

Court No. - 7

Case :- WRIT - A No. - 5074 of 2023

Petitioner :- Rajeev Kumar Sharma

Respondent :- State Of U.P. Thru. Secy. (Transport) And 5 Others

Counsel for Petitioner :- Satya Prakash Mishra, Brijesh Kumar

Counsel for Respondent :- C.S.C., Ratnesh Chandra

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel appearing for respondent no.1 and Sri Ratnesh Chandra, learned counsel appearing for respondents no.2 to 6.

2. Instant petition has been filed with the following main prayers:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 20.11.2018, 17.01.2022 and 10.03.2021 passed by the opposite party no.5, 4 and 3 (duly contained as Annexure No.1, 2 and 3 to the present petition).

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent corporation to ensure the payment of salary and other allowances admissible under law qua the suspension period i.e. 06.06.2016 to 21.10.2016 minus the subsistence allowances already paid along with interest with all consequential and monetary benefits."

3. The case set forth by the petitioner is that while he was working under the respondents, he faced disciplinary proceedings which culminated in an order dated 19.06.2017, a copy of which is Annexure-7 to the writ petition, whereby a punishment of warning was imposed upon him. Earlier the petitioner had been placed under suspension and remained under suspension from 06.06.2016 to 21.10.2016. The petitioner did not file any appeal against the punishment order.

4. After imposition of a minor penalty when the petitioner was not paid salary for the suspension period he staked his claim for the same which was negated by the respondents while passing the order dated 14.07.2017, a copy of which is Annexure-9 to the writ petition, on the ground that as the petitioner has been punished with a warning consequently he is not entitled for any

payment for the period of suspension except the subsistence allowance. The petitioner claims to have filed an appeal and revision against the said orders which have been rejected vide orders dated 17.01.2022, 10.03.2021 and 20.11.2018. The petitioner claims to have continued to represent to the respondents but to no avail and hence the instant petition has been filed before this Court contending that as the petitioner has only been visited with a minor penalty consequently for the period of suspension i.e. 06.06.2016 to 21.10.2016 he would be entitled for the salary for the suspension period and the suspension period cannot only be confined to payment of subsistence allowance.

5. In this regard reliance has been placed on the judgment of this Court passed in Service Single No.23559 of 2020 in re: **Sanjay Kumar Mathur vs. State of U.P. and others**, decided on 07.07.2021, wherein it has been held that in case an employee has been visited only with a minor penalty and has also been placed under suspension as such he would be entitled for salary for the period of suspension.

6. On the other hand, Sri Ratnesh Chandra, learned counsel appearing for respondents no.2 to 6, raises a preliminary objection of the writ petition being barred by laches.

7. His contention is that the petitioner had been informed that he is not entitled for payment of subsistence allowance vide the order dated 14.10.2017. Apart from the fact that the said order has not been challenged while filing the instant petition, the petitioner claims to have filed an appeal and revision against the said orders although there is no remedy of appeal or revision provided under the regulations governing the disciplinary proceedings namely The U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (hereinafter referred to as Regulations, 1981). It is thus contended that the petitioner having approached this Court after a lapse of almost 6 years from the order impugned consequently the writ petition deserves to be dismissed on this ground alone. It is also contended that it is settled proposition of law that repeated representations even if have resulted into passing of an order on the said representations would not entail revival of a stale cause of action.

8. Having heard learned counsel for the parties and having perused the records what emerges is that the petitioner had been placed under suspension for the period from 06.06.2016 to 21.10.2016 on the ground of pendency of disciplinary proceedings. The disciplinary proceedings culminated with issue of a punishment order of warning vide order dated

19.06.2016. When the petitioner was not paid the entire salary for the period of suspension rather he was only paid subsistence allowance he staked his claim for payment of salary which was negated by the respondents vide order dated 14.10.2017. The said order was not challenged by the petitioner at that stretch of time rather he preferred an appeal and revision against the said order. The appeal and revision are said to have been filed under Regulations 1981.

9. A perusal of Regulations, 1981 would indicate that the remedy of appeal would lie against a punishment order while the revision would lie only in the case of dismissal, removal or reduction in rank. It is not the case of the petitioner that he preferred an appeal against the initial order of punishment dated 19.06.2017 rather the petitioner was satisfied with the said order. The petitioner only staked his claim for being paid salary for the period of suspension. As already indicated above the Regulations, 1981 do not provide for any appeal or revision against an order by which the respondents have not paid the subsistence allowance for the period of suspension rather non-payment of subsistence allowance is not a penalty as specified under the Regulations, 1981. Thus, an order was passed by the respondents whereby the petitioner was not held entitled for payment of salary for the period of suspension vide order dated 14.10.2017. The petitioner in his own wisdom filed an appeal and a revision which have all been negated. Even if the appeal and revision which were not maintainable were filed by the petitioner the same can only be said to be representations which were also finally rejected vide the orders impugned dated 20.11.2018, 17.01.2022 and 10.03.2021. It is settled proposition of law that repeated representations do not extend the limitation **(See-Naresh Kumar vs. Department of Atomic Energy reported in (2010) 7 SCC 525)**.

10. Considering the aforesaid more particularly when (a) the initial order dated 14.07.2017 has itself not been challenged by the petitioner, and (b) repeated representations filed for the same grievance have all been rejected although the said representations themselves were not maintainable consequently the preliminary objection raised by learned counsel for the respondent-Corporation is upheld and the writ petition is **dismissed** on the ground of laches.

Order Date :- 17.11.2023

A. Katiyar