

Court No. - 35

Case :- WRIT - A No. - 17713 of 2023

Petitioner :- Ram Narayan Chauhdary

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

Counsel for Petitioner :- Prem Prakash, Sr. Advocate

Counsel for Respondent :- C.S.C., Dharmraj Chaudhary

Hon'ble Vikas Budhwar, J.

Heard Sri R.K. Ojha, learned Senior Counsel assisted by Shri Prem Prakash, learned counsel for the petitioner and Sri H.K. Shukla, learned Standing Counsel, who appears for Respondents 1, 2 and 3.

In view of the order, which is being proposed to be passed today, notices are not being issued.

The case of the writ petitioner is that he was initially appointed on the post of Peon in the year 1990 in the fourth respondent institution, Sant Kabir Shankar Das Intermediate College, Mohammad Nagar, Basti. It is also the case of the writ petitioner that in the year 2019, one Shri Subhash Tiwari preferred a complaint against the writ petitioner herein. However, the salary of the writ petitioner was stopped which compelled the writ petitioner to prefer a representation dated 27.08.2019 before the second respondent, Joint Director of Education, Basti Region Basti. The third respondent, District Inspector of Schools, Basti thereafter proceeded to issue a communication dated 12.07.2019 requiring furnishing of certain inputs. A letter is also stated to have been issued by the second respondent to the third respondent. It is also the case of the writ petitioner that the Joint Director of Education, Basti proceeded to issue a communication to the District Inspector of Schools, Basti on the basis of the said complaint lodged against

the writ petitioner, the salary of the writ petitioner could not have been withheld. As per the writ petitioner, due to village rivalry and enmity regarding scuffles between two fractions. FIR was sought to be lodged by the petitioner against one Shri Jay Prakash and 3 others which was registered as Case Crime No. 201 of 2022 under Sections 352, 504, 506 IPC Police Station Sonha, District, Basti on 14.09.2022. It is also the case of the writ petitioner that Shri Jay Prakash bore enmity between the writ petitioner also preferred a representation/complaint before the District Inspector of Schools, Basti with regard to certain allegations referable to the working of the writ petitioner relatable to the fact that the writ petitioner was under age at the time of the appointment and he was not entitled to the appointed as such. On the said complaint, on 12.04.2023 the inquiry officer who had been appointed by the respondent-authorities issued a communication to the writ petitioner and the principal of the institution in question relatable to the fact that the writ petitioner was convicted in a criminal case and he was languishing in jail, thus he was not entitled to the monetary benefits while including the said period and thus the determination of the pay-scale and increments was *per se* illegal. Thereafter on 14.06.2023, the District Inspector of Schools, Basti issued a communication to the fourth respondent, Principal Sant Kabir Shankar Das Intermediate College, Mohammad Nagar, Basti mentioning therein that the writ petitioner languished in jail from 03.02.1988 to 11.02.1988 but he was made entitle to the payment of salary for the said period and the same became the basis of grant of increments thus an affidavit be taken from the writ petitioner in that regard and consequential proceedings be also initiated. It is also the case of the writ petitioner that a total amount referable for the said period based pay-scale of Rs. 363/- was of Rs. 907/-. On

03.08.2023, the District Inspector of Schools, Basti, third respondent issued a communication to the fourth respondent, Principal of the committee of management that the salary, pay-scale, increments, bonus selection grade, promotional grade and ACP which had been made available to the writ petitioner including the services when the writ petitioner was languishing in jail was illegal thus the entire amount be recovered and deposited in the treasury. The writ petitioner claims to have been preferred a representation/application on 08.08.2023 before the second respondent, Joint Director of Education, Basti Region Basti. During the pendency of the said representation on 28.08.2023, the fourth respondent issued an office order seeking to recover an amount of Rs. 7,87,300/- referable to the period from 01.09.1989 to 31.07.2023 being an excess payment sought to be made requiring the writ petitioner to deposit in the treasury itself thereafter according to the writ petitioner, on 11.09.2023, the second respondent, Joint Director of Education, Basti Region Basti proceeded to pass an order whereby it was provided that recovery of the said amount is not justifiable in that regard. However, now according to the writ petitioner, the said order is being sought to be revoked by virtue of an order dated of the Joint Director of Education, Basti Region Basti on 05.10.2023.

Questioning the said order dated 05.10.2023 reviewing the order dated 11.09.2023 passed by the second respondent, Joint Director of Education, Basti Region Basti, the writ petitioner has preferred the present writ petition.

This Court entertained the writ petition on 06.11.2023 requiring the learned Standing Counsel to seek instructions. On 21.11.2023 his copy of the instructions was produced before this Court and the

Court after perusing the said instructions proceeded to pass an order dated 22.11.2023 which is recorded as under:

"The contention of the learned Senior Counsel for the writ petitioner is that the writ petitioner is to superannuate on 24.11.2023 however he has been working in the institution in question since 1980 on the post of Peon. Pursuant to the lodging of a first information report criminal proceedings were drawn and ultimately by the order of the Special Judge Basti dated 3.2.1988 the writ petitioner has been convicted under Sections 147, 148 and 302 of the IPC against which he has preferred an appeal and he has been enlarged on bail .

