

Court No. - 35

Case :- WRIT - A No. - 12258 of 2023

Petitioner :- Dr. Virendra Kumar Mishra

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ujjawal Satsangi

Counsel for Respondent :- A.S.G.I.,Ajay Singh,Hem Pratap Singh,Saumitra Singh

Hon'ble Vikas Budhwar,J.

Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Ujjawal Satsangi, learned counsel for the petitioner and Sri Ajay Singh, learned counsel, who appears for Respondent Nos. 2, 3 and 4. Notice on behalf of the first respondent has been accepted by the office of the Additional Solicitor General of India.

Sri Ajay Singh has made a statement at bar that he had filed counter affidavit on 22.10.2023, however, according to him, the Writ Petition number is Writ-A No.12258 of 2023 due to typographical error was mentioned as '12257 of 2023'. He has forwarded a self attested copy of the counter affidavit, which is taken on record and verified by the learned counsel for the petitioner. In the rejoinder affidavit also the same typographical error occurred and a self attested copy of the same was forwarded and is taken on record after verifying the same from the learned counsel for the respondents.

Office is directed to trace the Counter as well as Rejoinder Affidavits filed in Writ-A No.12257 of 2023 (correct number is "12258 of 2023").

The petitioner herein had filed Writ-A No. 8456 of 2022 (*Virendra Kumar Mishra Vs. Union of India and others*) questioning a communication dated 20.04.2022 of the fourth respondent, Assistant Registrar (Admin-Teaching), Office of the Registrar, Administrative Teaching, Banaras Hindu University, Varanasi, whereby the claim of the writ petitioner regarding promotion on the post of Deputy Librarian (Stage-2) and Deputy Librarian (Stage-3) had been withdrawn on the basis of the report submitted by the Committee constituted in terms of ECR-56 dated 26.11.2018 and the provisional pay was fixed in AGP-6000 for the purpose of pension and other retirement benefits as communicated vide office letter dated 06.01.2021. This Court entertained the writ petition and proceeded to pass an order dated 12.10.2022, which reads as under:-

"1. Heard Mr. Ashok Khare, Senior Advocate, assisted by Mr. Ujjawal Satsangi, learned counsel for the petitioner; Ms. Pooja Agarwal, learned counsel for respondent University and; learned Standing Counsel.

2. Challenge has been raised to the communication dated 20.4.2022 issued by respondent no.4/Assistant Registrar. It reads as below:

"Sir,

This has reference to the subject cited above.

In this connection, I am directed to inform you that the promotion of Dr. Virendra Kumar Mishra on the post of Dy. Librarian (Stage 2) and Dy. Librarian (Stage 3) has been withdrawn on the post of the report submitted by Committee constituted in terms of FCR 56 dated 26.11.2018.

Further, the provisional pay fixed in AGP-6000 for the purpose of pension and other retirement benefits, as communicated vide this office letter no. AB/20-A-11/18232-238 dated 06.01.2021 (copy enclosed) stands final."

3. Submission of learned senior counsel for the petitioner is, the petitioner was granted two promotions vide communications dated 25.4.2015 and 30.9.2015 issued by Deputy Registrar of the respondent University. By the first communication, the petitioner was granted promotion on the post of Assistant Librarian (Stage-2) in the Library Sector, Dept. of Philosophy & Religion, Banaras Hindu University, under the Career Advancement Scheme on a salary to be fixed in Pay Band-III (Rs. 15,600-39,100) with Academic Grade Pay (AGP) Rs. 7,000/- (Annexure no.1 to the writ petition). By the second communication, the petitioner was granted promotion on the post of Deputy Librarian (Stage-3) in the Library Sector, Dept. of Philosophy & Religion, Banaras Hindu University, under the Career Advancement Scheme on a salary to be fixed in Pay Band-III (Rs. 15,600-39,100) with Academic Grade Pay (AGP) Rs. 8,000/- (Annexure no.2 to the writ petition).

3. Perusal of the aforesaid communications reveal, they had been passed with the concurrence of the Executive Council of the respondent University. It is a fact, the petitioner retired on 31.7.2020. Though after grant of the above two promotions, an enquiry appears to have been conducted as to the entitlement of the petitioner to the promotions already granted and though it further appears that vide first enquiry report dated 17.11.2018, certain conclusions had been drawn to doubt the entitlement to promotion (already granted to the petitioner), no consequential action to revert the petitioner to the pre-promotional post was taken. After his retirement, further enquiry appears to have been concluded and it has been reasoned that the petitioner is entitled to AGP Rs. 6,000/- in PB-III.

4. In such facts, it does merit acceptance, there survived no jurisdiction or authority with the respondent University to issue the impugned communication dated 20.4.2022, almost two years after the petitioner had attained the age of superannuation. It remained undisputed, up to the date of superannuation. The petitioner continued to enjoy the higher pay scale in PB-III with AGP Rs. 8,000/-. There is also no doubt that the petitioner performed the functions commensurate to the promotional post up to the date of

attaining superannuation.

5. In such facts, in absence of any order of reversion to a lower post during the service tenure of the petitioner that ended on 31.7.2020, the respondent University cannot be permitted to treat the petitioner not entitled to pension commensurate to the work performed on the higher post in the higher pay band with higher AGP, thereafter.

