

Court No. - 39

Case :- WRIT - A No. - 17360 of 2023

Petitioner :- State Of U.P. And 4 Others

Respondent :- Ram Naresh Mishra S/O, Late Chandrasekhar

Counsel for Petitioner :- C.S.C.,C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Rajendra Kumar-IV,J.

1. Heard Shri Pankaj Rai, learned Additional Chief Standing Counsel for the State respondent.

2. Present writ petition has been filed against the order dated 27.04.2023 passed by State Public Service Tribunal in Claim Petition No. 968 of 2021 (Ram Naresh Mishra Vs. State of U.P. and another). By that order, the learned Tribunal has issued a direction to the present petitioner to continue to pay the respondent higher pension as was being paid to him prior to August, 2020. Further recoveries being pursued by the petitioner to recover alleged excess pension up to August, 2020, has been quashed.

3. Having heard learned Additional Chief Standing Counsel for the State-respondent and having perused the record, we find that the respondent had been appointed as Panchayat Secretary on 16.06.1955. He was promoted to the post of Village Development Officer in 1962, and further promoted to the post of Block Development Officer. However, that promotion was not confirmed. In such circumstances, he retired from service on 30.06.1992 on the post of Village Development Officer. Consequent to his retirement, retiral dues were paid out to the respondent including pension. Thus, for August 2020 pension was paid out to the respondent Rs. 29,440/-. Without issuance of any

notice and without any order, a deduction of Rs. 19,627/- was made from that monthly pension in a wholly ex parte manner. It is in such fact background, the claim petition came to be filed.

4. While allowing the claim petition, the Tribunal has taken strong exception to the fact that pension of the respondent had been suddenly reduced and excess payment deducted from his monthly pension paid for the month of August, 2020, 28 years after he had retired from service, when he had reached the age of 85 years.

5. Relying on the principle laid down by the Supreme Court in **State of Punjab and Ors., Vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334**, the Tribunal has allowed the claim petition in entirety.

6. Having heard learned Additional Chief Standing Counsel for the State respondent and having perused the record, we find no good ground to interfere with the order of the Tribunal insofar as it has quashed the deduction of alleged excess payment paid in the past. In that regard, the Tribunal has clearly found, neither any mistake was shown to have been committed by the respondent nor any conduct was seen to have been offered by him as may have warranted such deduction to be made. To that extent, the order passed by the Tribunal is wholly consistent to the ratio laid down by the Supreme Court in **Rafiq Masih (White Washer) (supra)**.

7. At the same time, the Tribunal has itself not recorded any finding that no error had occurred in the computation of the correct pension payable to the respondent. In that regard, the only finding returned by the Tribunal is that the exercise conducted by the petitioner to correct that mistake was wholly ex parte. Neither any notice was issued to the respondent before making that order of

correction nor the respondent was confronted with the correct facts in that regard.

8. Insofar as the Tribunal has disapproved the action taken by the respondent-State to make that deduction, we find no fault in the order of the Tribunal. It is a *sine qua non* that the respondent should have been given adequate opportunity of hearing before any correction may have been made in the computation of his monthly pension. Once the higher pension had been computed and granted to the respondent on the own act of the petitioner and its authorities, a notice of the proposed correction should have been first issued to the respondent to allow him an opportunity to dispute the same and to establish the correct facts according to his perspective. Only after such reply had been furnished, it may have become open to the petitioner to pass any order ostensibly to make any correction in the pension payment order or in the computation of pension payable to the respondent.

9. While such requirement of law is consistently applied in our jurisprudence, it did not become open to the Tribunal to quash the entire order and to direct the petitioner to be paid the higher amount without determination. No substantive right had arisen to the respondent to continue to receive a higher pension, in future even though that higher pension may have been computed erroneously.

10. Therefore, we find that the Tribunal ought to have left open to the petitioner to pass fresh order to compute the correct amount of pension payable to the respondent, in future.

11. Considering the entirety of the facts and circumstances of the case and the order we propose to pass the requirement to issue

notice to the private-respondent is dispensed with as that would only lead to further agony to the respondent who undisputedly is 85 years old.

12. Accordingly, writ petition is disposed of with the following directions :

(i) The petitioner shall not make recovery of any higher amount that it claims to have paid out to the sole respondent. Any such amount that has been paid out to the respondent, is made absolute. Any recovery made towards alleged excess payment of pension upto August 2020, shall be reversed forthwith with interest @ 6% from the date of recovery/deduction to the date of payment.

(ii) For the period August, 2020 onwards, the petitioner shall provisionally pay out to the respondent the due pension, as per the computation made by the petitioner. Any arrears towards that amount will be paid out not later than 30.11.2023, failing that, the said amount shall attract interest @ 8% from the date of amount become payable till the date of actual payment.

(iii) For the current period, the petitioner shall continue to pay the respondent the due pension as provisionally computed by the petitioner, as and when it becomes due.

(iv) With respect to alleged excess computation of pension due to the respondent, the petitioner is permitted to issue appropriate notice to the respondent within a period of one month from today disclosing the exact basis on which the pension payable to the respondent is sought to be revised/reduced.

(iv) If any Government Order or Office Memorandum etc. is being relied in that regard, legible copy of the same shall be provided to

the respondent along with such notice.

13. Upon due service of notice, the respondent shall tender the written reply/objection to the same within four weeks therefrom.

14. Upon such reply being furnished, the petitioner may proceed to pass a reasoned and speaking order dealing with the objection of the respondent within a further period of three months and not later.

15. Subject to such compliances, any further amount that may be found payable to the respondent shall be paid out to him within a period of one month from the date of that decision, failing which the payable amount shall also attract interest @ 6% from the date of deduction till the date of payment.

Order Date :- 13.10.2023
SA

(Rajendra Kumar-IV, J.) (S.D. Singh, J.)