

Neutral Citation No. - 2023:AHC-LKO:66853-DB

Court No. - 1

Case :- WRIT - A No. - 7888 of 2023

Petitioner :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Civil Secrt. Lko. And Others

Respondent :- Smt. Nirmala Pant And Another

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Ramesh Chandra Pandey, Manish Mishra

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

(1) The instant writ petition under Article 226 of the Constitution of India has been filed by the State authorities/petitioners, assailing the legality of the judgment/order dated 13.07.2023 passed by the State Public Service Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as '**the Tribunal**'), whereby Claim Petition No. 1899 of 2022 filed by respondent-Smt. Nirmala Pant arising out of the punishment order dated 25.05.2007 and the order dated 26.05.2022, rejecting her representation directed there against, was allowed by the learned Tribunal with the following directions :-

“...Impugned punishment order dated 25.05.2007 and 26.05.2022 as contained in Annexure No. 1 and 2 to the claim petition, passed by Opposite Party No. 5 i.e. Commandant 10th Battalion, PAC, Barabanki, are hereby quashed. Opposite parties are directed to restore the pay-scale of petitioner's husband w.e.f. 19.03.2007 in the existing pay-scale of Platoon Commander (Gulm Nayak) and revise the post retiral dues including family pension and after restoration of pay scale and pay

the arrears of post retiral dues and family pension to the petitioner as per rules. Compliance of the judgment and order dated shall be made within a period of three months from the date of receipt of certified copy of this judgment and order.”

- (2) Succinctly, the facts of the case are that late husband of the respondent, namely, Anil Kumar Pant, was recruited as Platoon Commander in Uttar Pradesh Provincial Armed Constabulary (UP-PAC). While posted at 30th Battalion, P.A.C., Gonda, late Anil Kumar Pant (husband of the respondent) was awarded a punishment of reversion on the lowest pay-scale of Rs.5500-9900 for three years vide order dated 19.03.2004 passed by the Commandant, 30th Battalion, P.A.C., Gonda. Subsequently, on account of major health issue, late husband of respondent (Anil Kumar Pant) sought voluntary retirement. At that time, he was posted at 10th Battalion, P.A.C., Barabanki. The said prayer of late husband of the respondent was acceded to by the competent authority and he was voluntarily retired on 31.03.2007.
- (3) Apparently, after retirement voluntarily on 31.03.2007, the husband of respondent, late Anil Kumar Pant, submitted an application dated 12.05.2007, seeking to restore his pay-scale and revise his pay-scale in the existing pay-scale of Platoon Commander *inter alia* on the ground that the order of punishment of reversion on the lowest pay-scale dated 19.03.2004 was only for three years and that period has already been completed/expired on 19.03.2007. After that the

Commandant, 10th Battalion, Barabanki under whom the late husband of the respondent was posted and voluntary retired on 31.03.2007, passed an order dated 25.05.2007 refusing to restore the period of punishment of reversion for three years awarded to late Anil Kumar Pant vide order dated 19.03.2004, which came to lapse on 19.03.2007 and instead restored the said reversion on 19.03.2008.

- (4) Aggrieved by the aforesaid order dated 25.05.2007, late husband of the respondent had submitted an application dated 15.06.2007 followed by reminder dated 22.07.2008, however, no decision was taken by the authority concerned. Meanwhile, the husband of the respondent, Anil Kumar Pant, expired on 15.05.2010, leaving behind his wife (respondent) and her minor daughter. Thereafter, the respondent had submitted repeated representations, ventilating her grievances with regard to restoration of pay-scale and revision of post-retiral dues as well as family pension, but no heed was paid by the authority concerned. However, pursuant to the direction of the higher authorities, the Commandant, 10th Battalion, Barabanki, had passed order dated 26.05.2022 on the respondent's representation, by which her representation was rejected.
- (5) Feeling aggrieved, the respondent had preferred Claim Petition No. 1899 of 2022 before the Tribunal. The learned Tribunal, while rejecting the plea of the State that the claim petition is

time barred as the matter is recurring in nature, allowed the claim petition vide judgment/order dated 13.07.2023 with the further directions stated hereinabove in paragraph-1. It is this order, which has been sought to be challenged in the instant writ petition.

