

Court No. - 19

Case :- WRIT - A No. - 9728 of 2023

Petitioner :- Rajendra Prasad Yadav

Respondent :- State Of U.P. Thru. Prin. Secy.
Deptt. Of Nagar Vikas Lko. And 2 Others

Counsel for Petitioner :- Ghaus Beg

Counsel for Respondent :- C.S.C., Namit Sharma

Hon'ble Jaspreet Singh, J.

1. Heard Shri Ghaus Beg, learned counsel for the petitioner. Notice on behalf of the respondent no.1 has been accepted by the office of the Chief Standing Counsel and Shri Akhilesh Srivastava, learned counsel has put in appearance on behalf of the respondents no.2 and 3 and has filed his Vakalatnama which is taken on record.

2. By means of the instant petition, the petitioner seeks relief in the nature of mandamus commanding the respondent no.2 and 3 to sanction and pay pension and other retiral dues to the petitioner from the date of his retirement alongwith interest within a time to be specified by the Court.

3. Submission of the learned counsel for the petitioner is that the petitioner was initially appointed in the year 1989 on the post of Clerk Class-III as a daily wage employee with the respondent no.2. Later, the services of the petitioner alongwith the other employees was duly regularized by means of order dated 14.07.1997.

4. It is further submitted that while the petitioner was working in the Engineering Department (Zone-V), Nagar Nigam, Lucknow, he was placed under suspension vide order dated 08.09.2015. Later, a disciplinary inquiry was held which was not concluded where after the petitioner being aggrieved against the suspension order as well as the charge-sheet served filed a Writ Petition No.25128(S/S) of 2018. In the said petition, the Court by means of order dated 07.09.2018 passed an interim order staying the operation of the

suspension order and it further directed that the respondents shall conclude the disciplinary proceedings within a period of three months.

5. It is in furtherance thereof that the Municipal Commissioner reinstated the petitioner in service vide order dated 10.10.2018 while the disciplinary proceedings continued. Despite a clear direction given by this Court, a period of three month expired and yet the disciplinary proceedings were not concluded nor the authority filed any application before the writ court for seeking extension of the time.

6. Later, a show cause notice was issued on 25.01.2019 indicating that on the basis of the inquiry report dated 24.01.2019, all the charges against the petitioner stood proved. The petitioner filed his response to the said show cause notice and despite raising all objections, the same was not appropriately considered rather the punishment order dated 20.06.2019 was passed whereby the petitioner was reverted to the basic pay and was also given an adverse entry.

7. Being aggrieved, the petitioner preferred a departmental appeal and it is during the pendency of the said appeal that the petitioner attained the age of superannuation on 31.01.2020. Significantly, the Appellate Authority vide its order dated 27.02.2020 set aside the punishment order dated 20.06.2019 which was passed on the basis of an ex parte inquiry report and further directed the Municipal Commissioner to complete the departmental inquiry afresh.

8. It is the case of the petitioner that there are no rule which permit the department to initiate or continue any proceedings after retirement. It is in the aforesaid backdrop that even though the petitioner had superannuated, he made several requests to the department to release the full pension and other post retiral dues to the petitioner such as gratuity, leave encashment, group insurance and other financial benefits of the first and the second A.C.P. (Assured Career Progression). Despite making several efforts, the respondents did not make the payment and even

though the petitioner had made representation yet it did not find favour with the respondents which led to the filing of the instant petition.

9. Shri Akhilesh Srivastava, learned counsel appearing for the respondents no.2 and 3, on the other hand, submits that the petitioner has already been granted and paid the leave encashment for a sum of Rs.2,53,890/- on 20.03.2021 and the A.C.P. was also paid to the petitioner on 08.04.2021 amounting to Rs.1,88,718/-.

10. It has further been submitted that in so far as other dues are concerned, the same has been processed and in so far as the pension is concerned, the same is also prepared and the necessary papers have been forwarded. In this regard, a letter was sent to the petitioner to provide his I.D. and the Bank Pass-book so that the necessary detail can be creased out. However, the petitioner did not respond to the same and in case if the petitioner gave all the necessary details as required, the issue can be sorted out.

11. Learned counsel for the petitioner, at this stage, submits that the dispute does not lay in the manner as expressed by the counsel for the respondents. It is urged that since the petitioner has already been granted the leave encashment and the A.C.P. in his Bank Account, all the details are already available with the respondents and the plea that the petitioner has not given the Pass Book and I.D. is not quite correct.

12. It is further submitted that the crux of the controversy is that the fact that whatever computations have been made by the respondents no.2 and 3 is after taking into consideration the punishment order dated 20.06.2019. Actually, what is required of the respondents is to pay the difference of salary alongwith the first and the second A.C.P., the leave encashment ignoring the punishment order. It is, thus, submitted that once the punishment order was set aside in appeal by the Appellate Authority by means of order dated 27.02.2020 and no further inquiry has been held, the respondents are bound to ignore the punishment order and thereafter compute the

dues which would impact the pension, the gratuity as well as the A.C.P. and leave encashment and in this view, the petitioner has stated the amount due in paragraphs 27 and 28 of the petition.

13. Considering the facts and circumstances and noticing the arguments made by the respondents, apparently the issue raised by the petitioner requires to be considered by the department. Considering the averments as well as the arguments of the counsel for the petitioner, the respondent is required to revisit the issue of grant of post retiral dues to the petitioner also taking note of the fact that the punishment order has been set aside in the departmental appeal by means of order dated 27.02.2020. Once the punishment order has been set aside and the same does not exist any more, the respondent is required to re-compute the post retiral benefit as if the punishment order was not in existence and thereafter make the necessary computations to release the amount as due to the petitioner.

14. In view of the aforesaid, at this stage, the Court does not deem appropriate to keep the matter pending rather is of the view that ends of justice can be met by directing the petitioner to move afresh comprehensive representation with the respondents no.2 and 3 within a period of ten days from today raising all his grievances and in case if such a representation is made, the respondents no.2 shall consider the same and pass reasoned and speaking order thereon within a period of six weeks from the date of receipt of the representation. In absence of any legal impediment, the respondents shall also do the needful and disburse the entire amount as found due and payable. However, in case if there is any legal impediment, the same shall be communicated to the petitioner.

15. It is made clear that the Court has not examined the case of the petitioner on merits and the Authority shall take a decision strictly in accordance with the rules and law applicable in light of the observations made in this order by the Court.

16. With the aforesaid, the petition is disposed of.

Order Date :- 19.12.2023

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