

Court No. - 7

Case :- WRIT - A No. - 4881 of 2022

Petitioner :- Ghanshyam Mishra

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Education And 4 Others

Counsel for Petitioner :- Manjeet Singh

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.

2. Instant writ petition has been filed praying for the following main reliefs:-

(i) Issue a writ or direction in the nature of certiorari quashing the impugned order dated 14.03.2022 passed by the Opp. Party no. 2/ Director of Education (Secondary) U.P. 18- Park Road, Lucknow as contained in Annexure No. 1 to this writ petition.

(ii) Issue a writ or direction in the nature of mandamus commanding to the opposite parties to grant the selection grade, promotional pay scale and annual increments including other benefits to the petitioner which is legally entitle by him even on notional basis w.e.f 01.03.1973 till 08.11.2011.

(iii) Issue a writ, or direction in the nature of mandamus commanding to the opposite parties to make correct fixation of the salary w.e.f 08.11.2011 after adding all the service benefits on notional basis w.e.f 01.03.1978 and pay the same along with arrears of salary to the petitioner w.e.f 08.11.2011 till the date of increment i.e 30.06.2018.

(iv) Issue a writ, order or direction in the nature of mandamus commanding to the opposite parties to make payment of the pension to the petitioner w.e.f 30.06.2018 and thereafter regularly each and every month.

3. Bereft of unnecessary details, the facts of the case are that there is an Institution running in the name of Raj Guru Shri Krishan Pandey Sangved Sanskrit Uchhattar Madhayamik Vidyalaya Shastri Nagar Belha, District Pratapgarh (Hereinafter referred to as "Institution"). The Institution was having a recognition from Class 6 to 12 and had also been taken in grant-in-aid from Class 7 to 12 in the year 1966 itself. The petitioner claims to have been appointed on 28.02.1978 as Assistant Teacher in the Institution and submitted his joining and started working. The appointment of the petitioner was also provisionally approved on 16.03.1980 by an order passed by the Inspector Sanskrit Pathshala, Lucknow, a copy of which is Annexure-4 to the writ petition. As the Institution was running in a rented building and subsequent thereto on account of non-availability of the rented building at Allahabad, a decision was

taken by the Committee of Management i.e. respondent no.5 for transferring the Institution to Pratapgarh. The said proposal was also sent to the University and permission was obtained from the University for transfer of the Institution from Allahabad to Pratapgarh. However, when the Institution was transferred the grant-in-aid was suspended by the State Government in the year 1979. After the Institution started running at Pratapgarh, various requests were sent by the Institution for revival of grant-in-aid which was revived by the Government vide order dated 08.11.2011, a copy of which is Annexure-9 to the writ petition. However, the grant-in-aid was granted with a specific condition that for the period when grant-in-aid remained suspended, no arrears would be given to the teachers working in the said Institution. It was also required that an affidavit in this regard would be taken from the teachers. The petitioner along with others gave their affidavits in this regard and thereafter the grant-in-aid came into effect from 08.11.2011. The petitioner claims to have retired from service on 31.07.2018.

4. As the petitioner, despite having retired, was not paid the dues like selection grade, promotional pay scale and third ACP as per Government orders issued from time to time by counting the service of the petitioner w.e.f the date of his appointment i.e 01.03.1978 and neither the increments were granted for the said period, the petitioner approached this Court by filing Writ Petition No. 9759 (SS) of 2017 Inre; Ghanshyam Mishra Vs. State of U.P and Ors which was disposed of vide order dated 04.05.2017 with the direction to the respondents to decide the representation of the petitioner.

5. In pursuance thereof, the claim of the petitioner was considered but rejected vide order dated 01.08.2017, a copy of which is annexure 18 to the writ petition.

6. Being aggrieved, the petitioner filed Writ Petition No. 5453 (SS) of 2018 Inre; Ghanshyam Mishra Vs. State of U.P and Ors. This Court vide judgment and order dated 15.07.2021, a copy of which is annexure 19 to the writ petition partly allowed the writ petition by setting aside the rejection order dated 01.08.2017 and required the respondents to pass a fresh order regarding the claim of the petitioner for payment of selection grade, promotional pay scale,

ACP and consequential fixation.

7. In pursuance thereof, the respondents have rejected the claim of the petitioner vide order impugned dated 14.03.2022, a copy of which is annexure 1 to the writ petition.

8. Raising a challenge to the aforesaid order, the instant writ petition has been filed.

9. The contention of learned counsel for the petitioner is that when the respondents themselves vide order dated 08.11.2011 had revived the **grant-in-aid** but the revival was granted with the specific condition that for the period when grant-in-aid remain suspended, no arrears would be given to the teachers working in the said institution and that affidavit was duly given by the petitioner along with several others, which fact has not been denied by the respondents while passing the order impugned consequently, not counting the period of service of the petitioner right since 1978 till the revival of the grant-in-aid as made vide order 08.11.2011 would be contrary to the order dated 08.11.2011 itself more particularly when by the said order, it is only the arrears of pay which were required to be not paid to the petitioner and other teachers who were working in the said institution without any stipulation of not counting the service for the interregnum.

