

Court No. - 35

Case :- WRIT - A No. - 16577 of 2023

Petitioner :- Krishna Pal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sunil Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Sunil Kumar Srivastava, learned counsel for the petitioner as well as Sri Ajit Kumar Singh, learned Additional Chief Standing counsel who appears for the respondent number 1, 2 and 3.

2. The case of the petitioner is that there happens to be an institution by the name of St. John Inter College, Jangathi, Meerut, which is a minority institution conferred with certain protection under Article 30 of the Constitution of India and the provisions of the UP Intermediate Education Act, 1921 and the payment of salary act No. 24 of 1971 stands applicable.

3. The petitioner claims to have been appointed on the post of Assistant Teacher L.T. Grade 1.8.1975 and he further claims that his appointment has been approved on 11.7.1978, however, on 1.3.1989, the services of the petitioner was terminated by the 4th respondent on the basis of the resolution dated 13.1.1989. It is further stand of the petitioner that he along with three others preferred writ petition No. 3945 of 1989 (Girdhari Singh and others Vs. Committee of Management and others), in which initially on 18.5.1989, an interim order was passed, however, subsequently the said writ petition came to be allowed on 26.2.1997 against which the matter travelled up to the Hon'ble Apex Court in Civil Appeal No. 5397 of 1977, Committee of Management, St. John Inter College Vs. Girdhari Singh and others, wherein the civil appeal preferred by the 4th respondent, Committee of Management came to be allowed on 30.03.2021 while dismissing the petitioner upholding the termination order.

4. In para 12 of the writ petition, it is further asserted that post passing of the order by the Hon'ble Apex Court while dismissing the writ petition and allowing the appeal of the respondent no. 4, the salary of the petitioner was stopped, he came to be

superannuated on 14.1.2013. In para 13 of the writ petition, it is further asserted that the petitioner has not been paid his post retiral benefits, gratuity and pension, though, according to the petitioner he is entitled to the same. The petitioner further claims to have preferred a representation on 10.7.2017 before the respondent no. 3 District Inspector of Schools, District Meerut.

5. As per the petitioner one Sri Kailash Hariya whose services also stood terminated along with the petitioner who preferred Writ-A No. 1190 of 2016 (Kailash Hariya Vs. State of U.P.), whereby an order dated 10.12.2019 passed by the District Inspector of Schools, Meerut was questioned, whereby his claim for post retirement pensionary benefits has been rejected.

6. In the said writ petition on 31.5.2023 the following orders were passed which is quoted here in under:-

"1. Heard Sri Sunil Kumar Srivastava, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. By means of this petition petitioner has challenged the order passed by the District Inspector of School, Meerut dated 10th December, 2015, whereby his claim for post retirement pensionary benefits, have been rejected. Petitioner has based his claim in the present petition upon the plea of equality before law as enshrined under Article 14 of the Constitution.

3. Briefly stated facts of the case are that petitioner was appointed as Assistant Teacher in the institution run by respondent No.- 4 on 1st August, 1969 as per the procedure prescribed therein. Petitioner joined the institution and was paid salary regularly and it is after coming into force of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 that the petitioner started getting salary from the State exchequer. Petitioner was further promoted from C.T. grade to L.T. grade in the year 1979 and also was paid salary. While petitioner was discharging his duties without there being any complaint regarding his work and conduct, Manager of the institution suddenly passed an order on 1st March, 1989 terminating the services of the petitioner with immediate effect on the basis of some resolution earlier passed by the respondent No.- 4 on 31st January, 1989. Three other identically placed Assistant Teachers, namely, Sri Girdhari Singh, Sri Kishan Pal and Sri V.K. Sharma were also fired from service in a similar fashion. Petitioner along with three other aforesaid teachers challenged the order of termination dated 1st March, 1989 vide Writ Petition No.- 3945 of 1989 in which initially an interim order was passed on 18th May, 1989 and so consequently petitioner was continued in service and was paid salary. The writ petition came to be finally allowed 26th February, 1997 quashing the termination order. The respondent No.- 4 against the aforesaid order dated 26th February, 1997 filed Special Leave Petition No.- 322 of 1997 before the Supreme Court and the Supreme Court allowed the special leave petition by setting aside the order of this Court and dismissed the writ petition. With the dismissal of the writ petition by the

