
(2006) 09 AHC CK 0249

Allahabad High Court

Case No: C.M.W.P. No. 40209 of 2004

State of U.P. and Others

APPELLANT

Vs

Ram Kishore and Another

RESPONDENT

Date of Decision: Sept. 22, 2006

Acts Referred:

- Uttar Pradesh State Commission for Backward Classes Act, 1996 - Section 9(2)

Citation: (2006) 7 AWC 7356

Hon'ble Judges: Sushil Harkauli, J; Pankaj Mithal, J

Bench: Division Bench

Advocate: U.K. Pandey, Addl. C.S.C, for the Appellant; Anil Kumar Srivastava, Swarn Kumar Srivastava and Mansoor Ahmad, for the Respondent

Final Decision: Dismissed

Judgement

Sushil Harkauli and Pankaj Mithal, JJ.

The department of Minor Irrigation, U.P., Lucknow, declined to regularize the services of Respondent No. 1 Ram Kishore who was working as a daily rated employee with the department since 1992. Therefore Respondent No. 1 filed a Writ Petition No. 39367 of 1996, Ram Kishore v. Superintending Engineer Minor Irrigation Division, Lucknow and others. The said writ petition was disposed of by the High Court vide judgment and order dated 10.12.1996 (Annexure-4 to the writ petition) on merits directing the Executive Engineer, Minor Irrigation, Kanpur Dehat to decide the representation with regard to his regularization by a speaking order within a period of two months. In pursuance to the aforesaid order, the Executive Engineer on 19.2.1997 rejected the claim of the Petitioner for regularization. This order became final conclusive and was not challenged in any higher forum.

2. The Respondent No. 1 instead of agitating the matter before the higher authorities or the Court moved an application dated 12.10.2001 before the U.P. State Backward Classes Commission (hereinafter referred to as "Commission")

under the provisions of the U.P. State Commission for Backward Classes Act, 1996. In the application no mention was made of the earlier filing of the writ petition and the decision of the High Court thereon as well as rejection of the representation in pursuance of the directions of the High Court. The Commission vide order dated 19.2.2004 (Annexure-1 to the writ petition) issued direction to regularize the services of the Respondent No. 1 and for payment of arrears of salary within a period of one month and to report compliance to the commission. This order/report of the Commission submitted to the State Government, has been challenged in the present writ petition by the State of U.P. through Principal Secretary, Minor Irrigation and two others.

3. On the earlier occasion a preliminary objection was raised by the Respondent No. 1 regarding the maintainability of the writ petition. On the last turn, we had granted time to the learned standing counsel to examine whether under the Act an order of the Commission of the nature impugned in the writ petition was binding upon the Government or merely recommendatory in nature.

4. The learned standing counsel has not been able to demonstrate how the order impugned is binding upon the State Government. Under the provisions of Section 9(2) of the Act, the only obligation upon the State Government is to lay the reports of the Commission before each house of the State Legislature alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations and the reason for the non-acceptance of the recommendations, if any. The provisions of Section 9(2) of the Act makes clear that if the Government decides not to accept the recommendation of the Commission, it has only to place the same before each house of the State Legislature alongwith the reasons for its non-acceptance. Therefore the impugned order/report of the Commission is only recommendatory in nature and is not binding upon the State Government.

5. In view of the above since the order impugned is only of a recommendatory nature and has no binding effect upon the State Government, we are of the opinion that this writ petition is not maintainable. The preliminary objection raised by the Respondent No. 1 therefore succeeds.

6. The writ petition is accordingly dismissed as not maintainable.