

Court No. - 7

Case :- WRIT - A No. - 3703 of 2023

Petitioner :- Harendra Prasad Singh

Respondent :- State Of U.P. Thru . Prin. Additional Cheif Secy. Edu.
(Madhyamik) Lko. And 6 Others

Counsel for Petitioner :- Ram Nath Pandey, Santosh Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard Shri Harendra Prasad Singh, the petitioner, who appears in-person and Shri Nitin Mathur, learned Additional Chief Standing Counsel for respondent nos. 1 to 5.

2. Despite the notice having been issued to respondent nos. 6 & 7, nobody has responded on their behalf. As per the Office Report dated 01.08.2023, the service of notice is deemed sufficient upon the respondent nos. 6 & 7. Thus, this Court proceeds ex-parte against them.

3. Instant petition has been filed for the following main reliefs:

"I. Issue a Writ, Order or direction in the nature of certiorari thereby quash the order dated 26.04.2023 passed by opposite party no 4 i.e; (Deputy Director of Education, Ayodhya Mandal, District- Ayodhya) . (Annexure no 01)

II. Issue a Writ, Order or direction in the nature of mandamus thereby direct to opposite party no 4 i.e; Deputy Director of Education, Ayodhya Mandal, District-Ayodhya to fix and provide actual pension which has been already fixed by the said school/District Inspector of School, Ambedkar Nagar, Dist.- Ambedkar Nagar, Rs. 51,400 instead of 47050/-. (Annexure no 07)

III. Issue a Writ, Order or direction of a suitable nature commanding and directing the opposite parties to paid arrear of the rest amount from 01.04.2020 to till payable date, forthwith disburse the amount of payment along with interest at such rate as may be specified by this Hon'ble Court within a period to be specified by this Hon'ble Court."

4. Bereft of unnecessary details, the facts of the case are that while the petitioner was working as a lecturer in the respondent no. 7- Institution and the regular principal having been retired and no other

principal was sent by Service Commission and in the capacity of being the senior most lecturer, the petitioner, vide orders dated 27.06.2009 and 25.09.2009, a copy of which has been filed as Annexure Nos. 3 and 4 to the petition respectively, was made the ad-hoc principal of the Institution. The charge of the said post was also handed over to him.

5. The petitioner claims to have continued in the same capacity and retired on 31.03.2020.

6. It is contended that the fixation of the petitioner was initially made vide order of November, 2009, a copy of which has been filed as Annexure No. 5 to the petition, wherein as on 01.09.2009 his salary was indicated as Rs. 29,500. As per the pension papers, a copy of which has been filed as Annexure No. 7 to the petition, the pension of the petitioner was indicated as Rs. 51,400.

7. When the petitioner, instead of being paid pension of Rs. 51,400 was paid lesser pension of Rs. 47,050, he was constrained to approach this Court by filing **Writ A No. 573 of 2023 in re: Harendra Prasad Singh Vs. State Of U.P. Thru . Prin. Additional Chief Secy. Edu. (Madhyamik) Lko. And 6 Other.** This Court, vide order dated 24.01.2023, disposed of the matter with a direction to the Deputy Director of Education, Ayodhya Mandal, Ayodhya to consider the claim of the petitioner. In pursuance thereof, the order impugned dated 26.04.2023, a copy of which has been filed as Annexure No. 1 to the petition, has been passed whereby the respondents have defended the pay fixation of the petitioner and have contended that the actual salary at the time of retirement of the petitioner would be Rs. 94,100/- instead of Rs. 1,02,800/- and that the pay fixation has been made correctly and have consequently rejected the claim of the petitioner.

8. Raising challenge to the order impugned, the instant petition has been filed.

9. Contention of the petitioner is that when admittedly the petitioner was granted promotion as ad-hoc principal through orders dated 27.06.2009 and 25.09.2009 which order was made considering Section 18 of the U.P. Secondary Education (Service Selection Board) Act, 1982 (hereinafter referred to as "Act, 1982") which would entail payment of salary for the said post considering the specific provision of Section 18 of the Act, 1982 and the fixation which was to be made was in pursuance to the Government Order dated 07.09.2009, a copy of which has been filed as Annexure No. 6 to the petition, consequently, the rejection of the claim of the petitioner by means of impugned order dated 26.04.2023 contending that the fixation of the petitioner has correctly been made by treating his last salary drawn as Rs. 94,100/- would itself indicate that the respondents have patently erred in fixing the pay of the petitioner at a lower stage.

