

Neutral Citation No. - 2024:AHC-LKO:10711-DB

Reserved on 10.01.2024

Delivered on 06.02.2024

Court No. - 1

Case :- WRIT - A No. - 166 of 2024

Petitioner :- Satyanam Dubey

Respondent :- State Public Service Tribunal, Lucknow And Others

Counsel for Petitioner :- Alok Kr. Misra, Shiv Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Brij Raj Singh, J.

(Per: Brij Raj Singh, J)

1. Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. By means of present writ petition, petitioner has prayed the following relief:-

"(i) Issue writ order or direction in the nature of certiorari for quashing the impugned order dated 22.11.2022 passed in Claim Petition No. 403 of 2021 (Satyanam Dubey Vs. State of U.P.), order dated 06.10.2023 passed in Review Petition No.110 of 2022 (Satyanam Dubey Vs. State of U.P. and others) as well as order dated 23.04.2012 passed by opposite party no. 4 contained as Annexure Nos. 1, 2 & 3 in the interest of justice.

(ii) Issue writ order or direction in the nature of mandamus commanding to the concerned opposite parties that they consider the case of the petitioner and pay the back wages to the petitioner within reasonable time as early as possible, in the interest of justice.

(iii) Any other order or direction which this Hon'ble Court may deem fit just and proper may also kindly be passed."

3. The facts, in brief, of the present case are that petitioner was appointed on the post of Constable on 08.08.1965 and subsequently in the year 1975, he was confirmed in service. While posted at Deoria, a charge-sheet dated 24.01.1987 was served to the

petitioner for unauthorized absence from duty for a period of 420 days. The disciplinary authority discharged the petitioner from services on 26.07.1987.

4. Aggrieved by the order dated 26.07.1987 the petitioner filed Claim Petition no. 500 of 1989 before the State Public Services Tribunal Lucknow. The same was decided on 04.02.1994 and the discharged order passed by disciplinary authority was quashed. The respondent-State filed Writ Petition No. 3702 (SB) of 1994 which was allowed on 23.10.2007 and this Court remanded the matter to the Tribunal. The Tribunal thereafter allowed the reference petition on 15.02.2008 and quashed the discharge order. The Tribunal further directed that the petitioner will be reinstated in service and be paid salary with effect from the date he joins the service. However, the decision for back wages was left open for consideration by the answering respondent.

5. The State feeling aggrieved assailed the above order passed by the Tribunal filed Writ Petition No. 348 (SB) of 2009 which was dismissed on 30.07.2009. Against the order dated 30.07.2009, the State filed an SLP which was also dismissed by Hon'ble the Supreme Court on 04.11.2011.

6. Opposite party no.4 issued an order dated 23.04.2012 in compliance of the Tribunal's order dated 15.02.2008 by giving notional service benefits to the petitioner, who retired on 31.8.2007, however, back wages were denied. The said order was challenged before the appellate forum which was also dismissed on 27.02.2015. The aforesaid two orders came to be challenged before the State Public Services Tribunal in Claim Petition No. 403 of 2021 which was decided against the petitioner on 22.11.2022, hence the present writ petition.

7. Learned counsel for the petitioner has submitted that once the petitioner has been reinstated in service, denial of back wages is not justified in view of the fact that the Tribunal has quashed the termination order, leaving no scope for the respondents to refuse

back wages. It is further submitted that while quashing the termination order, the Tribunal also observed that after long lapse of time it would not appropriate to allow the competent authority to do enquiry denovo, thus, the petitioner is entitled to get back wages on the ground that the State is under legal obligation to release the back wages treating him in service.

8. Per Contra, learned Additional Chief Standing Counsel has taken a stand that petitioner was unauthorizedly absent from duty for 420 days and the Tribunal quashed the discharge order which has been complied with by giving notional service benefits to the petitioner, treating him to retire from service on 31.08.2007 and the back wages has been rightly denied. While passing the order, the Tribunal left open to the answering respondent to take a decision. The matter was referred by the punishing authority to the State Government regarding back wages and after receiving necessary direction, the competent authority passed the order denying the back wages.

9. Learned Additional Chief Standing Counsel has invited attention towards the operative portion of the judgment passed by State Public Services Tribunal in Claim Petition No. 500 of 1989 decided on 15.02.2008 and the same is quoted below:-

"The reference petition is allowed. The impugned punishment order dated 26.7.87 contained in annexure no.1 is hereby quashed. The petitioner shall be reinstated in service forthwith and paid salary with effect from the date he joins service. However, so far as the back wages are concerned, the opposite party no.3 shall take a decision with regard thereto within a period of three months.

Looking to the fact that the petitioner is out of employment since 1987 and has to be suffer expenses and mental agony due to such a long drawn litigation for about 22 years, we consider it in the interest of justice not to grant any liberty to the opposite parties to proceed with the enquiry denovo.

No order is made as to costs"

10. After hearing learned counsel for both the parties and keeping in view the material available on record, it is evident that in

compliance of Tribunal's order, the competent authority has given notional service benefits to the petitioner because he attained the age of superannuation on 31.08.2007. It is clear that compliance was made as the Tribunal passed the order on 15.02.2008 for reinstatement but as per service record, the date of birth of the petitioner is 08.08.1947 and he had already retired on 31.08.2007. Thus, the notional service benefits were extended to the petitioner, however, the arrears of back wages have been denied. The Tribunal while passing the judgment on 15.02.2008 had observed that so far as decision for payment of back wages is concerned, same be decided by the competent authority and in the operative portion an observation is also made that the petitioner was out of employment since 1987 and after 22 years it was considered that opposite parties would not be given liberty to proceed with the enquiry denovo. We may note that petitioner was absent from duty for 420 days and departmental proceedings were completed against him and many rounds of litigation were fought between the parties. However, the Tribunal quashed the termination order only on the ground that enquiry was faulty, without giving liberty to the respondent to proceed against the petitioner by initiating enquiry denovo. The order has been complied with by reinstating the petitioner in service and the notional service benefits were also extended to him but so far as denial of back wages is concerned, in our considered opinion, there is no scope for interfere in the orders of competent authorities as well as the view taken by the Tribunal. The findings recorded by the Tribunal needs no interference.

11. The writ petition is **dismissed** accordingly.

(Brij Raj Singh, J.) (Attau Rahman Masoodi, J.)

Order Date :- 06.02.2024

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