

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Reserved on :15.03.2023

Pronounced on:04.05.2023

Date: 28.03.2023

LPA No.41/2019

CM No.1789/2019 [1/2019]

c/w

LPA No.43/2019

CM No.1776/2019 [1/2019]

UOI & others

.....**Appellant(s)/Petitioner(s)**

Through: Mr. Sandeep Gupta, CGSC

versus

Moti Lal

.....**Respondent(s)**

Through: Mr. S.C. Gupta, Advocate

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

Tashi Rabstan - Judge

1. Both these appeals are directed against the judgment dated 25.10.2018 delivered by the learned Single Judge in SWP Nos. 2499/2014 and 2491/2016, whereby the learned Single Judge while disposing of both the petitions, held as under:

“11. Keeping in view the legal position discussed above, the petitioner cannot be denied the back wages for the period w.e.f. 06.06.2002 to 07.05.2014 as he was wrongfully boarded out from service without offering him shelter or alternate employment as mandated by the provisions of Section 47 of the Act of 1995. Accordingly, the order dated 07.07.2014 to the extent it denies wages for the period 06.06.2002 to 07.05.2014 and order dated 12.07.2014 to the extent it imposes interest @ 6% are quashed. The petitioner is, thus, held entitled to wages/salary for the period w.e.f. 06.06.2002 to

07.05.2014. He shall also be entitled to re-fixation of his salary by taking into consideration the annual increments which would have accrued to him had he not been boarded out from service by the respondents. Needless to say that while calculating and paying the arrears to the petitioner, the amount received by the petitioner by way of retiral benefits including the pension shall be adjusted. It is, however, clarified that in case the amount received by the petitioner on account of terminal benefits and pension exceeds the amount payable in terms of this judgment, the same would be refunded by the petitioner within two months from the date he is intimated. Let the respondents consider the case of the petitioner for the reliefs granted hereinabove within a period of two months from the date certified copy of this order is made available to them.”

2. Feeling aggrieved, the writ respondents-appellants herein have filed the present appeals questioning the judgment/order impugned.

3. Since both the appeals have arisen out of a common judgment involving common question of facts and law, as such both are being dealt with by this common judgment.

4. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file.

5. Admittedly, when the writ petitioner was boarded out from service with invalid pension with effect from 06.06.2002 being found in low medical category, i.e., SIH-1 A2P2E1 after he was examined by the Board of Directors at District Hospital Udhampur and was declared permanently incapacitated for further service by the respondents, the writ petitioner had already rendered more than fifteen years of service. Since the writ petitioner had been boarded out on medical grounds, as such the writ respondents were under an obligation to offer him alternate employment in CISF in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1965 but they failed to do so. Ultimately, the writ petitioner came to be reinstated on 29.04.2014 only under the orders of this Court.

Although the writ petitioner came to be reinstated, yet the writ respondents denied wages to the writ petitioner for the period with effect from 06.06.2002 to 06.05.2014 and also imposed interest @ 6% on recovery of the amount already released in his favour being final payments.

6. Feeling aggrieved, the writ petitioner filed SWP Nos.2499/2014 and 2491/2016 and the learned Single Judge disposed of the writ petitions vide judgment dated 25.10.2018 allowing the reliefs in favour of writ petitioner. Now the writ respondents have filed the instant appeals.

7. Since the writ petitioner remained out of job from 06.06.2002 to 07.05.2014 only because of the fault of the writ respondents as they had failed to offer him alternate employment in the force in terms of Section 47 (supra) and the writ petitioner came to be reinstated only in compliance to the judgment of the Division Bench dated 03.04.2014 passed in LPASW No.168/2013, as such we are in complete agreement with the learned Single Judge in allowing the afore-quoted reliefs in favour of writ petitioner.

8. Viewed thus, while upholding the judgment of learned Single Judge, we do not find any merit in the appeals and the same are, accordingly, dismissed along with connected CMs.

Jammu
04.05.2023
(Anil Sanhotra)

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No