

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 6841 of 2023

Applicant :- Ravindra Kumar Dwivedi

Opposite Party :- Surya Bhan, District Inspector Of Schools And Another

Counsel for Applicant :- Sanjay Kumar Mishra

Hon'ble Rohit Ranjan Agarwal,J.

The writ Court on 08.05.2023 while allowing Writ-A No.5690 of 2023 had passed the following order:-

"Heard Sri Sanjay Kumar Mishra, learned counsel for the petitioner and learned Standing Counsel for the State.

The petitioner who retired as Assistant Teacher (LT Grade) from recognized aided institution on 13.6.2015 but the salary for the period from April 2010 to May, 2014 had remained unpaid.

It is submitted that the petitioner's services stood regularized taking aid to Section 33-A '1-A'. However, the writ petition came to be decided ex parte against the petitioner on 21.7.2010 and so the payment of salary to the petitioner was stopped. The order of the learned Single Judge was challenged in appeal being Special Appeal No.201 of 2011 later on converted into regular Special Appeal No.926 of 2011. The judgment passed in Special Appeal required respondents to decide the matter afresh and thus the payment of salary was started to be paid to the petitioner from May, 2014. Thus, the payment of salary was withheld by the respondents for there being a decision of the Single Judge of this Court, under its order dated 21.7.2010 got rendered invalid/illegal for the simple reason that the payment of salary to the petitioner was restored in May, 2014 after the direction was issued by the Special Appellate Bench dated 29.5.2014. The operative portion of the Judgment in Special Appeal is reproduced hereunder:

"5. Since the facts will require verification, we allow the Special Appeal and set aside the judgment dated 21.07.2010 passed by the learned Single judge with directions that the District Inspector of Schools, Jaunpur to consider the facts for financial approval of the vacancies in accordance with law after verifying the averments made in the writ petition as well as Special Appeal quoted as above and the documents annexed with the writ petition. The required decision will be taken by the District Inspector of Schools, Jaunpur within a period of three months. In the meantime, the petitioner-appellants will be allowed to continue, and paid their salary regularly."

Taking notice of the aforesaid judgment and the prayer of the petitioner for payment of salary alongwith interest at the rate of 18 per cent, this Court under its order dated 3.4.2023 directed the authority to take

decision in the matter and accordingly, interim mandamus is issued by this Court in following terms:

"4. More than four years have passed. The matter is lying at that stage. Petitioner claims a direction for release of the money and payment of interest @ 18 %.

5. Prima facie case is made out. In the first place, payment as has been duly approved by the DIOS and to which no specific or credible objection has been raised by the Director, ought to have been paid long ago. Even otherwise, if there survived any objection to the claim made by the petitioner, adequate reasons should have been formed and communicated to the petitioner by now.

6. Being a retired employee, the petitioner cannot be made to wait endlessly for his just claim.

7. Accordingly ad interim mandamus is issued upon the respondents to complete the process of verification and release the due payment to the petitioner within a period of one month from today or to show cause why such payment has not been released. Quantification of interest may survive to be considered on the next date.

8. Put up on 08.5.2023 in top ten cases before the appropriate Court."

Today, a compliance affidavit has been filed annexing therewith an order dated 2.5.2023 passed by the Regional Joint Director of Education clearing the entire dues in terms of the arrears of salary to the petitioner to the tune of Rs.17,44,913/-. Thus, the interim mandamus issued to the petitioner stood complied with, however on the part of the interest nothing has been stated as to why the petitioner cannot be paid interest.

It is worth interesting to note vide paragraph nos.2 and 3 the prayer clause of the writ petition has been quoted and that the order of this Court issuing interim mandamus vide clause 4 averments have been made to the compliance made but no effort has been made to explain the reasons for withholding the salary of the petitioner from May, 2010 to April, 2014. Paragraph Nos.2,3 and 4 of the compliance affidavit are reproduced hereunder:

"2. That the petitioners have filed the aboyenoted writ petition seeking a

(i) Issue a writ, order or direction in the nature of mandamus commanding & directing the respondent no.1 & 5 to pay the arrears of salary of the petitioner to the tune of Rs. 17.44,913/- along with 18% interest since 06.05.2016.

(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 1 to consider the claim of petitioner for payment of arrears of salary requested through letter of respondent no. 5 dated 26.11.2018.

(iii) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case. (iv) Award the cost of the petition in favour of the petitioner.

3. That in the abovenoted this Hon'ble Court was pleased to pass following order dated 03-04-2023, which is extracted below:-

Hon'ble Saumitra Dayal Singh, J.

