

Court No. - 20

Case :- WRIT - A No. - 5232 of 2015

Petitioner :- Naseem Ahmad

Respondent :- State Of U.P. Thru Its Secy.Revenuecivil Sectt.Lko.And Ors.

Counsel for Petitioner :- Vishal Singh,Mohammad Ehtesham Khan,Paramanand Asthana,Rajesh Chandra Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. M.E. Khan learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed seeking a direction to opposite parties to release retrial benefits to petitioner.
3. It has been submitted that initially petitioner was appointed on the post of Lekhpal on a probationary period for two years vide order dated 17th December, 1981 and upon completion of probation period, petitioner's services were confirmed vide order dated 2nd April, 1994. It has been further submitted that subsequently vide order dated 18th November, 2010 petitioner's confirmation order dated 2nd April, 1994 was declared void on account of several complaints having been made against him pertaining to allegation of petitioner having obtained employment by forged documents. The said order was challenged in writ petition No. 8032 (S/S) of 2010 and was stayed by means of interim order dated 25th November, 2010 primarily on the ground that it had been passed without any show cause notice or affording any opportunity of hearing and that too after petitioner having rendered 16 years of service.
4. It is submitted that since opposite parties were flouting interim directions passed by this Court, the petitioner was compelled to file a contempt petition before this Court, in pursuance of which, the opposite parties passed order dated 11th November, 2011 indicating aforesaid facts as well as stating that in view of pendency of petition, interim order and the contempt petition, it would not be advisable to continue action against petitioner. It is submitted that upon passing of aforesaid order as well as the fact that petitioner was permitted to superannuate from service in terms of notice dated 22nd July, 2014, the aforesaid petition was dismissed as having been rendered infructuous by efflux of time but without prejudice to petitioner's right, if any.

5. It is submitted that despite the dismissal of petition as having been rendered infructuous, no fresh action was initiated against petitioner nor any fresh show cause notice was provided to him with regard to allegations levelled against him earlier leading to passing of the order dated 18th November, 2010. It has also been submitted that petitioner has been continuously performing his duties ever since the date of initial appointment in 1981 and has thereafter been permitted to superannuate from service in the year 2014 without any departmental inquiry with regard to allegations levelled against him and is therefore entitled to post retiral benefits considering him having been regularized in service in the year 1994.

6. Learned State Counsel on the basis of counter affidavit filed submits that petitioner's earlier confirmation in service was cancelled on account of allegations levelled against him having procured employment on the basis of forged documents which lead to passing of order dated 18th November, 2010, which however was stayed by this court. It is submitted that thereafter no further action was taken against petitioner due to pendency of petition but the said petition has thereafter been dismissed as infructuous in the year 2015 thereby reviving the initial order impugned in the said writ petition due to which no benefit can be granted to petitioner.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is admitted between the parties that petitioner was initially appointed on 17th December, 1981 on the post of Lekhpal with confirmation being directed on 2nd April, 1994. After having completed 16 years of service, his confirmation order was cancelled vide order dated 18th April, 2010 which was challenged as indicated herein above before this Court and was stayed by means of interim order dated 25th November, 2010.

8. A perusal of interim order dated 25th November, 2010, makes it evident that the same has been granted primarily on the ground that no opportunity of hearing was provided to petitioner prior to passing of the impugned order. Second ground indicated in the order is that such an order could not have been passed after 16 years long satisfactory service without having issued any show cause notice. The said interim order continued in operation till passing of the order dated 11th November, 2011 by the opposite parties themselves regarding the fact that no further action was required to be taken against petitioner at that stage. Apparently in view of the order dated 11th November, 2011, petitioner continued in service and was thereafter also permitted to superannuate as is evident from the notice dated 22nd July, 2014 which also does not indicate any

initiation of proceedings against petitioner with regard to initial allegations levelled against him.

9. It is on that basis that the writ petition No. 8032 (S/S) of 2010 was thereafter dismissed as having become infructuous but without prejudice to petitioner's right.

10. The aforesaid narration of facts makes it quite evident that petitioner's initial appointment was confirmed in the year 1994 whereafter he continued in service for the period of 16 years and even thereafter due to passing of interim directions by this Court and that further more he was also permitted to superannuate without initiation of any further inquiry proceedings against him in the year 2014. As such the petitioner has rendered 33 years of service with the opposite parties with only allegations having been levelled against him which have not been found to be established in any inquiry proceedings against him in which he was also permitted to participate.

11. It is trite that as has already been held by Hon'ble Supreme Court in the case of D.S. Nakara and others versus Union of India reported in AIR 1983 SC 130 that pension is not a bounty to be distributed by an employer at its own sweet will but is a right earned by an employee for satisfactory service rendered by him.

12. Considering the aforesaid facts since there is nothing on record to indicate the allegations levelled against petitioner having been substantiated or verified in any inquiry proceedings, this Court is of the considered opinion that opposite parties could not have withheld retiral benefits due to petitioner.

13. Consequently a writ in the nature of Mandamus is issued commanding the opposite parties to release post retiral benefits due to petitioner in lieu of services rendered by him with opposite parties. Since the petitioner has superannuated in the year 2014 and has been unjustly deprived of due benefits, it is further directed that he shall be entitled to interest at the rate of 7% per annum on such withheld post retiral benefits with effect from 22nd July, 2014 till the date of actual payment.

14. Consequently the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 29.11.2023

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