Court No. - 36

Case :- WRIT - A No. - 19333 of 2023

Petitioner :- Moti Singh Gaur
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Dhiraj Srivastava
Counsel for Respondent :- C.S.C.,Rajesh Khare

Hon'ble Manjive Shukla,J.

1. Heard learned Counsel for the petitioner, learned Standing Counsel for Respondent No.1 and Mr. Rajesh Khare, learned counsel appearing for Respondents No.2 & 3.

2. The instant writ petition under Article 226 of the Constitution of India has been filed for the following reliefs :-

"i) Issue a writ order or direction in the nature of mandamus commanding the respondent No.3 to make the payment of arrear of salary to the petitioner since 01.07.2015 to 30.11.2015 with the benefit of annual increment w.e.f. 01.07.2015 in the light of Angad Yadav and 7 others vs. State of U.P. & others (Supra).

ii) Issue a writ order or direction in the nature of mandamus commanding the respondent No.3 to make the payment of arrears of pension with the revised pay of seventh pay commission w.e.f. 01.01.2016.

iii) Issue a writ order or direction in the nature of mandamus to the respondent no.3 to decide the representation dated 25.09.2023 (Annexure No.7 to this writ petition) within stipulated time."

3. It is contended by learned Counsel for the petitioner that petitioner was working as Head Master in Purv Madhyamik Vidyalaya Devratha, Block Baberu, District Banda and was to retire on 30.06.2015.

4. It is further contended by learned Counsel for the petitioner that the petitioner worked from 01.07.2015 to 30.11.2015 as Head Master in the Institution pursuant to the Government Order dated 09.12.2014 but the salary/bonus for the Session 2015-16 has not been granted by the respondents.

5. Learned counsel for the petitioner in support of his submissions has placed reliance upon the judgment passed by this Court in Angad Yadav And 7 Others Vs. State of U.P. and 4 Others (Writ-C No. 33360 of 2017, dt.19.08.2017) and as such it is sought to be contended that the present matter is squarely covered by the

aforesaid judgment and the similar treatment may also be extended to the petitioner.

6. The controversy involved in this writ petition has already been decided by this Court in Angad Yadav (supra) against which Special Appeal No.505/2018; Basic Shiksha Parishad, Allahabad and others Vs. Angad Yadav and others was preferred which was dismissed on 11.12.2018. For ready reference, the operative portion of the judgement passed in the case of Angad Yadav (supra) is quoted hereunder:

"Applying these principles on the facts of the present case, I find that the petitioners in terms of the change of the academic session, when admittedly their dates of superannuation fall during the academic session i.e. 01st April, 2015 to 31st March, 2016 as their dates of birth are 05.04.1953, 01.07.1953, 17.4.1953, 01.05.1953, 01.07.1953, 08.06.1953, respectively, they were entitled for the sessional benefit and to continue upto 31st March, 2016. There was no fault on their part as they were not allowed to work after 30th June, 2015. A specific direction was issued not to allow them to continue beyond 30th June, 2015. The said direction, as mentioned above, was manifestly erroneous and contrary to the well settled practice and the relevant Rules to give the session benefit to such teachers whose date of superannuation falls during the academic session. The State Government has issued a Government Order dated 08th October, 2015 rectifying the said mistake, hence the Government Order dated 02nd May, 2017 that the teachers who were allowed to continue after the judgment of Ramesh Chandra Tiwari (supra) and the Government Order dated 08th October, 2015, will not be paid salary from 30th June, 2015 till their rejoining is arbitrary and unreasonable. When the Government itself had issued an order dated 08th October, 2015, there was no justification to issue the impugned order dated 02nd May, 2017, which is contrary to the law laid down by this Court in Ramesh Chandra Tiwari (supra). As noted above, the Division Bench has declared the Government Order dated 15th June, 2015 illegal.

Regard may be had to the fact that on the basis of the said order, the petitioners were denied sessional benefits. Once the said order was set aside, the petitioners became entitled to continue. The respondents have also allowed the petitioners to rejoin their position.

Therefore, in the said background and on a careful consideration of the entire facts and circumstances of the case, I am of the considered view that the impugned Government Order dated 02nd May, 2017 has to be set aside and is accordingly set aside. The petitioners are entitled for their salary from 30th June, 2015 till the date of their rejoining. Ordered accordingly.

Thus, the writ petition stands allowed."

7. Learned Standing Counsel has admitted the fact that the factual as well as the legal controversy involved in present writ petition is identical to the case of Angad Yadav And 7 Others Vs. State of U.P. and 4 Others (Writ-C No. 33360 of 2017).

8. Learned Counsel for the petitioner further submits that petitioner has filed a representation on 25.9.2023 before the Respondent No.3, Basic Shiksha Adhikari, District Banda, which remains pending till date.

9. Learned Standing Counsel states that no useful purpose will be served in calling for the counter affidavit and keeping the writ

petition pending and it may be disposed of with direction to the petitioner to raise his grievance by filing a fresh representation before the Respondent No.3, who may be directed to decide the same within stipulated period.

10. Considering the facts and circumstances of the case, without going into its merit and with the consent of parties, the writ petition is disposed of with direction to the petitioner to file a fresh representation before Respondent No.3, Basic Shiksha Adhikari, District Banda within one month from today raising his grievance, who shall consider and decide the same in the light of Angad Yadav's case within a period of two months from the date of production of a certified copy of this order along with the representation.

Order Date :- 22.11.2023
Salim

Digitally signed by :-
SALIM PRAVEJ
High Court of Judicature at Allahabad