1. Heard learned counsel for the petitioner and the learned Standing Counsel for the State.

2. Petitioner is a retired Assistant Teacher. He retired in 2015. Vide earlier order dated 06.5.2016 passed in Writ-A No. 20654 of 2016 (Ravindra Kumar Dwivedi Vs. State of U.P. and 3 Others), this Court had directed the DIOS, Jaunpur to examine the matter pertaining to claim of arrears of salary Rs. 17, 44 913/- made by the petitioner for the period May 2010 to April 2014. That claim was processed and approved by the DIOS Jaunpur vide order dated 24.3.2017. It was marked to the Director Secondary Education for release of necessary payment. In turn, the Director Secondary Education called for certain Warification from the DIOS vide communication dated 14.7.2017. Those clarifications and verification of record was provided by the DOS on 02.8.2017. Further clarification was sought by the Director vide communication dated 14.12.2017. Those are described to have been provided by the DIOS on 15.1.2018.

3. Instead of releasing the payment, the Director Secondary Education then chose to refer the matter to the Under Secretary vide communication dated 26.11.2018.

4. More than four years have passed. The matter is lying at that stage. Petitioner claims a direction for release of the money and payment of interest @ 18%.

5. Prima facie case is made out. In the first place, payment as has been duly approved by the DIOS and to which no specific objection has been raised by the Director, ought to have been d long ago Even otherwise, if there survived any objection to the claim made by the petitioner, adequate reasons should have been formed and communicated to the petitioner by now.

6. Being a retired employee, the petitioner cannot be made to wait endlessly for his just claim.

7. Accordingly ad interim mandamus is issued upon the respondents to complete the process of verification and release the due payment to the petitioner within a period of one month from today or to show cause why such payment has not been released Quantification of interest may survive to be considered on the next date.

8. Put up on 08.5 2023 in top ten cases before the appropriate Court.

Order Date-3.4 2023

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4. That Order Date: 03-04-2023 in compliance of the orders

The petitioner Mr. Ravindra Kumar Dwivedi (Retired Assistant Teacher) was given the residual salary From 01.05.2010 to 30.04.2014, a total of

Rs.1744913.00 (Rupees Seventeen Lakh Forty Four Thousand Nine Hundred Thirteen only) was paid to the Director of Education Secondary), Uttar Pradesh, Education arth (1) Section Prayagraj letter number arth (1) /532-35/ approval order by 2023-24 dated 02.05.2023 and allocation of funds provided by Finance Controller (Secondary) Directorate of Education, Uttar Pradesh, Prayagraj's letter no. (2) Credit limit account / 723-27 / 2023-24 dated 02.05.2023 In order of the money allocation, the petitioner Mr. Ravindra Kumar Dwivedi (Retd. Assistant Teacher) was transferred to the account number-719302010008691 of the petitioner Mr. Ravindra Kumar Dwivedi (Retired Assistant Teacher) by the teen number-2923132661 dated 03.05.2023 of Treasury Jaunpur, Union Bank Branch, Aruwawa Jaunpur. Has been given. is being filed herewith and marked as Annexure No. 1 & 2 to this affidavit."

In the circumstances when no explanation has been offered for withholding salary of the petitioner for four long years. The only conclusion can be drawn is that it was wholly illegally withheld. Virtually the State has got enriched by withholding the salary of the petitioner and the petitioner and his family was forced to face the unnecessary financial crisis. This approach of State as model employer may not be approved of.

If proper explanation is not offered for withholding the payment of salary the prayer of the petitioner regarding the interest appears to be genuine one. The petitioner also appears to be entitled for a proper cost for he being forced to resorted to unnecessary litigation.

In the circumstances, the petition stands disposed of with the direction that the entire arrears of dues which have come to be paid to the petitioner under the order of the Regional Joint Director of Education dated 2.5.2023 shall be paid and further the respondents are directed to calculate the interest at the rate of 12 per cent from the date the amount had become due till the date it has actually being paid.

The petitioner is also allot with a cost of Rs.25,000/-."

Today, an affidavit of compliance has been filed on behalf of the State, wherein in para 5, it has been stated that the arrears of salary has been transferred into the account of the applicant, while in para 6, it has been stated that the interest at the rate of 12% per annum has been paid to the applicant. Further, in para 8 of the said affidavit, it has been stated that the cost as awarded by the writ Court of Rs.25,000/- has also been paid to the applicant.

In view of the said fact as the order of the writ Court has been complied with in entirety, present contempt application is rendered infructuous and the same stands dismissed.

Contempt notice issued to the contemnor stands discharged.

Order Date :- 24.11.2023

SK Goswami