10. Elaborating the same, contention of the petitioner is that a perusal of the order dated 13.03.2023, a copy of which has been filed as CA-4 to the counter affidavit filed on behalf of the respondent nos. 1 to 5, would indicate that in para 2 of the said order, the respondents have indicated that the fixation of the pay of the petitioner has been made by increasing his pay by three percent in the same salary being drawn by the petitioner as a lecturer. It is contended that this itself is indicative of the fact that respondents have not treated the promotion of the petitioner under Section 18 of Act, 1982 as ad-hoc principal for the purpose of calculating the salary of the petitioner in terms of the Government Order dated 07.09.2009 as explicitly set out in the chart accompanying the said Government Order and thus the order impugned merits to be set aside on the said ground alone.

11. On the other hand, Shri Nitin Mathur, learned Additional Chief Standing Counsel, based on the averments contained in the counter affidavit, argues that even though the petitioner had been granted promotion as ad-hoc principal in the year 2009 and he retired on attaining the age of superannuation on 31.03.2020, but considering

that his substantive post was that of a lecturer and the pay fixation has been made keeping in view Office Order dated 25.09.2009 and as per details indicated in the service book and as explicitly set out in the order dated 13.03.2023 and as such there is no illegality or infirmity in the fixation of the pay and pension of the petitioner and consequently even the order impugned whereby the claim of the petitioner for higher fixation has been rejected, calls for no interference by this Court.

12. Heard Shri Harendra Prasad Singh, the petitioner, who appears in-person and Shri Nitin Mathur, learned Additional Chief Standing Counsel for respondent nos. 1 to 5 and perused the record.

13. From the perusal of record, it emerges that while the petitioner was working as a lecturer, he was granted promotion as ad-hoc principal on account of said post having found vacant in the respondent no. 7- Institution vide orders dated 27.06.2009 and 25.09.2009. The petitioner continued to work as ad-hoc principal and retired on attaining the age of superannuation on 31.03.2020. An ad-hoc promotion as principal is to be made considering the provisions of Section 18 of the Act, 1982 which also provides that a person who has been given promotion would also be entitled for the salary of the said post. This was also provided in the order of District Inspector of Schools concerned (hereinafter referred to as "DIOS") dated 25.09.2009, a copy of which is Annexure No. 4 to the petition.

14. Initially the salary of the petitioner was fixed as on 01.09.2009 at Rs. 29,500/-. Subsequent thereto, the pension of the petitioner was fixed as Rs. 51,400/- as finds placed in the service book, a copy of which is Annexure No. 7 to the petition. Later, the pension of the petitioner stood reduced to Rs. 47,050/- which entailed the petitioner to approach this Court and this Court, vide order dated 24.01.2023, required the respondents to consider the grievance of the petitioner. In pursuance thereof, the claim of the petitioner has been rejected vide

order impugned dated 26.04.2023.

15. A perusal of the order impugned dated 26.04.2023 along with the order dated 13.03.2023, a copy of which has been filed as CA-4 to the counter affidavit filed on behalf of respondent nos. 1 to 5, would indicate that the respondents admit that the pay of the petitioner has been fixed by considering the salary drawn by the petitioner in the capacity of being a lecturer as explicitly finds placed in paragraph 2 of the order dated 13.03.2023 as well as in the order impugned dated 26.04.2023.

16. When Section 18 of the Act, 1982 also provides for payment of salary to a person who is promoted as ad-hoc principal and even the DIOS while passing the order dated 25.09.2009 specifically provided that the petitioner would be entitled for the payment of salary of the post of principal with effect from 01.09.2009, consequently there cannot be any occasion for the respondents to have granted pay fixation to the petitioner by treating his salary as that of the post of lecturer as indicated in the order impugned.

17. Moreover, Section 18 of Act, 1982 explicitly provides for payment of salary to a person who is promoted on the post of ad-hoc and the petitioner continued to work as ad-hoc principal with effect from 01.09.2009 till his retirement on 31.03.2020, consequently the fixation of the salary of the petitioner as ad-hoc principal should have been made in pursuance to the Government Order dated 07.09.2009 by treating him to be a principal and not as a lecturer.

18. However, as this aspect of the matter has not even been considered by the respondents while passing the order impugned dated 26.04.2023 along with the purport of Section 18 of the Act, 1982 and even DIOS's order dated 25.09.2009 whereby the petitioner was to draw the salary of the post of ad-hoc principal with effect from 01.09.2009 has not been considered consequently, the impugned order dated 26.04.2023 merits to be set aside on these grounds alone.

19. Keeping in view of the aforesaid discussion, the writ petition is allowed. The order dated 26.04.2023, a copy of which has been filed as Annexure No. 1 to the petition, is quashed.

20. Respondent no. 4 - Deputy Director of Education, Ayodhya Mandal, Ayodhya is required to pass afresh order pertaining to correct salary fixation of the petitioner and consequential fixation of pension of the petitioner keeping in view of the aforesaid discussion.

21. Let such order be passed within six weeks from the date of receipt of certified copy of this order.

Order Date :- 2.11.2023

Mohit Singh/-

(Abdul Moin, J.)