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(2010) 10 AHC CK 0320

Allahabad High Court

Case No: Service Bench No. 1545 of 2010

State of U.P. and Another		APPELLANT
	Vs	
Mahendra Singh and Others		RESPONDENT

Date of Decision: Oct. 19, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Vedpal, J; Devi Prasad Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard learned Standing Counsel for the Petitioners and the learned Counsel for the claimant-Respondent.

2. Claimant-Respondent was selected in U.P. Education Services by the U.P. Public Service Commission in the year 1975 and served the department on various posts at different places and his services were confirmed in the year 1985 w.e.f. 18.8.1980. However, he was not promoted timely on the post of Joint Director of Education but he was promoted on 22.5.2003. Claimant-Respondent staked his claim w.e.f. 6.7.1995 when the junior to him was promoted on the post of Joint Director and thereafter on the post of Additional Director of Education on 19.2.2002 and thereafter as Director of Education w.e.f. 22.5.2004.

3. Before the Tribunal, a plea was taken by the Petitioners that on account of adverse entry, claimant-Respondent could not be promoted on higher post. However, it came to light that both the entries were expunged by the Tribunal''s judgment passed in claim petition no.215 of 1985. Copy of the Government Order of expunction dated 2.11.1985 is annexed as Annexure No. 2 to the claim petition before the Tribunal. Since entries were expunged, the claimant Respondent was promoted on the post of D.I.O.S. w.e.f.

2.3.1984. Thereafter again the claimant Respondent was punished with censure entry and stoppage of one increment with cumulative effect on account of personal malice/prejudice. However, the censure entry was quashed by the Tribunal vide order dated 7.7.2004 passed in claim petition No. 67 of 200. Again an adverse entry was awarded to the claimant for the year 1994-95 by Director, Basic Education and that too was set aside by the Tribunal vide its order dated 23.4.2001. Thereafter the claimant was promoted on the post of Joint Director w.e.f. 22.5.2003. The plea taken before the Tribunal was that malafidely and for extraneous reasons, the punitive action was taken against him by the authorities on unfounded grounds that is why the Tribunal has set aside the order with regard to the punishment awarded by the Petitioner or its authorities. The Petitioners have not challenged the orders of the Tribunal whereby the punishment orders were set aside by the Tribunal by various pronouncements (supra). Only the order dated 23.4.2001 passed by the Tribunal was impugned before this Court in a pending writ petition.

4. It has been submitted by the learned Counsel for the claimant Respondent that no interim order has been passed in the said pending writ petition by this Court. The fact remains that the adverse entries awarded against the Respondent have been set aside by the Tribunal.

5. In view of the above, the Tribunal took a view that since the adverse entries have been set aside the claimant Respondent was entitled to all service benefits which were withheld because of these entries and the Tribunal thereafter observed that once the adverse remark/punishment awarded to the claimant Respondent have been quashed/set aside, the order relates back to the year and time as punishment or adverse remarks become consequentially non existent on the date or in the year. Accordingly, the Tribunal held that the claimant-Respondent would be entitled for promotion w.e.f. the date junior to him was promoted on the post of Joint Director and the other posts.

6. While assailing the order of Tribunal, learned Standing Counsel submitted that certain facts were not brought before the Tribunal and the order of the Tribunal has been based on unfounded grounds. Specific query has been made to the learned Standing Counsel as to whether alleged facts were pleaded before the Tribunal? The reply is negative.

7. It is settled law that while exercising supervisory jurisdiction under Article 226/227 of the Constitution of India with regard to the superintendence over the subordinate court or the Tribunal, this Court has to look only those documents/pleading which were on record at the time of adjudicating the controversy and no new facts may be taken into account while assailing the Tribunal''s order. In case the Petitioners feel that some facts were not brought before the Tribunal, then appropriate remedy is to approach the Tribunal again under appropriate jurisdiction by moving review application.

8. We are of the view that the finding recorded by the Tribunal is based on sound principle of law and since punishment awarded to the claimant have been set aside, it

shall be deemed to be non existent and the claimant-Respondent shall be entitled for all service benefits which in usual course could have been given to him.

9. The impugned judgment and order passed by the Tribunal does not suffer from any illegality, impropriety and irregularity. Petition is devoid of merit and is accordingly dismissed.