

Court No. - 20

Case :- WRIT - A No. - 8975 of 2023

Petitioner :- Anil Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Health And Family Welfare Lko And 4 Others

Counsel for Petitioner :- Hari Prasad Gupta, Hari Ram Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Hari Prasad Gupta, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 16.10.2023 whereby arrears of salary in pursuance of re-determination of pay scale w.e.f. 05.07.2003 till 22.09.2008 has been withheld. Various prayers in the nature of mandamus have also been sought with regard to payment of such arrears of salary and interest thereupon. Prayer no. 5 pertains to direction to be issued to opposite parties for extension of benefit of Old Pension Scheme including GPF, GIS and Gratuity w.e.f. 05.07.2003 with transfer of fund deposited in the NPS scheme to the GPF account of petitioner.

3. However, learned counsel for petitioner on the basis of instructions submits that the relief sought in prayer no. 5 has already been granted to petitioner and has therefore become infructuous. He is therefore pressing for the other prayers in the petition.

4. On 20.11.2023, the following order had been passed:-

"1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. It has been submitted that earlier in pursuance of selection held in year 2002 for post of Physiotherapist, there was certain discrepancies with regard to petitioner's date of selection whereafter appointment order was issued to him on 23.09.2008 but since service benefits of petitioner with regard to date of initial appointment, i.e. 05.07.2003 were not provided to him, he filed Writ Petition No.877 (S/S) of 2006 which was disposed of vide order dated 08.09.2016 directing opposite parties to decide petitioner's grievance whereafter order dated 12.02.2020 was passed by the Finance Controller, Medical & Health Services rejecting petitioner's representation. Said order dated 12.02.2020 was challenged in WRIT - A No. - 20914 of 2021 and was allowed vide judgment and order dated 20.03.2023. It is submitted that said judgment attained finality since it was

not appealed against.

3. It is submitted that in pursuance thereof, the Director General, Medical & Health Services passed order dated 09.06.2023 providing such benefits but by means of impugned order dated 16.10.2023 Director Para Medical, Directorate of U.P. Medical & Health Services, Swasthya Bhawan, Lucknow has refused grant of such benefits, which is clearly against directions issued by this Court. It has been submitted that even otherwise the Director Para Medical does not have any authority of law to pass impugned order once the superior authority as well as this Court have found otherwise.

4. Considering aforesaid submissions, opposite party no.3 i.e. Director Para Medical, Directorate of U.P. Medical & Health Services, Swasthya Bhawan, Lucknow is directed to file his personal affidavit within a period of ten days from today indicating reasons for taking a view contrary to judgment rendered by this Court.

5. List this case on 01.12.2023, as fresh."

5. In pursuance thereof, personal affidavit of the Director , Para medical, Medical & Health Services U.P. Lucknow has been filed indicating reasons for passing of the impugned order.

6. In a nutshell, the entire dispute revolves around the fact that petitioner was initially selected by means of select list dated 05.07.2003 but was actually issued appointment letter on 23.09.2008 due to certain discrepancy in the select list pertaining to petitioner. Since salary for the period 05.07.2003 till 22.09.2008 was not paid to petitioner, he filed Writ-A No. 20914 of 2021 which was allowed by means of judgment and order dated 20.03.2023.

7. In paragraphs 10, 11 and 12 of the aforesaid judgment, a Co-ordinate Bench of this Court has clearly recorded the following facts.

"10. It is noticed that in pursuance to the selection held in the year 2002, the petitioner was placed at serial no. 4 in the select list, when the petitioner did not find his name at the correct place in the select list, he approached this Court by filing writ petition, where direction was issued to the respondents to consider claim of the petitioner. The respondents realised their mistake and accordingly, appointment letter was issued to the petitioner on 23.09.2008. Though the petitioner was appointed, but again benefit of pay-scale was not given to him as other similarly situated persons were granted and were appointed in the same selected list.

11. There is no reason stated in the impugned order, except that only the benefit of seniority has been given to the petitioner. Once the respondents have held that the petitioner's appointment has to be reckoned from 05.07.2003, then the consequential benefits have also to be granted to him. Once the seniority has been granted then the natural corollary would be grant of benefit commensurate with his seniority as he is legally entitled to receive same salary and other emoluments not less than his

juniors. It is admitted by the respondents that petitioner has been appointed and given seniority from 05.07.2003, then his pay should have been fixed from the initial date of appointment.

12. In view of above, this Court is of the considered view that the impugned order is illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India. Petitioner is also entitled for pay-scale which is akin to the persons who was appointed in the same select list i.e. on 05.07.2003."