Supreme Court on 30th March, 2001 payment of salary was stopped. Petitioner was neither paid for post retirement benefits like gratuity, pension etc. whereas other teachers who were party with the petitioner in Writ Petition No.- 3945 of 1989 they were paid gratuity and other service benefits. Resultantly, petitioner submitted representation on 9th August, 2010 before the District Inspector of Schools upon attaining the age of superannuation which he would have reached on 6th May, 2010 while in service. Since petitioner had worked for more than 20 years, therefore, according to him, he had qualifying service for pension to his credit before the order of termination was passed on 13th January, 1989. Thus, according to the petitioner, he was entitled to post retirement dues taking him as if he had been made to retire by an order simplicitor termination.

4. In the representation specific plea was taken that the other petitioners of Writ Petition No.- 3945 of 1989, namely Sri Girdhari Singh, Sri Kishan Pal and Sri V.K. Sharma, had been paid retirement benefits including pension and, therefore the petitioner could not have been discriminated against.

5. When nothing happened in the matter the petitioner filed writ petition before this Court being Civil Misc. Writ Petition No.- 69522 of 2010 which was disposed of on 17th September, 2014 in following terms:

"Without entering into the merits of the claim of the petitioner for post retiral benefits as aforesaid, the writ petition is disposed of with a direction to the petitioner to approach the respondent No.3, District Inspector of Schools, Meerut by filing a representation before him within a period of one month raising all his grievances. In the event, such a representation is submitted respondent No.3 shall consider and decide the same in accordance with law by passing a reasoned and speaking order within a period of three months from the date of submission of the representation by the petitioner, if there is no other legal impediment in this regard. The decision so taken shall be communicated to the petitioner forthwith."

6. It is in compliance of this order that impugned order has come to be passed, the argument advanced by learned counsel for the petitioner is that all the four teachers, namely, Sri Girdhari Singh, Sri Kishan Pal, Sri V.K. Sharma and the petitioner were terminated from the institution by means of an identical order dated 1st March, 1989 and the writ petitions were allowed by this Court on 26th February, 1997. In this writ petition being Writ Petition No.- 3945 of 1989 all the four petitioners were party and against which special leave petition was allowed dismissing the writ petition of all the four petitioners and under these circumstances Management could not have taken a stand that other three petitioners since attained age of superannuation during pendency of litigation, they were entitled to pension. This approach of the Management and reliance thereupon by the District Inspector of Schools, Meerut resulted in absolute discrimination meted out to the petitioner on the question of payment of pension and other retirement dues.

7. The other argument is that since the petitioners' services were terminated by an order of termination simplicitor, it should be taken to mean that they have been made to retire compulsorily at the discretion of Management of minority institution and since such a decision could not have attracted the provisions of prior approval of District Inspector of Schools, the petitioner would be entitled to post retirement dues if he has attained the qualifying

service.

8. Learned counsel for the petitioner has placed reliance upon the U.P. Contributory Provident Fund Insurance Pension Rules, 1964 and U.P. School and College Teachers Gratuity Fund Rules, 1964. He has also placed reliance upon Government order dated 10th August, 1978, whereby the benefits of death-cum-retirement gratuity were made applicable to the teachers of recognized and aided non Government colleges. He has also placed reliance upon the Government order dated 29th August, 1981 in the above regard. He has also submitted that petitioner having exercised his option to be retired at the age of 60 years on 15th January, 1992, he was entitled to gratuity.

