.

Apart from that, Section 5-A of the Act of 1976 also provides for power to punish for contempt. This Section was inserted by Act No. 7 of 1992.

It may also be noticed that the judgement of the Tribunal is dated 21.8.1995 and writ petition, wherein interim order dated 23.8.1995 was passed, was dismissed for non-prosecution on 10.7.2002. Thus the petitioner is approaching even this Court after more than 13 years, in such view of the matter also, no good ground warranting exercise of powers under Article 226 of the Constitution of India has been made out.

This writ petition is accordingly dismissed. No order as to costs.

Order Date :- 5.10.2015

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