The submission is that though he was confined in jail from 3.2.1988 to 11.2.1988 however he was made admissible for the payment of bonus, annual increment, revised pay scale, promotional pay scale, selection grade and ACP taking into account the confinement of the writ petitioner in jail and when the objection was raised then an order is stated to have been passed on 11.9.2023 by the Joint Director of Education, Basti Region, Basti granting benefits to the writ petitioner but the said order has been revoked by the said authority on 5.10.2023.

It is the case of the writ petitioner that the recovery of the said amount cannot be made after a lapse of enormous delay and further the writ petitioner is entitled to provisional pension in the back ground of the pendency of the criminal case against him.

Sri Awadhesh Kumar Mishra, submits that he shall seek instructions in the matter and he requests that the matter be posted on day after tomorrow i.e. 24.11.2023 as fresh."

Shri R.K. Ojha, learned Senior Counsel for the writ petitioner submits that in absence of any power of review available with The second respondent, Joint Director of Education, Basti Region Basti, he could have passed the order dated 05.10.2023 reviewing which is earlier order dated 11.09.2023, he submits that the power of review if exercisable can be resorted too particularly when there

is fraud, concealment and misrepresentation, however in the present case, there is no such allegation thus the writ petitioner could not have been denied the said benefits. Additionally it is being sought to be argued that the conscious decision taken on 11.09.2023 by the second respondent, Joint Director of Education, Basti Region Basti, while according benefits to the writ petitioner but unilaterally without putting the writ petitioner to notice the order impugned has been passed. According to him, though the writ petitioner was languishing in jail from 03.02.1998 to 11.02.1998 and as per the respondents the basic pay for the said period was Rs. 363/- totaling to Rs. 907/- but once the writ petitioner has deposited the said amount referable to the period when he was languishing in jail then the same could not be made the basis for taking away the benefits for the writ petitioner. He seeks to rely upon the judgment in the case of Hon'ble Supreme Court Full Bench decision in the case of Shiv Shankar Vs. Union of India reported in 1985 (2) SCC 30. According to the learned Senior Counsel in view of the judgment in the case of Full Bench of this Court in the case of Shivgopal Vs. State of U.P. in Special Appeal No. 40 of 2017 decided on 08.05.2019 though the writ petitioner is not entitled to payment of pension owing to his conviction in case Crime No. 201 of 2022, Session Trial No. 269 of 1985, under Sections 352, 504, 506 IPC but he is entitled for provisional pension as well as provident fund. He submits that the order in question be set aside and the matter be remitted back to pass fresh order.

Shri H.K. Shukla learned Standing Counsel on the other hand submits that the writ petitioner might be right to some extent that he was not accorded opportunity of hearing as the same is not revealing from the order in question but the crucial question is that

in view of the order dated 24.03.2015, the payment of monetary benefits inclusive of ACP is liable to be withheld particularly when the writ petitioner had been convicted and it is always open for the writ petitioner to claim once he is honorably acquitted by the Court of law. He, however, does not disputed the fact that the writ petitioner is entitled for provisional pension and provident fund. On a specific query being made to Shri H.K. Shukla, learned Standing Counsel as to whether he proposes to file response. He submits that he is possessing instructions which are self-sufficient for disposal of the writ petition, in view of the order which is being proposed to be passed.

I have heard the learned counsel for the parties and perused the record.

The facts of the case are not in dispute. The writ petitioner is a Class-IV employee who came to be superannuated on 24.11.2023 though he continued till 30.11.2023. It is also not in dispute that the writ petitioner was a confirmed employee. However, the bone of contention between the parties is as to whether on conviction the pensionary benefits can be withheld and the amount of Rs. 7,87,300/- could be recovered based upon the facts that owing to confinement in jail for the said period the writ petitioner was paid salary which was included for grant of ACP and other monetary benefits. It is not disputed by Shri H.K. Shukla, learned Standing Counsel that the order dated 05.10.2023 reviewing the order dated 11.09.2023 passed by the Joint Director of Education, Basti Region Basti, second respondent was in violation of principles of natural justice thus in the opinion of the Court, the order suffers from procedural irregularity and fundamental defects thus it is liable to be set aside. Now a question arises as to whether the writ

petitioner is entitled to payment of full pension or provisional pension including provident fund. The said issue is no more *res integra* as a Full Bench of this Court in Shivgopal (supra) had considered the said issue and held that pendency of a criminal case would not deny payment of provisional pension.

Accordingly, the writ petition is being decided in the following manner:

- a). The order dated 05.10.2023 passed by the second respondent, Joint Director of Education, Basti Region Basti, reviewing the order dated 11.09.2019 passed by it set aside.
- b). The matter stands remitted back to the Joint Director of Education, Basti Region Basti, to pass fresh orders strictly in accordance with law within a period of one month from the presentation of the certified copy of the order after putting to notice the writ petitioner and seeking its version.
- c). The writ petitioner shall be made entitled to provisional pension and other benefits which are admissible under law and the payment of full pensioary benefits shall be dependent upon the final orders so passed by the competent Court of law.

With the aforesaid observation, the writ petition is **disposed off**.

Order Date :- 5.12.2023/A. Prajapati