9. A counter affidavit has been filed in this case on behalf of the State respondents sworn by Sri Nirvikar Anand, the then Principal, Government High School, Ekwara, Meerut. The stand taken in the counter affidavit is that since the services of the petitioner were terminated and writ petition filed by the petitioner got dismissed by the order of Supreme Court, petitioner would not be entitled to payment of pension as per law, however, there is a fair amount of admission in paragraph 6 of the counter affidavit that Sri V.K. Sharma, the Assistant Teacher and Sri Girdhari Singh, the then Principal since retired on 30th June, 1998 and 30th June, 1993 respectively, their pension and other post retirement benefits had been paid by Deputy Director of Education, 1st Region Meerut. It is also an admission on the part of State respondent that the petitioner like other two teachers were also paid salary lastly on 31st May, 2001 and since he would have retired on 30th June, 2010 the papers/ service book had been forwarded to the Deputy Directory of Education, Meerut but thereafter District Inspector of Schools since had taken a decision, the matter of the petitioner has come to be closed.

10. Having heard learned counsel for the respective parties and their arguments raised across the bar, following admitted factual positions emerge out quite clearly from the above discussions:

(i). Four teachers, namely, Sri Girdhari Singh, Sri Kishan Pal, Sri V.K. Sharma and Sri Kailash Haria (petitioner) were all terminated from the institution by an identical orders passed in their respect separately in following terms:

"Dated: 1.3.1989

From : The Manager,

St. John Inter College,

Jangethi, Meerut.

To,

Kailash Haria,

Asstt. Teacher.

Sir,

This is to inform you that vide Resolution No. 326 dated 13.1.1989 passed by the Committee of Management of the institution you are terminated from the institution with immediate effect.

This is for your information.

Yours faithfully,

Sd/-

Manager"

(ii). They all jointly filed a single writ petition being Writ Petition No.- 3945 of 1989 in which on 18th May, 1989 following interim order was passed:

"Heard learned counsel for the parties, petitioners may make an application to the District Inspector of Schools concerned who will make an enquiry into the fact whether the petitioners have in fact worked and taught the classes in St. John Inter College, Janethi, district Meerut. In case it is found that the petitioners in fact attended the college and performed their duties as assigned to them by the Principal of the college, the District Inspector of Schools will ensure that the petitioners receive their due salary for the period during which they have discharged their duties in the college. It is also being made clear that the District Inspector of Schools can also conduct enquiry in case the petitioners put forward the case that they offered themselves for discharge of their duties but they were not allowed to discharge their duties due to illegal act of the respondents. In such a case the petitioners even though may not have in fact worked but they will be entitled to receive their salary."

(iii). Consequently all the teachers started getting salary and this writ petition was allowed on 26th February, 1997 in following terms:

"This writ petition was filed challenging the orders, all dated 13.1.1989 whereby the services of the respective petitioners were terminated on the ground that there was no prior approval obtained in respect of such terminations. At the time of hearing the learned counsel for the petitioners admitted on facts that there was no prior approval. The Institution wherein the petitioners were working is admittedly minority Institution. The law in this regard has since been settled in writ petition No. 4031 of 1988: Smt. J.K. Katra v. R.T.G.S. and others decided on 19.7.1996 holding that even in the case of minority institution prior approval is required. No contention has been advised disputing the said legal proposition.

In the aforesaid circumstances, the writ petition succeeds and it is allowed. The impugned orders, all dated 13.1.1989 at annexure no. 3A, 3B, 3C and 3D to the writ petition are hereby quashed. But, I make it clear that the respondents' authorities will be entitled to take any action permissible in law. There will be no order as to costs."

(iv). Against the aforesaid order of writ court, the Committee of Management approached the Supreme Court vide Special Leave Petition No.- 322 of 1997 which was allowed holding vide paragraph 7 as under:

"7. Under the provisions, as it stand, the conclusion is irresistible that question of prior approval of the competent authority in case of an order of termination of an employee of a minority institution does not arise. In the aforesaid premises, the majority view in the Full Bench Judgment of Allahabad High Court is set aside and this appeal is allowed. The writ petition filed, stands dismissed."

