

Court No. - 6

Case :- WRIT - A No. - 1081 of 2022

Petitioner :- Ram Murti

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Revenue Lko. And Another

Counsel for Petitioner :- Ashish Raman Mishra, Amrendra Nath Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Supplementary counter affidavit filed today is taken on record.

2. Heard Shri Amrendra Nath Tripathi, Advocate along with Shri Ashish Raman Mishra, Advocate as counsel for the petitioner as well as Shri Diwakar Singh, learned Standing counsel for the respondents.

3. There is a consensus at Bar that the facts of the case have already been set forth in detail by this Court in the order dated 30.04.2024. For the sake of convenience, the order dated 30.04.2024 is reproduced below:

"1. Heard.

2. Under challenge is the order dated 11.08.2021, a copy of which is annexure 1 to the writ petition whereby the representation of the petitioner has been rejected. Also under challenge is the order dated 11.10.1994, a copy of which is annexure 2 to the writ petition so far as it has reinstated the petitioner in service provisionally.

3. The contention of learned counsel for the petitioner is that the petitioner had been appointed on 04.11.1982 as a Class IV post on the post of Peon. On account of a First Information Report being lodged against him and he being incarcerated in jail, he was placed under suspension on 17.04.1989 which suspension order was revoked on 11.10.1994. The First Information Report that had been lodged against the petitioner had resulted into Case Crime No. 319 of 1988. The competent Court of law vide its judgment and order dated 09.05.1994, a copy of which is annexure 4 to the writ petition in Session Trial No. 27 of 1990 has acquitted the petitioner. By means of an order dated 11.10.1994, a copy of which is annexure 2 to the writ petition, the petitioner has been

reinstated in service provisionally and also indicating that his reinstatement would be subject to decision in the proposed criminal appeal and that the departmental proceedings against the petitioner would continue. Ultimately, the petitioner retired on attaining the age of superannuation on 31.12.2021 but as he has not been given any of the dues for the period starting from the period of his suspension from 1989 to 1994 and other benefits pertaining to the Assured Career Progression, promotion & Annual Increment and only paid his basic pay consequently, he was constrained to approach this Court by filing Writ Petition No. 2744 (SS) of 2021 Inre; Ram Murti Vs. State of U.P and Ors. The writ Court vide judgment and order dated 01.02.2021, a copy of which is annexure 7 to the writ petition disposed of the writ petition leaving it open to the petitioner to file a fresh representation which was required to be considered in accordance with law.

4. In pursuance thereof, the representation of the petitioner has been rejected vide order impugned dated 11.08.2021 primarily on the ground that as the criminal appeal is pending against the order of acquittal dated 09.05.1994 and departmental proceedings are also pending against him consequently, payments of the dues as have been demanded by the petitioner would be subject to the final decision of the criminal appeal and the departmental proceedings. It has also been indicated that the provisional reinstatement order of the petitioner dated 11.10.1994 has not been challenged by the petitioner at any stage.

5. Being aggrieved by both the orders, the instant writ petition has been filed.

6. The contention of learned counsel for the petitioner is that although a specific averment has been made in the writ petition itself that there are no departmental proceedings pending against the petitioner consequently, rejection of the claim of the petitioner for payment of dues as indicated above on simply on the ground of pendency of the departmental proceedings and pendency of the criminal proceedings in which no stay order had been granted of the order of the acquittal of the petitioner dated 09.05.1995 would not give a license to the respondents to not pay the dues to which the petitioner is entitled on account of he having continued in service right since November, 1982 having retired on 31.12.2021 and thus the order impugned merits to be set aside.

7. The further contention is that considering the provisions of Regulation 351- A of Civil Service Regulations at this stage no departmental proceedings can be initiated against the petitioner as even if the respondents can now issue a charge sheet to the petitioner, the same would be squarely hit by the provisions of Regulation 351-A considering the first proviso of 351-A of the Civil Service Regulations and explanation (a).

8. However, before proceeding further with the matter as the respondents have not indicated anywhere in the counter affidavit as to whether any departmental proceedings are pending against the petitioner as such, the respondents are required to file a supplementary counter affidavit indicating as to from when the departmental proceedings are pending against the petitioner and if so, the date when the departmental proceedings were initiated against the petitioner as well as to indicate the status of the criminal appeal which is pending against the petitioner.

9. As the matter has been heard at length as such, list this case on 16.05.2024 at 02:15 P.M."

4. From a perusal of the order dated 30.04.2024, it emerges that the petitioner is a retired employee having retired on attaining the age of superannuation on 31.12.2021. He has not been given the benefits of time scale, assured career progression scheme and pay revision as per the recommendations of the pay Commissions and the arrears of salary for the period of suspension i.e. from 17.04.1989 to 11.10.1994 along with the consequential benefits.

5. The claim of the petitioner for grant of the said benefits has been rejected vide order impugned dated 11.08.2021, a copy of which is annexure 1 to the petition, on the ground that both criminal appeal as well as departmental proceeding are pending against him and it is only after the departmental proceeding is decided then only the petitioner's claim for payment of the dues would be considered.

6. The petitioner has also challenged the order dated 11.10.1994, a copy of which is annexure 2 to the petition, to the extent it re-instate the petitioner into service provisionally.

