

Court No. - 33

Case :- WRIT - A No. - 18565 of 2023

Petitioner :- Jagdish Prasad

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shiv Bahadur Singh, Satyawar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir, J.

Heard Mr. Chandra Mani Singh, Advocate holding brief of Mr. Satyawar Yadav, learned Counsel for the petitioner at length in support of this petition and Mr. D.K. Singh, learned Additional Chief Standing Counsel appearing on behalf of the State.

The petitioner had earlier preferred Civil Misc. Writ Petition No. 64018 of 2012, questioning an order dated 08.02.2010 passed by the Chief Audit Officer, Lucknow, declining him arrears of salary from 01.10.2004 to 31.07.2005 and re-fixation of his pension after adding service for the period 01.10.2004 to 31.10.2005. The petitioner had further sought a *mandamus* to pay increment on the due dates, revise and re-fix his salary, re-fix his pension, pay the difference in the amount of gratuity and the difference of leave encashment, bonus for the years 2001, 2002, 2004 and 2005 with interest, interest on revised pension and medical leave, which was not paid. The said writ petition was dismissed by the learned Single Judge *vide* order dated 27.09.2013. The order of the learned Judge was appealed to the Division Bench *vide* Special Appeal No. 1741 of 2013. This appeal was allowed, the judgment of the learned Single Judge set aside and the writ petition allowed, granting relief in terms of the following order:

"In view of the discussions made herein above, it is apparent that the impugned order dated 18.2.2010 passed by the respondent No. 2 the Chief Audit Officer, Co-operative Societies and Panchayat is manifestly illegal and therefore, the same cannot be sustained. The learned Single Judge

erred in law in dismissing the writ petition filed by the petitioner-appellant. Consequently, the Special Appeal succeeds and is allowed. The judgement and order dated 27.9.2013 passed by the learned Single Judge is set aside. The impugned order dated 18.2.2010 passed by the respondent No. 2 the Chief Audit Officer, Co-operative Societies and Panchayat, U.P. Lucknow, Annexure-10 to the writ petition is quashed. A writ of mandamus is accordingly issued directing the respondents to recalculate the pensionary benefits admissible to the petitioner-appellant. The consequential exercise regarding revision of pension of the petitioner-appellant shall be undertaken within a period of one two months from the date of the receipt of the certified copy of this order.

With the aforesaid directions, the Special Appeal is allowed."

Now, the petitioner has instituted the present writ petition praying that he may be granted interest on the amount of gratuity, remaining earned leave, bonus for the years 2001 to 2005, due salary for the months of October 2004 to July 2005 and August, 2005 to December, 2005 and also one notional increment due since 01.07.2007 within a period of time to be stipulated by this Court.

These claims were subject matter of Civil Misc. Writ Petition No. 64018 of 2012, which was allowed by the Division Bench upon the petitioner's appeal from the order of the learned Single Judge. The claims involved have already been adjudicated by this Court. It is no longer open to the petitioner to re-agitate the same claim all over again for that would be against the settled principle of *res judicata*, or in any case, constructive *res judicata*. If some part of the claim was not earlier made, it would also be barred by principles analogous to those in Order II Rule 2 of the Code of Civil Procedure. For the said reason, this petition is held not maintainable. It is **dismissed in limine**. No order as to costs.

Order Date :- 22.11.2023/Deepak