

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 910 of 2023

Appellant :- Ajay Kumar Singh

Respondent :- State Of U.P. Thru. Secy. Deptt. Of Secondary Education Civil Sectr. Lko. And Others

Counsel for Appellant :- Prashant Srivastava, Amit Trivedi, Arunendra Nath Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

(C.M. Application No.1 of 2023: Application for Condonation of Delay)

1. Heard learned counsel for the appellant and Shri Anil Kumar Singh Visen, learned Standing Counsel for State-respondents.
2. There is delay of 145 days in filing the special appeal. The appeal is accompanied with an application for condonation of delay supported by an affidavit.
3. Learned State Counsel representing the respondents does not have any objection, if delay in filing the instant appeal is condoned and the matter is heard on merits.
4. Cause shown in the affidavit filed in support of application for condonation of delay is satisfactory and in absence of any objection, application for condonation of delay is allowed and delay in filing the special appeal is hereby condoned.

(order on appeal)

5. The intra-Court appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 has challenged the

judgment/order dated 31.05.2023 passed by the writ Court in Writ-A No.4408 of 2023.

6. Although the post retiral dues in the nature of commutation of pension on the basis of appellant's having applied online and praying for 40% commutation was processed and reimbursed to his account on 02.08.2022. However, prior thereto, in the application filed offline on 14.06.2022, there is no such request for commutation of pension to the extent of 40%. The appellant-petitioner has submitted that the online application requesting for 40% commutation on 29.06.2022 was submitted by some clerk of the office and the mistake had inadvertently crept in.

7. It is under these circumstances, that the appellant-petitioner has prayed that the amount reimbursed in his account to the tune of 40% commutation of pension may be permitted to be returned to the State so that the entitlement of pension admissible to him is considered and decided in its entirety. The Pension Payment Order may accordingly be modified so that the arrears of pension as well as the regular pension may be paid to the petitioner, in accordance with law.

8. The rectification of any discrepancy or withdrawal of any request is permissible in terms of Rule 11 of U.P. Civil Pension (Commutation) Rules, 1941 (hereinafter referred to as "Rules, 1941"), which for ready reference is extracted below:-

"11. (1) नियम 7 के उप-नियम (1) के परन्तुक के अधीन मामलों को छोड़कर पेंशनभोगी यदि वह ऐसा चाहे, यथास्थिति, राज्य सरकार या राशिकरण स्वीकृत करने के लिए सशक्त प्राधिकारी या भारत के उच्चायुक्त को लिखित नोटिस द्वारा, जिससे कि वह उस दिनांक के जब राशिकरण अन्तिम हो जाये, पूर्व उक्त प्राधिकारी के पास पहुँचे, अपने आवेदन-पत्र को वापस ले सकता है।

(2) यदि वह खण्ड (1) में विनिर्दिष्ट अवधि के भीतर अपना आवेदन वापस नहीं लेता, तो राशिकरण अन्तिम हो जायेगा, पेंशन के राशिकृत भाग को प्राप्त करने का अधिकार समाप्त हो जायेगा और राशिकृत मूल्य को प्राप्त करने का हक उस तिथि से प्रोद्भूत होगा, जिससे राशिकरण प्रभावी हो। राशिकृत मूल्य का भुगतान, यथासम्भव, उस तिथि से किया जायेगा जब से राशिकरण प्रभावी हो, किन्तु वास्तविक भुगतान की तिथि चाहे जो हो, संदत्त धनराशि तथा पेंशन पर प्रभाव नहीं होगा, मानों राशिकृत मूल्य उस तिथि को अदा किया गया था, जिसको राशिकरण अन्तिम हो गया था। यदि पेंशन का राशिकृत भाग उस तिथि के बाद आहरित किया गया है जिस पर राशिकरण आत्यन्तिक हो जाता है, तो आहरित धनराशि को राशिकरण में संदेय धनराशि से कम कर लिया जाएगा।

(3) नियम-7 के उप-नियम (1) के परन्तुक के अधीन आने वाले मामले में, पेंशनभोगी को अपना आवेदन-पत्र वापस लेने का हक नहीं होगा और और राशिकरण उस दिनांक को अन्तिम हुआ समझा जायेगा जब राशिकरण के लिये आवेदन-पत्र, जो सभी प्रकार से पूर्ण हो, विभागाध्यक्ष/कार्यालयाध्यक्ष को प्राप्त हो जाये।"

9. It is also to be noted that the commutation of pension as per the rules cannot be allowed unless the medical certificate of the pensioner is duly submitted which in the present case was not filed by the petitioner-appellant to fulfill the requisites meaning thereby that he had no intention of making a request for commutation of pension as permitted under law. This position remains undisputed.

10. Shri Anil Kumar Singh Visen, learned Standing Counsel, has brought to our notice a Government Order dated 30.11.2021 which prescribed the total procedure for processing of post retiral dues online. This, however, does not suggest that the benefit available to an employee under Rule 11 of Rules, 1941 extracted above stands obliterated. A Government Order cannot override the statutory rules, thus, the benefit of withdrawal of requests being admissible within the scope of Rule 11 of Rules, 1941 ought to have been granted.

11. In the circumstances of the case, we hereby set aside the impugned order dated 31.05.2023 passed by the writ court. The competent authority is directed to reconsider the appellant-petitioner's request for issuing a fresh Pension Payment Order having regard to all the relevant details after return of the amount reimbursed to his account.

12. This exercise shall be completed not later than a period of two months from the date of production of a copy of this order.

13. With the aforesaid observation and direction, the instant special appeal as well as the writ petition stands **disposed of**.

14. We also expected the authority concerned to make necessary compliance of the requisites as prescribed under the rules in the matter of processing the pension cases henceforth.

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

Order Date :- 6.12.2023

Shubhankar