

SUPREME COURT OF INDIA

Radhey Shyam Pandey

Vs.

Kanpur Development Authority

C.A.No.10208 of 2010

(R.Banumanthi and A.S.Bhopana,JJ.,)

18.07.2019

JUDGMENT

R.Banumathi,J.,

1. The appellant was appointed as IIIrd grade clerk in the year 1963 and he was confirmed as IInd grade clerk vide Order dated 23.10.1969. Thereafter, the appellant was appointed as a stenographer on ad-hoc basis on 12.12.1969. Later, the appellant was reverted as clerk on 05.07.1973 and he continued to work in that post. The appellant also availed leave from 19.09.1973 to 24.08.1974 during which period he was not paid salary. The period during which he worked i.e. between 01.01.1976 and 30.11.1987, according to the appellant he worked as a stenographer; but he was paid salary only as a IInd Grade clerk. When the appellant made the representation to pay his arrears and allowances as the stenographer, the same was not considered.

2. By Order dated 16.12.1988, the Administrator, Nagar Mahapalika, Kanpur, appointed the appellant as the Stenographer with retrospective effect from 01.07.1975. As noted earlier, the appellant prayed for the arrears of salary and other consequential benefits. U.P. Public Service Tribunal No.II, Jawahar Bhawan, Lucknow, vide Order dated 13.11.1991 allowed the application of the appellant and directed the authorities to pay him arrears of salary as payable to stenographer.

3. Being aggrieved, the Kanpur Development Authority preferred writ petition before the High Court. The High Court vide the impugned order pointed out that the services of the stenographers were centralised by adding Section 5-A of the Uttar Pradesh Urban Planning and Development Act, 1973 w.e.f. 22.10.1984. Pursuant to Section 5-A of the 1973 Act, the High Court observed that services of the appellant was centralised one and the State of Uttar Pradesh was the appointing authority. The High Court while pointing out that the State Government being necessary party is not impleaded, set aside the order of the Tribunal and approved the order of the Kanpur Development Authority. Being aggrieved, the appellant is before us.

4. We have heard Mr. Shrish Kr. Misra, learned counsel appearing for the appellant and Ms. Reena Singh, learned counsel appearing for the respondent and also perused the impugned judgment.

5. The High Court vide impugned order set aside the order of the Tribunal mainly on the ground that the services of the appellant as stenographer were centralised one and the State Government being the appointing authority, has not been impleaded as party.

6. Mr. Shrish Kr. Misra, learned counsel appearing for the appellant, has submitted that the through out his service, the appellant was discharging his duties only as a stenographer but he has been paid pay-scale of clerk.

7. Since the High Court set aside the order of the Tribunal mainly on the ground that the State Government has not been impleaded as a party in the proceedings, the impugned order is set aside and the appeal is allowed. The State of Uttar Pradesh is ordered to be impleaded as the third respondent in C.M.W.P. No.6637 of 1992 and the matter is remitted back to the High Court for consideration of the matter afresh. C.M.W.P. No.6637 of 1992 shall stand restored to its original number. We request the High Court to afford sufficient time to the appellant to file additional counter affidavit and after affording sufficient opportunity of hearing to both the parties dispose of the matter at an early date preferably within a period of six months from the date of receipt of copy of this Order. No costs.