

Neutral Citation No. - 2023:AHC:201174

Reserved On:- 11.10.2023

Delivered On:- 17.10.2023

Case :- CIVIL MISC REVIEW APPLICATION No. - 263 of 2023

Applicant :- Rajesh Kumar Srivastava

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Shailesh Kumar Shukla

Counsel for Opposite Party :- C.S.C.

Hon'ble Siddharth,J.

List revised.

Heard Sri Shailesh Kumar Shukla, learned counsel for applicant and Sri Shailendra Singh, Standing counsel for State.

Order on Delay Condonation Application No. 01 of 2023

in

Civil Misc. Review Application No. 263/2023.

Review application is reported to be beyond time by 26 days.

No counter-affidavit has been filed to above noted delay condonation application.

Cause shown for delay condonation is sufficient.

Delay condoned.

Above noted review application is treated to have been filed within time throughout.

Order on review application No. 263/2023

in

Civil Misc. Writ Petition No. 5458 of 2022

This review petition has been filed only on the ground that while allowing Civil Misc. Writ Petition No. 5458 of 2022 by the judgment and order dated 27.05.2022, this Court has recorded the finding in fourth last paragraph of the judgment that "It is nowhere on record that the petitioner challenged the order dated 07.04.2016 passed by District Basic Education Officer, Maharajganj. Therefore, it has attained finality. The petitioner has admitted that he has been paid month to month salary after the order dated 07.04.2016, but no arrears. In the absence of any challenge to the order

dated 07.04.2016 passed by respondent no. 3 it would be deemed that the petitioner acquiesced to the aforesaid order. In the writ petition, aforesaid order has not been subjected to challenge. Hence, no direction for payment of arrears from 20.12.2000 to 07.04.2016 can be ordered”.

Learned counsel for applicant has submitted that the finding recorded by this Court suffers from error apparent on the face of record since in the order dated 07.04.2016 there is clear finding recorded by the District Basic Education Officer, Maharajganj, that petitioner shall be entitled to the benefits of salary, etc., from the year 2000. Order of payment of salary by the then District Basic Education Officer and Finance Officer is proved to be in accordance with rules therefore in such situation the applicant was entitled to payment of salary etc., from the year, 2000. Such an observation is found in the discussion part of the order of District Basic Education Officer, Maharajganj, in its order dated 07.04.2016.

The operative portion of the aforesaid order is not very clear, but it does not contains any findings to the contrary. Hence, it is clear that the petitioner is entitled to benefit of salary and other service benefits from July, 2000 till 07.04.2016 and the finding of this Court in the judgment and order dated 07.04.2016, directing payment of salary to the petitioner from date of appointment to July, 2000 suffers from error apparent on face of record.

The order dated 27.05.2022 passed by this Court is reviewed and direction is given to the respondents to make payment of arrears of salary of the petitioner since 20.12.2000 to 07.04.2016 to petitioner to which he was found entitled in the order dated 07.04.2016 passed by the respondent no. 3.

Review application is **allowed**.

Order Date :- 17.10.2023

Abhishek