- (6) We have heard learned Counsel for the parties and gone through the material available before this Court in the instant writ petition.
- (7) Learned Standing Counsel representing the State authorities drawing our attention to the reasoning recorded by the learned Tribunal, has firstly argued that the learned Tribunal has wrongly allowed the claim petition treating the cause of action to be a recurring one. According to the State Counsel, mere pendency of representation would not keep the cause of action alive once the reference instituted before the Tribunal is maintainable with the period of limitation as prescribed under the Act.
- (8) Learned Standing Counsel representing the State has next submitted that late husband of the respondent had chequered history during stint of his service as he was awarded as many as 13 censure entries. In the year 2004, the late husband of respondent was unauthorizedly absent from duty and as such, a departmental proceeding was initiated and vide punishment order dated 19.03.2004, the late husband of the respondent was

awarded punishment of reversion for three years on the lowest pay-scale of Rs.5500-9000. During this period of punishment i.e. w.e.f. 19.03.2004 to 19.03.2007, late husband of the respondent went on leave for 366 days without pay. Meanwhile, his request for voluntary retirement as considered and allowed on 31.03.2007. Thereafter, on considering that the husband of the respondent had availed 366 days leave without pay before he was allowed to voluntarily retire on 31.03.2007, the Commandant, 10th Battalion, PAC, Barabanki, vide order dated 25.05.2007, directed to restore the pay-scale of late husband of the respondent on 19.03.2008 instead of 19.03.2007. The last pay drawn for the retiral dues was, thus, treated to be Rs.5500/-. It is the order passed by the Commandant, 10th Battalion, PAC, Barabanki on 25.05.2007, which is sought to be defended in the present writ petition by assailing the judgment passed by the Tribunal.

- (9) *Per contra*, learned Counsel for the respondent has supported the impugned judgment/order passed by the learned Tribunal and has submitted that as per the punishment order dated 13.03.2004 passed by the Commandant, 30th Battalion, P.A.C., Gonda, the period of punishment order of reversion in the minimum pay-scale was three years and that period had expired on 19.03.2007. According to the learned Counsel, the voluntarily retirement of the late husband of the respondent was an issue unaffected by punishment order, which was to operate

for three years. Once the period of three years was over on 19.03.2007, his pay-scale was liable to be restored. Instead of restoration of pay-scale, the Commandant, 10th Battalion, Barabanki, had passed the order dated 25.05.2007, by which the punishment awarded to the late husband of the respondent was extended up to 19.03.2008. Once the punishment had lapsed on 19.03.2007 and the husband of the respondent was allowed to voluntarily retire on 30.03.2007, there was absolutely no authenticity left for enhancing the period of punishment beyond the period for which it was due. Thus, the order dated 25.05.2007 was palpably illegal and erroneous.

- (10) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record available before this Court in the instant writ petition, it is required to be noted here that as regards the issue of delay in matters pertaining to claims of pension, it has already been observed by the Apex Court in **Union of India v. Tarsem Singh** : (2008) 8 SCC 648 that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. The relevant part of the report is extracted as under :-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal).”

One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception.

If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

(emphasis supplied)

- (11) Keeping in mind the aforesaid legal proposition, what we find from perusal of the impugned judgment/order is that while considering the issue of delay in filing the claim petition, learned Tribunal has returned a finding that the matter in question is recurring in nature, since the respondent is facing financial loss each and every month and as such the learned Tribunal concluded that the claim petition was well within limitation.

- (12) We, on due consideration of the facts and circumstances of the case, concur with the aforesaid observation made by the learned Tribunal and we are of the view that the learned Tribunal was justified in observing that the claim of the respondent is continuing in nature.
- (13) As regards the other issue raised by the learned Counsel for the State/petitioners that the learned Tribunal has erroneously quashed the order dated 25.05.2007, what we find from perusal of the impugned judgment/order is that the learned Tribunal has vividly dealt with the said issue and returned a finding that the order dated 25.05.2007 was erroneous once the period of three years had lapsed on 19.03.2007. The learned Tribunal has also found that the punishment order dated 19.03.2004 was passed by the Commandant, 30th Battalion, P.A.C. Barabanki, whereas the order dated 25.05.2007 impugned in the claim petition by which the period of punishment mentioned in earlier punishment order dated 19.03.2004 was extended from 19.03.2007 to 19.03.2008, was passed by 10th Battalion, P.A.C., Barabanki, therefore, the punishment order dated 25.05.2007 was illegal and beyond jurisdiction since there is no rule in existence to extend the penalty by other authority other than the punishing authority itself. Apparently, the Tribunal has also returned a finding that for the period of alleged absence of 366 days as mentioned in the order impugned in the claim petition dated 25.05.2007, no proceeding was initiated nor any

opportunity was provided to late husband of the respondent and this fact has not been denied by the State in its counter affidavit. Thus, in the given facts of the case, the learned Tribunal was justified in observing that the order dated 25.05.2007 impugned in claim petition was passed after voluntary retirement of late husband of the respondent and that too without providing any opportunity to him.

- (14) Having gone through the material available on record and the reasoning recorded by the learned Tribunal, we are of the view that the reasoning assigned in the impugned judgment/order is convincing and does not leave any scope for Judicial Review of this Court, so as to interfere in exercise of writ jurisdiction under Article 226 of the Constitution of India.
- (15) The writ petition being bereft of any merit is, accordingly, **dismissed.**

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 11.10.2023

Shahnaz/Ajit/-