11. In view of the above, therefore, the termination order of services of all four petitioners, namely, Sri Girdhari Singh, Sri Kishan Pal, Sri Kailash Haria (petitioner) and Sri V.K. Sharma dated 1st March, 1989 stood affirmed and, therefore, all the four petitioners taken to have terminated from service w.e.f. 1st March, 1989.

12. However, Sri Girdhari Singh and Sri V.K. Sharma were paid pensionary benefits during the pendency of the writ petition and special leave petition as they attained age of superannuation during pending of litigation. This has been so admitted in paragraph 6 of the counter affidavit filed on behalf of the State respondents that runs as under :

"6. That in compliance of the order passed by this Hon'ble Court, the salaries are being paid to the concerned four teachers. However, it is further relevant to point out here that during the pendency of the writ petition Sri Girdhari Singh, Principal was retired on 30.06.1993 and Dy. Director of Education – I Region Meerut has sanctioned the pension payment order on 23.04.1995 has since 01.07.1993. It is relevant to point out here that Sri Virendra Kumar Sharma Assistant Teacher dated 30.06.1998 Dy. Director of Education – I Region Meerut has sanctioned the pension payment order on 21.12.1998 has since 01.07.1998 and other retiral benefits. At present both teachers are being paid their salaries from Meerut Treasury, Meerut."

13. In view of the above admitted and undisputed fact positions, since the special leave petition of the Committee of Management was allowed and the termination order dated 1st March, 1989 stood affirmed, there was no question of making any payment of pensionary benefits and post retirement benefits to Sri Girdhari Singh and Sri V.K. Sharma on the plea that they had attained the age of superannuation but it appears that Management itself took them to have retired from service while stand of the Management was that the order terminating the service dated 1st March, 1989 was a valid one.

14. In the given facts and circumstances and the legal position that emerges out of the decision of the Supreme Court, it appears quite apparent that Committee of Management forwarded the service book and papers of Sri Girdhari Singh and Sri V.K. Sharma for pensionary benefits and other post retirement benefits taking them to have attained their qualifying service.

15. It is pertinent to reproduce the stand of Committee of Management taken before the District Inspector of Schools. The relevant paragraph containing the stand of Committee of Management in the order impugned passed by the District Inspector of Schools is reproduced hereunder:

"उपरोक्त प्रकरण में सुनवाई के उपरान्त विद्यालय के प्रबन्धक/प्रधानाचार्य ने अपने पत्र दिनांक 17-8-2015 को प्रकरण के सम्बन्ध में आख्या प्राप्त कराये गयी हैं। प्राप्त आख्या एवं प्रमाण के आधार पर चूंकि श्री कैलाश हरिया से पूर्व सेवा निवृत्त दो अध्यापकों को विभाग

द्वारा पेंशन स्वीकृत की जा चुकी है। जिसके आधार पर वह कोषागार मेरठ से पेंशन का भुगतान प्राप्त कर रहे हैं। उपरोक्त अध्यापक सेवा निवृत्त हुए हैं और उनकी लम्बी सेवा को देखते हुए उन्हें सेवा निवृत्तिक लाभ मिले हैं। यहाँ यह तथ्य भी उल्लेखनीय है प्रबन्धतंत्र का सेवा समाप्ति का जो आदेश है, उसमें प्रार्थी की सेवाएँ किसी दुराचरण के आधार पर समाप्त नहीं हुई है। उन्हें कोई आरोप पत्र भी नहीं दिया गया है, और न ही उनके विरुद्ध कोई अनुशासनात्मक कार्यवाही भी नहीं हुई है। उनकी सेवा समाप्ति दोष रहित (*Simple termination*) की संज्ञा में आती है। अतः उसकी पेंशन रोके जाने का कोई औचित्य नहीं है। अतः लाभत्रयी योजना के अन्तर्गत प्रार्थी पेंशन, एवं अन्य सेवा निवृत्ति लाभों को प्राप्त करने का अधिकारी है। इसी आधार पर प्रबन्धक/प्रधानाचार्य ने अपने पत्र दिनांक 16-3-2015 के द्वारा श्री कैलाश हरिया की दिनांक 30-6-2010 को सेवा निवृत्ति के उपरान्त दिनांक 1-7-2010 से पेंशन स्वीकृति हेतु पत्रजात इस कार्यालय को प्रेषित किये गये हैं।"

