

Devendra Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-09-1999

Reported in : (2000)1UPLBEC412

Judge : A.K. Yog, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 36 of 1998

Appellant : Devendra Singh

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.C. Jhingan, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Yog, J.

1. An amendment application has been filed belatedly after this Court detected that earlier Writ Petition No. 42007 of 1996 with identical facts and similar relief was filed as already noted by this Court in its order dated 14-10-99.

2. In the interest of justice, I allow this application. The proposed amended reliefs shall be read in the writ petition (which may be incorporated by the office in due course). I do not propose to adjourn the case on this score.

3. Amendment of reliefs, as prayed in the amendment application No. 88560 of 1999, will have no consequence otherwise on the final result of the case.

4. In the present writ petition (dated 16-12-97) the petitioner has sought two reliefs (A) Regularisation (P) Payment on the basis of minimum of the regular pay scale prescribed for similar regular employee (identically situated as the petitioner) while working as daily wager in the Deptt. of Forest. U.P. :

5. The first prayer in this writ petition reads :

'(I) to issue a writ, order or direction in the nature of mandamus, commanding the respondents to treat the petitioner to be a regular employee of Class III/TV in the service of the State Government from the date of his initial appointment i.e. May, 1987 on the post held by him in the Forest Department.'

Similar relief was claimed by this petitioner in earlier writ petition No. 42007 of 1996 (see prayer No. I of this petition).

6. Another prayer of the present writ petition reads :

'(II) to issue a writ, order or direction in the nature of mandamus commanding the respondents to make payment of difference of back wages to the petitioner which he would have received had he been treated to be the regular employee of the State Government in Class III/IV group 'C'.'

Identical relief has been claimed (vide prayer II) in Writ Petition No. 42007 of 1966.

7. Earlier Writ Petition No. 42007/96 has been finally decided on 10-12-1997 by the Division Bench of this Court (Hon'ble D.P. Mohapatra, C.J. and Hon'ble R.A. Sharma, J.) alongwith leading case (Special Appeal No. 653 of 1995, State of U.P. and Ors. v. Putti Lal, reported in 1998 (I) Alld. Civil Journal 251 (D.B), i.e. before filing of the present Petition No. 36 of 1998.

8. Persual of this judgment shows that similar reliefs on the identical facts as claimed in the present petition, were claimed. Division Bench of this Court had already adjudicated these very issues, namely question of regularisation and payment of minimum of regular pay scale.

9. Learned Counsel for the petitioner submitted that a SLP has been filed against this judgment in the case of Putti Lal only. It is not material. Whether SLP has been filed or not separately in each case so long as there is no stay order passed by the Supreme Court. Learned Counsel states that there is no interim order by Apex Court. It will be noted that once Deverndra Singh, the petitioner filed Writ Petition No. 42007 of 1997. On the facts and identical reliefs, he should not have filed another writ petition on the same facts and same reliefs.

10. It is disturbing to note that the fact that earlier Writ Petition No. 42007 of ' 1996 (referred to above in para-3 of the present writ petition) though already decided was not brought to the notice of this Court when the matter was taken up on 14-10-99.

11. Order dated 14-10-99 on the order sheet of the present case reads :

'The matter was heard at some length in Court. Subsequently I called for the original record of WP No. 42007 of 1996. Since record was not available in Court, matter was postponed for further hearing/dictation on the next date Original record was made available in Chambers after Court rose. It was dictated that the said W.P. No. 42007/96 contained some what similar facts and indential reliefs. The said writ petition was already decided by Division Bench and that the said petition as well as W.P. No. 86/96 were filled by the same Counsel. Registry was, therefore, directed to list the case again with the record of the earlier petition.'

12. An interim order in the present writ petition was obtained from Hon'ble the Single Judge (Hon'ble O.P. Garg. J.) on 8-1-1998. The said interim order reads as follows :

'Meanwhile if the petitioner is still in service on daily wage basis and his claim for regularisation has not already been abnegated, the respondent shall ensure

payment of such salaries/wages to the petitioner not less than the minimum of the salary payable to a regularly appointed employee performing similar duties.'

13. There is nothing on record to show that Writ Petition No. 42007 of 1996 having been decided by the Division Bench of this Court vide judgment and order dated 10-12-97 was brought on record or otherwise to the notice of the learned Single Judge while aforementioned ad interim order dated 8-1-98 was obtained.

14. The petitioner having already filed Writ Petition No. 42007 of 1996 (Devendra Singh v. State of U.P.) could not be permitted to file another writ petition for the similar facts and similar reliefs in the present Writ Petition No. 36 of 1998.

15. The Counsel representing the petitioner in both the cases being same, it was legitimately expected by the Court that the petitioner should have brought on record the fact of the decision of Writ Petition No. 42007 of 1996 vide Division Bench Judgment dated 10-12-97.

16. The petitioner having invited Division Bench Judgment (supra), of this Court he could not be permitted to reagitate the same issues by filing fresh petitions. If the petitioner had some grievance for non-compliance of the judgment in Writ Petition No. 42007/97 he should have filed a contempt petition or taken recourse to such measures as may be advised to the petitioner or filed a claim petition under U.P. Public Service Tribunal Act.

17. I have perused the Vakalatnama of the petitioner in both the writ petitions. From bare naked eyes it is evident that atleast one of the Vakalatnama is farzi. The signatures on Vakalatnama in the two cases are different and written with different flavour & spellings. Even the age, shown in two writ petitions is conflicting.

18. The petitioner who has approached this Court under Article 226 of the [Constitution of India](#) for seeking benefit for service in the Government Department is not expected to behave in this fashion. I find that this writ petition is not maintainable and is nothing but gross abuse of the process of the Court. Otherwise also the petitioner has disentitled himself from seeking relief from this

Court under its discretionary and extra-ordinary jurisdiction under Article 226 of the [Constitution of India](#) as he has not approached this Court with clean hands, as held by this Court in AIR 1961, Allahabad 746 (Full Bench), 1996 (3) SCC 332, 1996 (9) SCC 534 and 1999 AWC 100 (Supreme Court).

19. In view of the above, the writ petition is dismissed with Rs. 5,000 as costs to be appropriated and deposited as follows. Rs. 2500 to be paid within one month to the respondents, who shall be otherwise entitled to recover from the petitioner, if he fails to pay as above. Rest Rs. 2500 to be deposited within one month from today with the Registrar of this Court and when deposited, the same shall be remitted forthwith to the State Legal Authority. If costs are not deposited as above, the State Legal Authority may take steps for recovery as land revenue through the District Magistrate.

20. Interim Order/s, if any, stand discharged.

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