

Neutral Citation No. - 2023:AHC-LKO:80512-DB

Court No. - 1

Case :- SPECIAL APPEAL No. - 538 of 2023

Appellant :- Rajeev Kumar Sharma

Respondent :- State Of U.P. Thru. Secy. Transport Govt. Of U.P. Lko. And Others

Counsel for Appellant :- Satya Prakash Mishra, Brijesh Kumar

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

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

1. Heard learned counsel for the appellant, learned Standing Counsel for the State and Sri Ratnesh Chandra learned counsel who has put in appearance on behalf of the opposite party no. 2 to 6.
2. The present intra court appeal filed under Chapter VII Rule 5 of the Allahabad High Court Rules has assailed the judgment and order dated 17.11.2023 rendered in Writ A No. 5074 of 2023.
3. The writ court has rejected the writ petition merely on the ground of laches. The matter pertains to the claim of difference of salary for the period of suspension. It appears that the appellant was placed under suspension on 6.6.2016 and he continued under suspension till 21.10.2016. The conclusion of the inquiry initiated against the appellant has culminated into a mere warning which is not classified to be a punishment under the rules.

4. Under these circumstances, the forfeiture of difference of salary for the period of suspension could not be resorted to without prior notice indicating the cause as to why it may not be forfeited.
5. No such notice was ever issued to the appellant. On the contrary, the appellant having laid his claim through representation met with the fate of refusal initially on 14.7.2017 for the reason that a warning had come to be issued on conclusion of disciplinary proceedings and the order so passed does not speak anything payable during the period of suspension, therefore, it cannot be paid.
6. The appellant went on making repeated representations and thus his second representation was again turned down by the order dated 20.11.2018. This order recites that the difference of salary for the period of suspension cannot be allowed for the reason that the punishment order of warning was passed against the appellant. Although, warning was not a punishment as per the statutory rules yet such an opinion was expressed that too without issuance of a prior notice.
7. The appellant preferred an appeal against the order on 20.11.2021, which was rejected on 10.3.2021. Although no such appeal would have been maintainable yet the appellant lastly made another attempt to make a further representation

for redressal of his grievance but the representation so made was rejected by the order dated 17.1.2022.

8. The rejection of the representations made by the appellant would have attained legitimacy provided the requisite procedure provided under the fundamental rule i.e. Rule 54-B(3) & (8) of the Financial Handbook was followed by the competent authority, which for ready reference is extracted below :-

"54-B(1).....

(2)

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), to be paid the full pay and allowances to which he would have been entitled, had he not been suspended

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only

such amount (not being the whole) of such pay and allowances as it may determine.

(4)

(5)

(6)

(7)

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible".

9. Learned counsel for the appellant has submitted that no such procedure has been adopted by the authorities. Thus, the intention of the respondents proceeding to withhold the difference of salary for the period of suspension remained unilateral and without opportunity. Any action having civil consequences resorted to by the government authority against the official is bound to be based on just and plausible reason for which a prior opportunity is essential.
10. Sri Ratnesh Chandra, learned counsel for the respondent at this stage has stated that it is not the case of the appellant that the Rule 54-B(3) of the Financial Handbook would apply or not but at the same time an opportunity to be granted to the appellant before forfeiture of his claim of difference of salary could not be disputed.

11. The appellant in support of his contention has placed reliance upon a judgment rendered by this Court on 7.7.2021 in the case of **Sanjay Kumar Mathur versus State of U.P. and another** i.e. Service Single No. 23559 of 2020, wherein, it has been held that once the departmental proceedings culminate into a minor punishment, it would imply that resort to action of suspension was unwarranted and on that account an incumbent would not stand disentitled of the entire salary for the period of suspension.
12. In the present case, the period of suspension has though remained minimal, therefore, the financial implication of making the entire payment of difference of salary to the appellant does not cause any financial hardship to the employer that too when the ultimate order is merely a warning.
13. The forfeiture of difference of salary for the period of suspension in any case ought not to have been resorted to without prior opportunity and such a procedure not having been adopted by the opposite parties leaves us with no manner of doubt that the claim set up in the writ petition was maintainable. The writ court having taken a rigid view on the aspect of limitation has proceeded to reject the writ

petition on that ground alone, which, in our humble view was technical.

14. Thus, the special appeal is allowed and the impugned judgment and order dated 17.11.2023 rendered in Writ A No. 5074 of 2023 is set aside. Respondents are directed to make payment of the difference of salary for the period of suspension in its entirety.

15. Necessary compliance of the order shall be made by the opposite parties within three months.

Order Date :- 8.12.2023

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