

Court No. - 33**Case :-** WRIT - A No. - 16324 of 2022**Petitioner :-** Ashok Kumar Sharma**Respondent :-** Managing Director, Paschimanchal Electricity Distribution Corporation Ltd. And 3 Others**Counsel for Petitioner :-** Basant Kumar Upadhyay, Ritesh Kumar Singh**Counsel for Respondent :-** Kartikeya Saran**Hon'ble J.J. Munir, J.**

1. A short counter affidavit has been filed on behalf of respondent No.4 by Mr. Vinayak Ranjan, Advocate holding brief of Mr. Kartikeya Saran, which is taken on record. Let it be numbered by the office.

2. This writ petition is directed against an order dated 24th June, 2020 passed by the Executive Engineer, Urban Distribution Division-I, Saharanpur, whereby he has fixed the petitioner's monthly pension at a sum of Rs.6773/-. The petitioner was a routine grade clerk in the employ of the former U.P. State Electricity Board. He was appointed on 19.06.1976. He was posted in the office of the Vidyut Vitran Khand, Saharanpur. The petitioner claims to have been an efficient worker, which led the employers to post him as the head cashier. He was working as the head cashier on 19.03.1997, when two men made their way to his room and took away cash lying there, a sum of Rs.3,44,539.50. The petitioner was suspended on 17th June, 1997 and charge-sheeted on 29th September, 1998. Disciplinary proceedings ensued, culminating in an order dated 15.09.2003, terminating the petitioner's services.

3. The petitioner raised an industrial dispute, which was referred to the Labour Court, Saharanpur by the Government. The industrial dispute was registered as Adjudication Case No.33 of 2004 on the file of the Labour Court, Saharanpur. The Labour Court by its award dated 21.01.2010 held the order of termination of services dated 15.09.2003 passed against the petitioner to be void and directed his reinstatement in service with continuity and all back-wages. The award of the Labour Court was challenged by the U.P. Power Corporation Ltd. by means of Writ-C No.40119 of 2010. Another writ petition being Writ-C No.12831 of 2013 was filed challenging the proceedings under Section 6-H(1) of the U.P. Industrial Disputes Act, 1947. Both the writ petitions were consolidated, heard together and decided by a common judgment and order of this Court dated 30th August, 2018. This Court disposed of both the petitions in terms of the following order:

"The Labour Court award dated 21.1.2010 in Adjudication Case No.33 of 2004 is, therefore, modified to the extent that the respondent-employee would be entitled to 50% of the back-wages from the date of termination i.e. 15.9.2003 till 31.7.2010 i.e. the date of his superannuation. Consequently, the order dated 6.2.2013 passed by the Deputy Labour Commissioner under Section 6-H (1) of the Act, 1947 on the basis of award dated 21.1.2010 is hereby set aside with the further direction to him to make fresh computation in the light of the above directions.

Before arriving at the final computation, it shall give opportunity to the petitioner to rebut. The admissible payments shall be made to the respondent-employee soon after the fresh order is passed by the Deputy Labour Commissioner to this effect.

Subject to the above observations and directions, both the writ petitions are **disposed of.**"

4. A perusal of the order of this Court dated 30th August, 2018 would show that the award of the Labour Court passed in

Adjudication Case No.33 of 2004 was maintained as regards the relief of reinstatement in service, but the entitlement to receive back-wages was reduced to 50% from the date of termination i.e. 15.09.2003 till 31.07.2010 i.e. the date of the petitioner's superannuation.

5. Needless to point out that the petitioner had, during the course of this long winded litigation, reached the age of superannuation on 31.07.2010. Now, while fixing the petitioner's pension, the Executive Engineer, Electricity Distribution Division-I, Saharanpur has sanctioned a sum of Rs.6773/- as the petitioner's monthly pension. The petitioner says that this fixation of pension is manifestly illegal given his basic salary together with the grade pay that he was last drawing at the time of his superannuation. Accordingly, this petition has been instituted.

