

Court No. - 7

Case :- WRIT - A No. - 2329 of 2015

Petitioner :- Mohd Yunus Khan

Respondent :- U.P. Rajkiya Nirman Ltd. Thru Its M.D.Vibhuti Khand
Lko.Andanr

Counsel for Petitioner :- Subodh Kumar Verma,Rakesh Kumar
Singh,Umesh Kumar Srivastava

Counsel for Respondent :- Shishir Jain

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner and Shri Shishir Jain, learned counsel appearing for all the respondents.

2. The instant writ petition has been filed challenging the order dated 21.08.2014, a copy of which is annexure 1 to the petition, so far as it relates to non payment of monetary and other consequential benefits for the period 16.09.2000 to 20.09.2001. Further prayer is for a writ of mandamus commanding the respondents to make payment of remaining retiral dues as mentioned in the paragraph 23 of the writ petition alongwith interest.

3. At the very outset, learned counsel for the petitioner states that all the dues as detailed in paragraph 23 of the writ petition have been paid to the petitioner and thus the only dispute that now remains is the salary for the period 16.09.2000 to 20.09.2001.

4. The case set forth by learned counsel for the petitioner is that while the petitioner was working as Office Assistant he had been dismissed from service on 16.09.2000. The dismissal order was stayed by this Court vide an interim order dated 15.03.2001 passed in Writ Petition No. 6544 of 2000 in re: Mohd. Yunus Khan vs Uttar Pradesh Rajkiya Nirman Nigam Ltd. Subsequently the writ petition was allowed vide the order dated 04.09.2012, a copy of which is annexure 5 to the petition,

whereby the dismissal order was quashed and the matter was remitted to the appointing authority to consider and pass a fresh order in the light of the observations made in the judgement. In pursuance thereof the respondents passed an order dated 22.10.2012 whereby a punishment of censure and withholding of one increment permanently was imposed. A copy of the said order has been filed as CA-3 to the counter affidavit. Subsequent thereto the respondents, vide order dated 12.12.2013, a copy of which is annexure CA 1 to the counter affidavit, indicated that the petitioner would not be entitled for payment of any salary from 16.09.2000 to 20.09.2001.

5. Without raising challenge to either of the orders i.e. 12.12.2013 or 22.10.2012 the petitioner filed Writ Petition No. 2546 (SS) of 2014 in re: Mohd. Yunus Khan vs U.P. Rajkiya Nirman Nigam Ltd wherein from a perusal of the order passed by this Court dated 07.05.2014, a copy of which is annexure 3 to the petition, it emerges that the reliefs prayed for were of a direction commanding the respondents to make payment of his retiral dues as well as arrears of pay as per pay fixation of fifth and sixth pay commission and time scale etc alongwith interest. The writ court vide the order dated 07.05.2014 disposed of the petition leaving it open to the petitioner to make a fresh representation to the Managing Director of the Corporation who was required to decide the said representation in accordance with law. In pursuance thereof the competent authority has passed the order impugned dated 21.08.2014 wherein apart from the claim of dues it has also been indicated that the petitioner would not be entitled for salary for the period from 16.09.2000 to 20.09.2001 as he has not worked during the said period and in the inquiry conducted against him, he has not been exonerated.

6. Raising challenge to the said order the instant writ petition has been filed.

7. The contention of learned counsel for the petitioner is that when the dismissal order dated 16.09.2000 had been stayed by the writ court vide the order dated 15.03.2001 and the respondents on their own accord took their own sweet time in permitting the petitioner to join on 20.09.2001 and later, as the writ petition was allowed vide the order dated 04.9.2012 and the dismissal order was quashed, consequently the petitioner was entitled for payment of salary for the period from 16.09.2000 to 15.03.2001.

8. On the other hand, Shri Shishir Jain, learned counsel appearing for the respondent Corporation, has raised a preliminary objection that the writ petition merits to be dismissed on the ground that no challenge has been raised to the order dated 12.12.2013 per which the petitioner was informed that he would not be entitled for payment of any salary for the period of 16.09.2000 to 20.09.2001. A specific averment has been made in paragraph 2 of the counter affidavit that the petitioner has concealed the order dated 12.12.2013.

