

Court No. - 10

Case :- WRIT - A No. - 22172 of 1990

Petitioner :- Mukul Srivastava

Respondent :- Commissioner And Administrative Ram Ganga Project And Anr.

Counsel for Petitioner :- R.P.Goel,Pradeep Kumar Upadhyay,S B Singh

Counsel for Respondent :- S.C.,Jai Bahadur Singh

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Shashank Bhushan Pandey, learned counsel holding brief of Shri P.K. Upadhyay, learned counsel for the petitioner, learned Standing Counsel for State-respondents and Shri Jai Bahadur Singh for respondent no.3.

2. The petitioner was selected on the post of Seenchpal on 13.10.1983 when he was less than 28 years of age, though, when he was appointed on 29.03.1990, he was 31 years of age and his appointment was cancelled by the order impugned dated 23.05.1990 on the ground that he was over-age on the date of his appointment and that persons having less than 28 years of age were being offered appointment.

3. The order cancelling appointment of the petitioner was stayed by this Court on 23.08.1990.

4. Though, the writ petition was dismissed as infructuous 03.10.2001, which order was recalled on 22.03.2023 and the petition was restored, the petitioner continued to work on his post at the strength of interim order dated 23.08.1990 throughout and, after completing the entire tenure of his services, he has retired from his post on 31.07.2018.

5. The grievance raised by the petitioner is that his post-retiral benefits are not being released on the ground that the writ petition is pending and the Authorities are awaiting decision of the writ petition. He has referred to certain annexures forming part of the personal affidavit filed by the Chairman and Administrator in this regard.

6. Shri Jai Bahdur Singh, learned counsel for respondent no.3 submits that the Department is not at fault and requisite documents have been forwarded by the Authorities for the purposes of releasing benefits, however, since the writ petition is pending, the claim of the petitioner has not been finalized.

7. In view above, it would not be appropriate for this Court to examine the validity of the cancellation order at this stage, when the petitioner has already retired from service and continue to work till the date of his superannuation.

8. The Supreme Court in the case of ***Nani Gopal Dutta v. Union of India & others*** reported in ***(2002) 1 UPLBEC 439*** has dealt with almost identical situation which is existent in the present case and in the case before the Supreme Court also, the appellant concerned had availed entire benefits of service including payment of salary at the strength of interim order passed in his favour and, therefore, the Supreme Court declined to interfere in the order impugned before it.

9. Following the decision of Apex Court in the case of ***Nani Gopal Dutta (supra)*** and the peculiar facts of this case, as discussed hereinabove, this writ petition is being **disposed off** directing the respondent no.4-Bhumi Sanrakshan Adhikari, Sinchai Avam Jal Sansadhan Vibhag, Fatehpur to compute the retiral benefits,

pension etc. admissible to the petitioner on the basis of his last drawn salary and release the same in his favour within a period of **four months** from the date a certified copy of this order is produced before him alongwith appropriate application.

9. It is made clear that this order has been passed in the peculiar facts of the case and it shall not be treated as a binding precedent in any other case.

Order Date :- 6.11.2023

Jyotsana