

Court No. - 35

Case :- WRIT - A No. - 20670 of 2023

Petitioner :- Rajmani Pandey

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Santosh Kumar Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Santosh Kumar Shukla, learned counsel for the writ petitioner and Sri H.K. Shukla, learned Standing Counsel who appears for all the respondents.

2. The case of the writ petitioner is that he was appointed on the post of Junior Lecturer "Botany" on 28.08.1997 and thereafter he is superannuated on 31.08.2022. It is also the case of the writ petitioner that the writ petitioner was made admissible to the monetary benefits post completion of 14 years of satisfactory services by virtue of an order passed therein. It is also the case of the writ petitioner that Finance Controller, Technical Education, Directorate, U.P., Kanpur, fourth respondent issued an order dated 20.06.2013 by which the Principal, Handiya Polytechnic, Handiya, Prayagraj was directed to provide benefit of Pay Band-3 in Pay Scale of Rs. 15,600-39,100/- Grade Pay of Rs. 5400. As per the writ petitioner, pursuant to the Government Order dated 08.12.2008 which was based upon the recommendation of the 6th Pay Commission, the Pay Scale of the writ petitioner was determined to be 54,000/- with effect from 01.12.2008 in the Pay Scale of Rs. 8,000-13,500/- which was approved by the Audit Department on 29.12.2008, in the light of the recommendations of the 7th Pay Commission determination was done and he has also entitled to the said benefit with effect from 01.01.2016 PB-3 Rs. 15,600-39,100/- Grade Pay 5400. The writ petitioner further asserts that he was also accorded ACP on 13.06.2019 to the Pay Scale 15,600-39,100/- Grade Pay 6600/-, which stood revised to Pay Matrix Level-11 (67,700-2,08,700).

3. In para 12 of the writ petition, it is further asserted that by virtue of the order dated 13.06.2019, he was provided the Pay Scale of Rs. 67,700-208700/- Grade Pay 6600/- and revision of the same was made. It is also the case of the writ petitioner that periodical audits were being conducted and everything was found in order,

however, on 02.09.2021 in pursuance of the letter dated 16.12.2020 of the second respondent, Director, Technical Education, U.P., Kanpur re-fixation was done which was detrimental to the writ petitioner as recovery was being sought to be made to the tune of Rs. 17,04,693/- being excess payment accorded to the writ petitioner. The writ petitioner claims to have retired on 31.08.2022, however, a no dues certificate was issued on 22.09.2022 containing a rider that recovery is to be made of Rs. 17,04,693/- in excess payment.

4. Questioning the orders dated 22.09.2022 passed by the sixth respondent, Principal, Handiya Polytechnic, Handiya, Prayagraj and the re-fixation done on 02.09.2021 the present writ petition has been filed.

5. Learned counsel for the writ petitioner submits that though in the writ petition, it has been termed to be an order but virtually it is not an order but a communication for deduction of the said amount as once recovery is being sought to be made while quantifying certain monetary liability which according to the respondents was paid in excess, then, there has to be an order in complete sense and further that too after putting to notice the incumbent against whom re-determination is being sought to be done particularly when the same is within the proximity of the date of retirement.

6. Sri H.K. Shukla, learned Standing Counsel who appears for the respondents submits that since certain factual issues are being raised by the writ petitioner and according to him, the fact that the writ petitioner was put to notice is not also revealing from the order, thus, he submits that let the writ petitioner approach the Director, Technical Education, Kanpur, second respondent who shall take a conscious decision after summoning the record in that record. He submits that he does not propose to file any response the writ petitioner may approach the authority and till a final decision is taken, procedural action may not be taken.

7. To such a submission, learned counsel for the writ petitioner has no objection and he gracefully accepts the same.

8. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of granting liberty to the writ petitioner to approach the second respondent, Director of Technical Education, Kanpur, U.P. by 31.12.2023 thereafter the Director of Technical Education, Kanpur, U.P. shall put to notice the writ petitioner and pass an order after summoning the records by 19.01.2024 the orders in question seeking to recover

an amount of Rs. 17,04,693/- shall not be given effect to till passing of order by Director, Technical Education, Kanpur, U.P. or till 19.01.2024 whichever is earlier.

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

Order Date :- 14.12.2023

Rajesh