

Court No. - 21

Case :- SPECIAL APPEAL No. - 729 of 2023

Appellant :- Executive Officer, Nagar Panchayat

Respondent :- Ashwani Kumar And 3 Others

Counsel for Appellant :- Ashok Kumar Upadhyay

Counsel for Respondent :- C.S.C., Girdhar Prasad Tripathi

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Ashok Kumar Upadhyay, learned counsel for the appellant, Shri Arvind Kumar Shukla and Shri Girdhar Prasad Tripathi, learned counsel for respondent No. 1 and learned standing counsel for respondents No. 2 to 4.

2. With consent of counsel for the parties, the instant appeal as well the writ petition are being disposed of finally.

3. The respondent, herein, filed Writ-A No. 9835 of 2023, praying for a direction to the appellant and the State-respondents to forthwith pay the suspension allowance along with retiral dues i.e. Gratuity, GPF, Leave Encashment etc. along with interest till date of actual payment. The suspension allowance and retiral benefits being claimed by the respondent were that of his father who had worked as Bakshi at Nagar Panchayat, Kanchawa, District Mirzapur. He died on 08.01.2019. The appellant had withheld the post retiral benefits of the father of the respondent on account of his conviction in a case under Section 161 IPC read with Section 5/2 of the Prevention of Corruption Act, by judgment and order dated 11.10.1996. As per own admission of the appellant, a sum of Rs.81,388/- was due as suspension allowance to the respondent's father.

4. By the order impugned in the instant appeal dated 27.09.2023, learned Single Judge observing that the father of the respondent was not removed or dismissed from service until he reached the age of superannuation on 09.01.1999, has directed the appellant to file his affidavit indicating the precise entitlement of the respondent's father to the post retiral benefits.

5. Shri A.K. Upadhyay, learned counsel for the appellant contends that the direction contained in the impugned order is final in nature although the writ petition has been kept pending. He submits that under Regulation 351 of the Civil Services Regulation which were applicable to the father of the respondent, the employer/State Government was having power to withhold or withdraw the whole or any part of pension if the pensioner has been convicted of serious crime. He submits that although against the conviction order, the appeal filed by the father of the respondent is pending and even the order of conviction has been stayed but the same will not wipe off the effect of the conviction order until the appeal is allowed. He further submits that learned Single Judge has not adverted to the aforesaid aspect at all while issuing a positive direction to the appellant to disclose entire entitlements of pensionary benefits in relation to the father of the respondent to pave way for payment of the said amount. Learned counsel for the appellant places reliance on a Full Bench decision of this Court rendered in ***Special Appeal No. 40 of 2017, (Shivagopal vs. State of U.P. and 4 others)*** and connected matters dated 08.05.2019, in contending that in case of conviction of a government servant, the Government is entitled to withhold the pensionary benefits. He submits that the stage for consideration of the issue relating to withholding of pension or any part thereof would arise after the appeal is decided.

6. Shri Shukla, learned counsel for the contesting-respondent is not in a position to dispute the legal position that the employer/Government is competent to withhold pension or any part thereof if a government servant has been convicted of a serious offence.

7. In the instant case, concededly the conviction is under Section 161 IPC read with Section 5/2 of Prevention of Corruption Act which are serious offences.

8. Shri Shukla submits that he has no objection in case this Court clarifies that the respondent's claims to the financial benefits arising out of services rendered by his father is considered after the appeal is decided but a direction be issued to the appellant to release forthwith the arrears of suspension allowance i.e. Rs.81,388/- as per resolution of Nagar Panchyat dated 08.09.2023.

9. Shri A.K. Upadhyay, learned counsel for the appellant has no objection to the same.

10. Counsel for the parties agree that sum of Rs.81,388/- resolved to be paid to the respondent by Nagar Panchayat, Kachhwa on 08.09.2023 was towards arrears of suspension allowance and not pensionary benefits.

11. Accordingly, the instant appeal and the writ petition are disposed of with consent of the parties as follows:

a) Arrears of suspension allowance – Rs.81,388/- shall be paid to the respondent within three weeks.

b) Liberty is reserved in favour of the respondent to claim post retiral benefits on account of services rendered by his father after

the appeal is decided.

Order Date :- 6.11.2023

Mukesh Kr.

(Donadi Ramesh,J.) (Manoj Kumar Gupta,J.)