

Court No. - 35

Case :- WRIT - A No. - 19253 of 2023

Petitioner :- Dr. Shyam Babu Kulkshrestha

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

Counsel for Petitioner :- Bheem Singh,Aalok Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Instructions filed today is taken on record and marked as Appendix 'A'.

2. Heard Sri Bheem Singh, learned counsel for the writ petitioner as well as Sri Pradeep Kumar Shahi,learned Additional Chief Standing Counsel who appears for respondents No. 1 to 4.

3. In view of the order which is being proposed to be passed today, notice is not being issued to the fifth respondent.

4. The case of the writ petitioner is that the fourth respondent, M.M. H. College, District Ghaziabad is presently managed by the Authorized Controller and the same stands affiliated to Chaudhary Charan Singh University, Meerut and the provisions of U.P State Universities Act, 1973 stands applicable. It is also the case of the writ petitioner that the post completion B.A., M.A. in Geography and Bachelor of Library Science and Manuscriptology and in the year 1987 along with the qualification of Masters of Library and Information Science and Ph.D. in Library and Information Science was issued an appointment order dated 02.12.1999 by the respondents. In pursuance thereof, he joined the post in question. As per the writ petitioner pursuant to a Government Order dated 29.02.1996, the Secretary, Government of U.P. issued a notification on 26.12.1998 by which the Librarians/Deputy Librarians and Assistant Librarian were provided all the benefits from the University and it was further provided that the said employees shall get the benefits of aforesaid Government Order if they fulfil the qualifications for the respective posts in pursuance of the notification of UGC. The writ petitioner claims that based upon the said Government Order, the Secretary of the College in question issued an order dated 29.09.1999 whereby the writ petitioner was awarded nomenclature of head of Librarian and he was made admissible to the pay scale of Rs. 8,000-13,500. It is

also the case of the writ petitioner that a UGC notification has been issued on 19.10.2006 whereby under the subject Career Advancement Scheme (CAS) for Assistant Librarian/College Librarian, Assistant Director of Physical Education, the age of superannuation of the Assistant Librarian, College Librarian and Assistant Director of Physical Education was determined to be 62 years. It is also the case of the writ petitioner that the writ petitioner was promoted on the post of head of Librarian (Pustakaladhyaksh) with effect from 16.02.2006 and he was made entitled to the benefit of the 6th Pay Commission. The learned counsel for the writ petitioner placed reliance upon certain Government Orders dated 11.03.2015 an order dated 27.07.2015 and 24.06.2016 he, thus, submits that the writ petitioner is to continue till attainment of 62 years. Reference has also been made to Annexure 22 at page 99 of the paper book whereby the writ petitioner has sought to contend that he has been made Associate Professor in Library Science on 04.04.2022 and there happens to be a communication of the University itself 28.10.2023 addressing the writ petitioner in the said capacity, a copy whereof as Annexure 23 at page 101 reference whereof as Annexure 31. It is also the case of the writ petitioner in the seniority list, he comes within the teaching cadre, however, now by virtue of the communication dated 03.11.2023 under the signature of the fifth respondent, M.M. H. College, District Ghaziabad, the writ petitioner it is stated to have been retired on post completion of 60 years and he is not entitled to the payment of salary from January, 2023 to September, 2023 in view of the oral direction of the third respondent, Regional Higher Education Officer, Meerut and further recovery is being sought to be effectuated.

5. Questioning the said order, the writ petitioner has filed the present writ petition on 29.11.2023 wherein this Court passed the following order.-

"The contention of the learned Senior Counsel for the writ petitioner is that the writ petitioner herein is an Associate Professor/Librarian in M.M.H College, District Ghaziabad however by virtue of a communication dated 3.11.2023 of the Principal of the institution in question the writ petitioner's salary has been withheld and recovery is being sought to be made particularly in view of the fact that he is not to continue after 60 years.

Learned counsel for the writ petitioner relies upon the U.G.C. notification dated 19.10.2006 at page 56 relevant extract at page 59 of the paper book that he is to continue till 62 years as well as a notification of the State Government dated 13.5.2009 and judgement in Writ-A No.49118 of 2016, Dr. Ram Avtar Sharma vs. State of U.P. & 4 others. He further submits that the date of the birth of the writ petitioner is 26.12.1962 and he to continue till

25.12.2024 and he is also entitled to session benefits till 30.6.2025.

Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for State official respondent seeks time to obtain instructions.

On his request put up this case as a fresh case on 4.12.2023."

6. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel has produced before this Court the instructions under the signature of the Director of Education, U.P., Prayagraj dated 01.12.2023 according to which the writ petitioner does not belong to teaching cadre, however, only designation has been changed, thus, he is not entitled to the said benefit.

7. Sri Bheem Singh, learned counsel for the writ petitioner has invited the attention of the Court towards the order dated 21.11.2017, Writ A No. 55164 of 2017 (Rajendra Prasad Mishra Vs.State of U.P.) so as to further contend that the said benefits even were made available post issuance of the Government Order to the similarly situated persons. At this stage, learned Additional Chief Standing Counsel for the official respondents submits that the order which is being subject matter of challenge is a notice dated 03.11.2023 of the fifth respondent, Principal, M.M.H. College, District Ghaziabad informing the writ petitioner that he is not entitled to payment of salary from January, 2023 to September, 2023 and a direction has been made for deposit of the monetary benefits which has been availed by the writ petitioner on account of oral instructions of the Regional Higher Education, thus, he says that a conscious decision is to be taken arrived at and taken by second respondent, Director of Education, Higher, U.P. at Prayagraj, he submits that let the writ petitioner approach the second respondent, Director of Education, Higher, U.P. at Prayagraj.

8. Considering the stand taken by the parties, the writ petition stands disposed of granting liberty to the writ petitioner to approach the second respondent, who shall on the receipt of the same thereafter proceed to determine the entitlement of the writ petitioner within a period of three weeks from the date of production of certified copy of the order after putting to notice the authorized controller of the institution in question or the Committee of Management and the Principal as the case may be. The said exercise is to be undertaken say, by 31 December, 2023 and till the passing of the fresh orders or till 31.12.2023 whichever is earlier no recovery shall be effectuated against the writ petitioner. It is open for the writ petitioner to raise all legal and

factual contentions which shall be decided strictly in accordance with law.

9. With the aforesaid observations, the writ petition stands **disposed of.**

Order Date :- 4.12.2023

Rajesh