6. Heard Mr. Basant Kumar Upadhyay, learned Counsel for the petitioner and Mr. Vinayak Ranjan, Advocate holding brief of Mr. Kartikeya Saran, learned Counsel appearing for the respondents.

7. The learned Counsel for the petitioner has assailed the order fixing his pension on ground that it is far below 50% of his basic pay and grade pay, which is the criteria for fixation of retirement pension. When this matter was earlier heard on 06.10.2023, this Court required the learned Counsel for the respondents to file a short affidavit on behalf of the respondents indicating what would be the petitioner's full salary, to which he would have been entitled on the date of retirement specifying the salary without deductions of any kind. In Paragraph Nos.3, 4 and 5 of the short counter affidavit filed today on behalf of the respondents, it is averred:

"3. That it is pertinent to mention herein that the full salary of the Petitioner without any deduction would amount to Rs.41,116/- which includes Pay (Rs.21,690) + Grade Pay (Rs.5400) + D.A. 45% (Rs.12,191) + H.R.A. (Rs.1575) + M.A. (Rs.60) + C.C.A. (Rs.200).

4. That it is relevant to point out that to calculate pension of employee certain deduction has to be made from salary and after deduction Salary which has to be used to compute pension would be Rs.27,090/- that is Pay (Rs.21,690) + Grade Pay (Rs.5400).

5. That it is important to mention herein that Pension of the Petitioner at the time of retirement would be Rs. 13,545/-."

8. What, therefore, turns out from the admitted stand is that the respondents say that the petitioner's basic salary together with grade pay on the date of his retirement would be a sum of Rs.21,690/- + Rs.5400/- = Rs.27,090/-. It is averred in Paragraph No.5 that the petitioner's pension at the time of his retirement would be Rs.13,545/-. However, the pension payment order has sanctioned to him a sum of Rs.6773/- as monthly retirement pension. This pension has been fixed going by the direction of this Court in the judgment and order dated 30.08.2018 made in Writ-C No.40119 of 2010 and Writ-C No.12831 of 2013, where back-wages payable to the petitioner for the period that he remained out of employment, were reduced to 50% instead of the full sum of these awarded by the Labour Court.

9. To the understanding of this Court, the respondents have utterly confounded the reduction directed by this Court while modifying the award of the Labour Court reinstating the petitioner in service. This Court never reduced the petitioner's emoluments. Rather, what was reduced was the petitioner's back-wages for the period that he remained out of employment on account of the impugned order terminating his service since

nullified by the Labour Court. Upon reinstatement, what the petitioner would be entitled to receive was his full salary due on the date of superannuation. The said salary has been disclosed before this Court to be a total sum of Rs.41,116/-, wherein keeping aside allowances, the basic pay and the grade pay put together, make for a sum of Rs.27,090/-. Retirement pension in accordance with Rules is half of the basic pay + grade pay. Therefore, this Court finds that the Executive Engineer has committed a manifest error of law and perversely inferred from the judgment and order of this Court that the petitioner's salary or his pension has been reduced to half. The petitioner is clearly entitled to his pension in the same manner like any other employee, similarly circumstanced. The said pension has been admitted by the respondents to be a sum of Rs.13,545/-.

10. Accordingly, this petition **succeeds** and is **allowed**. The impugned order dated 24.06.2020 passed by the Executive Engineer, Urban Distribution Division-I, Saharanpur, insofar it sanctions and fixes the petitioner's pension at a sum of Rs.6773/- is hereby **quashed**. A *mandamus* is issued to the respondents to issue a revised pension payment order fixing the petitioner's pension at a sum of Rs.13,545/-. Needless to say that dearness relief etc., payable from time to time, would be added in accordance with law. It is further directed that the petitioner would be entitled to arrears on account of the difference between the pension to which he is entitled and the reduced pension that he has been receiving, which shall be paid within a period of two months with 6% simple interest per *annum*. Costs easy.

Order Date :- 3.11.2023

Anoop

(J.J. Munir, J.)