16. From the above it is clear that since it was a case of termination simplicitor and therefore, the Committee of Management proceeded to accord post retirement dues and pensionary benefits to these two teachers for having attained the qualifying service for such purpose and this is also admitted to the District Inspector of Schools that papers of the petitioner were also forwarded for similar benefits by the Committee of Management and the Principal of the institution on 16th March, 2015, however, District Inspector of Schools proceeded to reject the claim the petitioner only on the ground that in view of the judgment of Supreme Court dated 30th March, 2001 (relevant paragraph already reproduced hereinabove), petitioner would not be entitled to pension and other post retirement benefits and his services would be taken to have been terminated. The penultimate paragraph of the impugned order is reproduced hereunder:

"माननीय उच्च न्यायालय इलाहाबाद में दायर याचिका संख्या-3945/1989 में पारित आदेश दिनांक 18-5-1989 के विरुद्ध प्रबन्ध समिति सन्त जॉन इण्टर कालिज जंगेठी मेरठ ने माननीय उच्चतम न्यायालय नई-दिल्ली में दायर विशेष अनुमति याचिका में पारित आदेश दिनांक 30-3-2001 में प्रबन्ध समिति की याचिका को स्वीकार करते हुए प्रबन्ध समिति द्वारा लिये गये निर्णय में उपरोक्त चारों अध्यापकों की सेवा समाप्ति को सही माना गया है। माननीय उच्चतम न्यायालय के उपरोक्त आदेशों के अनुपालन में ही श्री कैलाश हरिया को दिनांक 31-5-2001 तक का वेतन भुगतान किया गया है। अतः माननीय उच्चतम न्यायालय नई-दिल्ली के आदेशानुसार श्री कैलाश हरिया सेवा समाप्ति के उपरान्त पेंशन आदि सेवा निवृत्त लाभों के पाने के अधिकारी नहीं है।"

17. This above approach of the District Inspector of School, in my considered view, is quite discriminatory. If an employer himself is taking petitioner to have already attained the qualifying service like pension and other post retirement dues of other teachers, namely, Sri Girdhari Singh and Sri V.K. Sharma and forwarded the papers of the petitioner also for pension, the State could not have rejected the claim of the petitioner while it had already allowed the identical claim of Sri Girdhari Singh and Sri V.K. Sharma, a similarly placed teachers. The order impugned, therefore, cannot be sustained in law on the above count alone. It is clear that management has taken/ treated all these teachers to have been compulsorily made to retire, though not specifically mentioned as such.

18. If qualifying service of two identically placed teachers have been reckoned with to confer upon them post retirement benefits then petitioner, being identically placed, was also entitled to equal protection of law in terms of conferment of post retirement benefits including pension.

19. In view of the above, therefore, it is held that petitioner has been discriminated against in the matter of grant of post retirement benefits for having already attained the qualifying service for pension.

20. Admittedly, the petitioner was appointed on 1st August, 1969 and the institution came to be covered under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. So the petitioner continued to draw salary earlier from the management and then later on State exchequer until the year 2001.

21. It is worth mentioning here that pension benefits were made applicable to the teachers of schools and colleges under the Triple Benefit Scheme of the Government order dated 17th December, 1965 that provided for qualifying service to be a period of 10 years and the only condition was that a teacher must be working on a substantive post.