6. No enabling rule or law has been shown as may allow the Court to sustain the impugned communication. The fact that the petitioner may have admitted inadvertence on his part in claiming computation of API Score while applying for promotion, may not be enough to deprive him of the retiral dues that may still be computed on higher pay under the promotion orders. The petitioner did not admit non-entitlement to the promotion granted to him. The University authorities cannot seek to now revert the petitioner to a lower grade pay. In the facts of this case, it is not possible to be done.

7. Accordingly, the present petition is allowed. The impugned communication dated 20.04.2022 is hereby quashed. Respondent University may re-fix the pensionary dues treating the petitioner to retire as Deputy Librarian (Stage-3) in PB-III with AGP Rs. 8,000/-. Such exercise may be completed within a period of three months from today."

According to the writ petitioner, the said order attained finality and when the writ petitioner preferred an application dated 30.01.2023 before the third respondent, Vice-Chancellor, B.H.U, Varanasi seeking benefits referable to Stage-4, then now by virtue of the order dated 07.07.2023 issued by the fourth respondent, Assistant Registrar (Admin-Teaching), Office of the Registrar, Administrative Teaching, Banaras Hindu University, Varanasi, has negated the claim of the writ petitioner.

Questioning the said order, as well as the ECR dated 26.11.2018 of the Executive Council of the Respondent-University, the present writ petition has been filed with a further relief for fixation of the pension of the petitioner as per the Pay-Band-4 for a Pay Scale of Rs.37400-67000 and AGP-9000 at Level 13A.

This Court entertained the writ petition on 28.07.2023 requiring the respondents to file counter affidavit. A counter affidavit has been filed on behalf of Respondent Nos. 2, 3 and 4 sworn by the Law Officer, Banaras Hindu University dated 26.10.2023, to which a rejoinder affidavit has been filed.

Learned counsel for the writ petitioner submits that the order dated 07.07.2023 passed by the Assistant Registrar (Admin-Teaching), Office of the Registrar, Administrative Teaching, Banaras Hindu University, Varanasi in so far as denies consideration of the claim of the writ petitioner for the promotion on the post of Deputy

Librarian (Stage-4) is patently illegal and contrary to law, particularly when reliance has been placed upon the Resolution of the Executive Council No. 58 dated 26.11.2018, the benefits were denied, however, this Court in Writ-A No.8456 of 2022 decided on 12.12.2022 had deprecated the said stand of the respondent and quashed the order impugned in the said writ petition entitling the writ petitioner for benefits of Deputy Librarian (Stage-2) and Deputy Librarian (Stage-3). Thus the said resolution cannot be a ground to deny the benefits to the writ petitioner. He further submits that the claim of the writ petitioner for promotion in Stage-4 was under process, however, the same was not being given a logical end in view of the API score, which according to the respondents was lower than the bench mark on the basis of the ECR Resolution dated 26.11.2018.

Submission is that the order in question be set aside, matter be remitted back to pass a fresh order.

Sri Ajay Singh, who appears for Respondents 2 to 4, while countering the submission of the learned counsel for the writ petitioner has invited the attention of this Court towards paragraphs-6, 7 and 10 so as to contend that there was a complaint by one Sri Manish Kumar Singh, Information Scientist, B.H.U. Varanasi regarding the entitlement for the promotion of the writ petitioner in (Stage-2) and (Stage-3) and the matter was considered in the Resolution of the Executive Council dated 26.11.2018, wherein it was found that the writ petitioner did not obtain 300 API marks, thus he cannot be accorded benefits. Learned counsel for the Respondent-University could not dispute the fact that the Resolution of the Executive Council dated 26.11.2018 was taken as a base for negating the claim of the writ petitioner for promotion in Stage-2 and Stage-3 while passing the order dated 20.04.2022, which has been set aside by this Court. According to the Respondent-University, the order impugned in the writ petition be set aside, matter be remitted back to pass a fresh order.

I have heard the learned counsel for the parties and perused the records carefully.

The facts are not in dispute. The only question, which arises is as to what would be the import and impact of quashing of the order dated 20.04.2022 passed by the Respondent-University denying the claim of the writ petitioner for according benefits as Deputy Librarian (Stage-2) and Deputy Librarian (Stage-3) on the basis of Executive Council's Resolution dated 26.11.2018. It has not been disputed by the parties that the order passed in Writ-A No. 8456 of

2022 on 12.10.2022 has attained finality. It is also not in dispute that the writ petitioner has been made admissible to the benefits of Deputy Librarian (Stage-2) and Deputy Librarian (Stage-3). Parties have also not disputed that the basic reason for not extending the benefit of Stage-4, was the resolution dated 26.11.2018 relating to API marks, which according to the respondents is below 300. Once the resolution dated 26.11.2018 of the Executive Council was acted upon by the respondents in the order dated 20.04.2022, which came to be set aside and the order attained finality, thus the matter needs reconsideration. Thus the order impugned in the writ petition is liable to be set aside.

Accordingly, the writ petition is being decided in the following terms: (a) The order dated 07.07.2023 passed by the fourth respondent, Assistant Registrar (Admin-Teaching), Office of the Registrar, Administrative Teaching, Banaras Hindu University, Varanasi, is set aside; (b) Matter stands remitted back to the Vice-Chancellor, Banaras Hindu University, Varanasi to decide the same afresh within a period of two months from the date of production of certified copy of the order.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 29.11.2023

N.S.Rathour