8. The operative portion of the aforesaid judgment and order is also as follows:-

"14. The order dated 12.02.2020, passed by the Finance Controller, Medical and Health Services, U.P. Lucknow is hereby set aside. The respondents are directed to pass necessary orders granting revised pay-scale to the petitioner as he is entitled for the same from 05.07.2003, as directed by the Director and Medical Superintendent, Ram Manohar Lohiya, Hospital, Lucknow in their order dated 05.11.2019.

15. Let necessary order be passed by the respondents with regard to claim of the petitioner expeditiously, say within a period of six weeks from the date of production of certified copy of this order. The pay scale of the petitioner shall be fixed alongwith all consequential benefits."

9. It is admitted between the parties that the aforesaid judgment has thereafter attained finality and in pursuance thereof, the Director General, Medical and Health Services U.P. Lucknow also passed order dated 09.06.2023 granting benefits of pay fixation and other service benefits to petitioner w.e.f. 05.07.2003.

10. It has been submitted that despite judgment of this Court and direction dated 09.06.2023, actual payment of arrears of salary to petitioner w.e.f. 05.07.2003 was not provided to petitioner and on the contrary impugned order has been passed denying the same.

11. From a perusal of the personal affidavit filed by the opposite party no. 3, Smt. Sushma Singh, currently posted as Director, Para Medical, Medical and Health Services U.P. Lucknow, it has been indicated that regarding pay fixation and arrears thereof, the Director and Chief Superintendent Balrampur Hospital informed through his letter dated 14.09.2023 that by his order dated 11.07.2023, pay fixation of petitioner for the post of Physiotherapist w.e.f. 05.07.2003 and arrears in pursuance thereof have been paid to petitioner vide order dated 21.07.2023. However, petitioner thereafter has been requesting for fixation of seniority and providing arrears of salary w.e.f. 05.07.2003. The affidavit also states that due to aforesaid, necessary instructions were sought with regard to payment of arrears to petitioner whereafter the matter was referred to

FinanceController, Medical and Health whereafter the Director (Finance), Medical and Health gave his opinion dated 25.09.2023 that since petitioner was not in service from 05.07.2003 till the date of appointment and did not discharge any duty, as such there is no occasion for payment of salary to him and it is in pursuance thereof that the aforesaid impugned order has been passed.

12. A perusal of the personal affidavit of the official concerned indicates the fact that arrears of salary to petitioner have not been paid to him w.e.f. 05.07.2003 despite claim to the contrary. The affidavit also does not disclose any reason for seeking instructions and clarification from any higher official once judgment of this Court as well as directions issued by the Director General on 09.06.2023 were already available with the opposite parties.

13. A perusal of impugned order dated 16.10.2023 also indicates the fact that arrears of salary have been denied to petitioner only on the basis of the aforesaid alleged clarification dated 25.09.2023. There is absolutely no mention whatsoever of the directions issued by this Court and the subsequent approval of the Director General dated 09.06.2023. The impugned order as such is a narration of non-application of mind by the official concerned.

14. In the considered opinion of this Court, once petitioner's right of pay fixation with consequential benefits w.e.f. 05.07.2003 had been directed by this Court, there was no occasion for the opposite parties not to have complied with the same for payment of arrears of salary to petitioner w.e.f. 05.07.2003 particularly when the judgment and order dated 20.03.2023 had attained finality.

15. Considering aforesaid facts, the impugned order dated 16.10.2023, being contrary to directions issued by this Court is hereby quashed by issuance of a writ in the nature of certiorari. A further writ in the nature of mandamus is issued commanding the opposite party no. 1 and other concerned opposite parties to ensure payment of arrears of salary to petitioner w.e.f. 05.07.2003 till 22.09.2008 within a period of six weeks from the date a certified copy of this order is produced before the concerned authority.

16. In view of the recalcitrant attitude of the opposite parties as evident from the impugned order, it is further directed that petitioner shall be entitled to interest @ 6% per annum on the aforesaid arrears of salary for the period 05.07.2003 till 2.09.2008. Such interest shall also be paid along with the

arrears within the same stipulated time period.

17. The opposite party no. 3 i.e. Director Para Medical, Directorate of U.P. Medical & Health Services, Swasthya Bhawan, Lucknow is hereby warned to be extremely careful in passing any orders contrary to directions issued by this Court failing which appropriate action may be taken against her.

18. Consequently, the petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 12.12.2023

Satish