22. It transpires from the record that the Committee of Management during the pendency of the writ petition before the High Court treated all four teachers to be working on a substantive post and, therefore, permitted them to apply for option to be exercised to retire at the age of 60 years and petitioner had also exercised his option to retire at the age of 60 years in the year 1992. The option paper filed as Annexure-6 to the writ petition dated 15th January, 1994 by the petitioner to opt for retirement at the age of 60 years has also not been disputed.

23. There is no dispute regarding applicability of gratuity rules to the teachers of the present institution as there is no such plea taken in the counter affidavit that U.P. Contributory Provident Fund Insurance Pension Rules, 1964 and U.P. School and College Teachers Gratuity Fund Rules, 1964 are not applicable to the teachers of the present institution. Government order dated 10th August 1978 making applicable the post retirement service benefits Rules, have also not been questioned.

24. In view of the above, petitioner is held entitled pension, gratuity, provident fund etc. as post retirement benefits for having qualifying service as per rules, to his credit.

26. In view of the above, writ petition succeeds and is allowed. The order impugned dated 10th December, 2015 is set aside. Petitioner is entitled for all post retirement dues including pension as has been given to Sri Girdhari Singh and Sri V.K. Sharma the identically placed teachers of the institution.

27. Necessary calculation shall be made and dues including pension shall be released to the petitioner within a period three months from the date of production of certified copy of this order. There will be no order as to cost."

7. According to the petitioner, the said order has attained finality as no special appeal till date has been preferred less to say about filing of any review or recall application and he while inviting attention towards para three of the said judgment has sought to contend that the name of the petitioner also found place showing that he was also sailing on the same boat viz-a-viz Sri Kailash

Hariya.

8. Grievance of the petitioner is that he is entitled to the post retiral benefits along with 12% interest.

9. This court entertained the writ petition on 11.10.2023 while Passing the following orders:-

"1. Learned Standing Counsel shall obtain instructions as to whether any Special Leave has been preferred against the order dated 31.05.2023 in Writ-A No. 1190 of 2016 (Kailash Hariya Vs. State of U.P. and others).

2. Documents furnished by learned counsel for the parties are kept on record.

3. Put up this case tomorrow i.e. 12.10.2023 at 2 P.M."

10. Learned counsel for the petitioner has produced before this court a communication dated 21.8.2023 of the District Inspector of Schools, Meerut addressed to the respondent no. 4-institution whereby pursuant to the order passed in the case of Kailash Hariya, it is being sought to be demonstrated that he is to be extended the said benefits. On noticing the said aspect this court fixed the matter for today.

11. Sri Ajit Kumar Singh, learned Additional Chief Standing counsel placed the instruction dated 11.10.2023 under the signatures of the District Inspector of Schools and according to him official respondents are in the process of preferring an intra court appeal passed in the case of Kailash Hariya and in this regard necessary spade work is under way. Sri Ajit Kumar Singh, learned Additional Chief Standing counsel submits that though appeal has not been preferred and the petitioner claims benefit of the judgement in the case of Kailash Hariya (supra) thus, he may represent his case before the respondent no. 3, District Inspector of Schools, District Meerut who shall address to the claim of the petitioner and pass appropriate orders strictly in accordance with law.

12. To such a submission learned counsel for the petitioner has no objection and he gracefully accepts the same.

13. Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed of granting liberty to the petitioner to prefer a comprehensive representation before the respondent no. 3, District Inspector of Schools, Meerut who shall on the receipt of the same put to notice respondent no. 4 and after obtaining it say, thereafter, proceed to pass an order

strictly in accordance with law within a period of three months from the date of production of certified copy of this order after looking into the aspects regarding the applicability and the existence of the order passed in the case of Kailash Hariya.

14. Needless to point out that this court has not adjudicated on the merits of the matter and then respondent no. 3 shall decide the controversy strictly in accordance with law without being influenced and obsessed by any of the observations made hereinabove.

15. The Instructions are taken on record and marked as appendix B.

Order Date :- 12.10.2023

S.A.