9. Elaborating the same, Shri Shishir Jain, learned counsel for the respondents argues that considering the judgement of this Court dated 04.09.2012, a punishment order dated 22.10.2012 was passed against the petitioner by which a penalty of censure and withholding of one increment permanently was imposed. Subsequent thereto, through the order dated 12.12.2013, the petitioner was informed that he is not entitled for payment of any salary for the period 16.09.2000 to 20.09.2001. Even when the petitioner filed the second writ petition namely Writ Petition No. 2546 (SS) of 2014, which was disposed of by this Court vide order dated 07.05.2014, no challenge was raised to the

order dated 12.12.2013. Later, when the representation of the petitioner has been decided vide the order dated 21.08.2014 and even though the matter which was agitated by the petitioner in the Writ Petition No. 2546 (SS) of 2014 did not pertain to his grievance for payment of salary for the period 16.09.2000 to 20.09.2001 yet the competent authority considering the representation filed by the petitioner remarked that the petitioner would not be entitled for salary from 16.09.2000 to 20.09.2001. Once the said grievance was never even raised by the petitioner in the earlier round of litigation and order in this regard had already been passed earlier on 12.12.2013 which order has not even been challenged by the petitioner in the instant writ petition nor in earlier petition consequently the remark made in the order impugned dated 21.08.2014 of petitioner not being entitled to salary would not give rise to a fresh cause of action to the petitioner to challenge the said order keeping in view the aforesaid argument as well as the fact that even if the order impugned dated 21.08.2014 is set aside, the initial order dated 12.12.2013 would still continue to subsist to which no challenge has raised and thus the petitioner in effect would not be eligible for grant of any payment of salary from 16.09.2000 to 20.09.2001.

10. Having heard learned counsels for the parties and having perused the record what emerges is that the petitioner was dismissed from service on 16.09.2000. Upon filing of writ petition the said order was stayed by an interim order of this court dated 15.03.2001. Later the writ petition was allowed vide the judgement and order dated 04.09.2012 and the dismissal order was quashed and the matter was remitted to the competent authority to pass a fresh order. In pursuance thereof the disciplinary authority passed the order dated 22.10.2012 whereby imposing a penalty of censure and withholding one

increment permanently of the petitioner. Subsequent thereto through an order dated 12.12.2013 the petitioner was informed that he would not be entitled for payment of salary for the period 16.09.2000 to 20.09.2001. The petitioner filed a writ petition in the year 2014 in which he did not pray for quashing the order dated 12.12.2013 rather he prayed for a direction to the respondents to make payment of his retiral dues as well as arrears of pay as per pay fixation of fifth and sixth pay scale and time scale with interest. Even though the order dated 12.12.2013 was in existence, the petitioner, in his own wisdom, did not challenge the said order nor was there any prayer made in the said petition for payment of arrears of salary for the aforesaid period. In pursuance to the directions issued by the Court the representation of the petitioner was decided wherein apart from other grievance as had been raised by the petitioner a remark was also made by the competent authority indicating that the petitioner would not be entitled for payment of salary for the period 16.09.2000 to 20.09.2001. The said order has now been challenged on the ground that once the dismissal order dated 16.09.2000 was stayed on 15.03.2001 and ultimately the dismissal order was quashed vide judgement and order dated 04.09.2012 by the writ court consequently the petitioner would be entitled for salary from 16.09.2000 till he was permitted to join in pursuance to the interim order i.e. on 20.09.2001.

11. The aforesaid argument though attractive on the face of record merits to be rejected outrightly keeping in view the preliminary objections raised by learned counsel for the respondents in as much as (a) no challenge has been raised to the order dated 12.12.2013 per which the petitioner was held as not entitled for payment of salary from the period 16.09.2000 to 20.09.2001, (b) as per the specific averment made in paragraph

2 of the counter affidavit filed by the respondents the petitioner has cleverly concealed the order dated 12.12.2013 and even as per the rejoinder affidavit filed by the petitioner no specific denial of the concealment has been made and (c) the writ petition filed by the petitioner in the year 2014 did not raise any claim pertaining to salary for the period of 16.09.2000 to 20.09.2001.

12. Once when in the earlier round of litigation the petitioner did not seek any relief pertaining to the salary for the aforesaid period and as already indicated above no challenge has been raised to the order dated 12.12.2013 even while filing the instant writ petition, consequently no relief can be extended to the petitioner in this regard.

13. Keeping in view the aforesaid discussion, the writ petition is **dismissed.**

Order Date :- 21.11.2023
J.K. Dinkar