

Court No. - 35

Case :- WRIT - A No. - 18694 of 2023

Petitioner :- Madan Rai

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

Counsel for Petitioner :- Girish Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Girish Kumar Singh, learned counsel for the petitioner and Sri H.K. Shukla, the 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 to the fourth respondent.

The case of the writ petitioner is that he was appointed as a Class-IV employee in the fourth respondent Institution, Shri Shailya Kumar Singh Inter College, Dilip Nagar, Kushinagar, approval whereof was granted on 15.06.1979 and thereafter he superannuated on 30.11.2021. However, he claims that owing to the lodging of the FIR being Case Crime no. 767 of 2001 transformed into Sessions Trial No. 126 of 2003, purported to be under Sections 302, 396 IPC, he was convicted, against which he has preferred the Criminal Appeal No. 5758 of 2005, in which he has been enlarged on bail. He submits that no departmental enquiry whatsoever has been conducted, however, his full pensionary benefits have been withheld. He submits that once the writ petitioner was allowed to join the post in question, post enlargement on bail, then he is entitled to full pension. He submits that the order dated 13.04.2023 passed by the second respondent, Deputy Director of Education (Madhyamik), VII Region Gorakhpur, District Gorakhpur in so far as denies full pension is illegal.

Sri H.K. Shukla, learned Standing Counsel, who appears for the official Respondents 1, 2 and 3 submits that once the criminal trial is pending and the conviction has not been either set aside or stayed only the writ petitioner has been enlarged on bail, then in view of the Full Bench judgment in the case of ***Shiva Gopal Vs. State of U.P., 2019 (5) ADJ 441***, the writ petitioner is not entitled to full pension along with gratuity. He however, submits that so far as the issue with respect to leave encashment is concerned, the writ petitioner may represent his cause before the second respondent,

Deputy Director of Education (Madhyamik), VII Region Gorakhpur, District Gorakhpur with regard to the payment of the same permissible under law. The said legal proposition so canvassed by Sri Shukla on the strength of the judgment in the case of ***Shiva Gopal (supra)*** has not been disputed by learned counsel for the petitioner. Since the present issue stands covered by the judgment in the case of ***Shiva Gopal (supra)***, thus the order dated 13.04.2023 passed by the second respondent, needs no interference. However, so far as the payment of leave encashment is concerned, the writ petitioner may represent his cause before the second respondent, who shall consider and determine the same in accordance with law and thereafter proceed to pass an order within a period of one month.

With the aforesaid observations the writ petition stands **consigned to record.**

Order Date :- 1.12.2023

N.S.Rathour