10. Elaborating the same, the argument of learned counsel for the petitioner is that a perusal of the order dated 08.11.2011 would itself indicate that though the grant-in-aid was revived yet it was the earlier grant-in-aid which had been revived (Punarjivit) and the respondents consciously indicated that no arrears would be payable for the aforesaid period meaning thereby that the intention while passing the order of revival was only to restrict the payment of arrears and not to restrict counting of the entire period of service rendered by the staff of the said institution from 1978 till the year 2011.

11. So far as non grant of the benefits which the petitioner has claimed i.e the benefit of selection grade, promotional pay scale and third ACP, the argument of learned counsel for the petitioner is that obviously when the entire service rendered by the petitioner since his appointment in the year 1978 till his

retirement on 31.07.2018 is counted only then the petitioner would be entitled for the aforesaid benefits.

12. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit has supported the order impugned. The contention is that when the revival of grant-in-aid had only been made vide order dated 08.11.2011 explicitly providing that the staff would not be entitled for the arrears of pay consequently, no error has been committed by the respondents in not granting the benefits of the entire period of service rendered by the petitioner more particularly when the order dated 08.11.2011 still stands good as of date and has also not been challenged by the petitioner.

13. It is further contended that the benefits claimed by the petitioner i.e selection grade, ACP etc, would only fructify upon completion of ten years of satisfactory service while the promotional pay scale is made admissible only on completion of 12 years of satisfactory service which the petitioner did not have at the time of retirement in the year 2018 and consequently, the petitioner is not entitled for the benefits as have been prayed for by him.

14. Heard the learned counsel appearing for the contesting parties and perused the records.

15. From the arguments as raised by the learned counsel appearing on behalf of the contesting parties and perusal of records it emerges that the grant-in-aid of the institution was suspended in the year 1979. The petitioner had been working as Assistant Teacher in the institution right since 1978 and retired in July, 2018. The grant-in-aid of the institution was revived through an order dated 08.11.2011 with the specific condition that no arrears for the period the institution remained without grant-in-aid would be payable to the teachers. All the teachers gave an affidavit in this regard indicating that they would not claim any arrear of salary for the aforesaid period. When the petitioner was not paid the other benefits by counting entire period of service rendered right since the year 1978 till the year 2018 initially he filed a writ petition which was disposed of with the direction to the respondents to decide the representation of the petitioner. Subsequent thereto, the respondents rejected the claim of the

petitioner vide order dated 01.08.2017 on the ground that through the order dated 08.11.2011 only a conditional revival of the grant-in-aid had been made which provided that the teachers would not be entitled for arrears of salary and consequently, the petitioner would not be entitled for any benefits. The said order was challenged by filing Writ Petition No. 5453 (SS) of 2018 which petition was partly allowed vide order dated 15.07.2021 and the respondents were directed to consider the claim of the petitioner for grant of selection grade, promotional pay scale, ACP and consequential fixation.

16. Again, the respondents have rejected the claim of the petitioner vide impugned order dated 14.03.2022 by contending that as the revival of grant-in-aid order dated 08.11.2011 explicitly provided that the teachers would not be entitled for arrears of pay consequently, the period of service of the petitioner from 1978 till revival of grant-in-aid vide order dated 08.11.2011 would not be countable for any purpose and as benefit of selection grade and other benefits is subject to the petitioner having ten years of qualifying service, which the petitioner has not completed, consequently he is not entitled for any benefits.

17. However, a perusal of the order impugned would indicate that the respondents have missed the fine print as indicated in the order dated 08.11.2011. A perusal of the order dated 08.11.2011 would indicate that though the respondents have revived the grant-in-aid with immediate effect but the grant-in-aid has been “revived” meaning thereby that the grant-in-aid which had been granted earlier and which stood suspended stood revived vide order dated 08.11.2011. Another aspect of the matter is that through the order dated 08.11.2011, the respondents have only restricted the arrears for the aforesaid period. The order dated 08.11.2011 does not restrict the counting of service of the teachers for the period the institution remained in animated suspension i.e since 1978 till it being “revived” vide order dated 08.11.2011. Once the order dated 08.11.2011 itself did not explicitly restrict the counting of the service from 1978 till the “revival” of the suspended grant-in-aid consequently, no stipulation or restriction which is not contained in the order dated 08.11.2011 could have been read by the respondents while rejecting the claim of the petitioner for grant of the aforesaid benefits.

18. Keeping in view the aforesaid discussion, the writ petition deserves to be allowed and is allowed. A writ of certiorari is issued quashing the order dated 14.03.2022 passed by the respondent no. 2, a copy of which is annexure 1 to the writ petition. The respondent no. 2 is directed to pass a fresh order keeping in view the discussion made above pertaining to grant of selection grade, promotional pay scale, annual increments and other benefits including pensionary benefits to the petitioner keeping in view the discussion made above.

19. Let an order be passed within a period of eight weeks from the date of receipt of a certified copy of this order.

Order Date :- 2.11.2023

Pachhere/-