7. The Court had required the learned Standing counsel to file a supplementary counter affidavit indicating as to from when the departmental proceedings are pending against the petitioner and if so, the date when the departmental proceedings were initiated against the petitioner as well as to indicate the status of the criminal appeal which is pending against the petitioner.

8. In the supplementary counter affidavit filed today, in paragraph 4, it has been indicated that as the petitioner had only been re-instated in service vide order dated 11.10.1994, which reinstatement was subject to the order passed by this Court in

the Government Appeal (filed against the order of acquittal of the petitioner), the petitioner will be bound by it and that the departmental proceedings will go on against him and its final disposal will be done after decision of the appeal pending before this Court. The status of the pending Criminal Appeal No.403 of 1994 in Re: State of U.P. Vs. Ramdas has also been brought on record. It is also stated by learned Standing counsel that the departmental proceedings are pending against the petitioner since 17.04.1989 which date has been indicated by him on the basis of the suspension order dated 17.04.1989.

9. From a perusal of the aforesaid facts, it is thus apparent that despite the petitioner having retired on attaining the age of superannuation on 31.12.2021, the dues to which the petitioner is entitled to, as enumerated above, have not been paid on the ground of pendency of the departmental proceedings which is said to be pending since 17.04.1989, i.e. the date of suspension of the petitioner, and the pendency of the criminal proceedings which is in criminal appeal filed by the State against the order of acquittal of the petitioner in the criminal case that had been lodged against him in which he has been acquitted vide judgment and order dated 09.05.2014.

10. Admittedly, the petitioner is a retired employee. Any proceedings against the petitioner, after his retirement, would be governed by the provisions of Regulations 351-A of the Civil Service Regulations (CSR). For the sake of convenience, Regulation 351-A of the CSR is reproduced below:

"Article 351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement;

Provided that -

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment?

(i) shall not be instituted save with the sanction of the Governor,

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and

(c) the Public Service Commission, Uttar Pradesh, shall be consulted before final orders are passed.

Explanation- For the purposes of this article-

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted-

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court."

(Emphasis by the Court)

11. From a perusal of the Regulation 351-A, it emerges that the Governor has reserved to himself the right of withholding or withdrawing pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to the Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

The explanation (a) to the Regulation 351-A provides that a departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date. Likewise, explanation (b) provides that judicial proceedings shall be deemed to have been instituted which so far as they are relevant to the facts of the petitioner's case would be (i) in the case of criminal proceedings on the date on which a complaint is made, or a charge sheet is submitted to a criminal court.

12. In the instant case, admittedly, no department charge sheet has been issued to the petitioner till date. The case of the respondents is that as the petitioner had been suspended vide order dated 17.04.1989, consequently, departmental proceedings are pending against him since 17.04.1989. However explanation (a) of the Regulation 351-A of CSR provides that even if the officer has been placed under suspension from an earlier date then the departmental proceedings shall be deemed to have been instituted from the said date.

13. In the instant case, after the petitioner had been placed under suspension on 17.04.1989, his suspension order has been revoked vide order dated 11.10.1994, meaning thereby, that when the suspension order has already been revoked, which has not been followed by any charge sheet issued to the petitioner either when he was in service or even subsequent to his retirement, consequently considering explanation (a) of the Regulation 351-A of the CSR, it cannot be said that any departmental proceeding is pending against the petitioner as of date.

14. So far as the pendency of a criminal case, as has been

indicated by the respondents is concerned, the same would be covered by the explanation (b)(i) of Regulation 351-A of CSR wherein it has been provided that in the case of criminal proceedings the same can be said to be pending on the date on which a complaint is made or a charge sheet is submitted before a criminal court.

15. Admittedly, in the instant case, the petitioner, after submission of the charge sheet, has already been acquitted by the competent criminal court vide judgment & order dated 09.05.1994 and it is only a criminal appeal which is pending which has been filed by the State against the order of acquittal of the petitioner. Filing of a criminal appeal against the order of acquittal is not covered by explanation (b)(i) of the Regulation 351-A of the CSR and consequently, it cannot be said that any criminal proceedings are pending against the petitioner inasmuch as, it is only the criminal appeal which has been filed by the State against the order of acquittal of the petitioner, which is said to be pending and thus, squarely not covered by Regulation 351-A of the CSR.

16. Considering the aforesaid, it emerges that as of date or even on the date of retirement of the petitioner, i.e. 31.12.2021, there was neither any departmental proceeding nor any criminal proceedings pending against the petitioner.

17. Keeping in view of the aforesaid discussion, it is apparent that the order impugned dated 11.08.2021 per which the petitioner has not been paid the dues, as admissible to him after revocation of the suspension order vide order dated 11.10.1994, cannot be said to be an order legally valid in the eyes of law. Accordingly, the order impugned dated 11.08.2021, a copy of which is annexure 1 to the petition, as well as part of the order dated 11.10.1994, a copy of which is annexure 2 to the petition,

so far as it has reinstated the petitioner in service provisionally, are **quashed**. A writ of mandamus is issued commanding the respondents to grant all consequential benefits w.e.f. the date the petitioner was reinstated in service vide order dated 11.10.1994 including all consequential benefits.

18. Further considering that the order of suspension of the petitioner dated 17.04.1989 had itself been revoked by the respondents vide order dated 11.10.1994 and thereafter, no follow up action either for the issuance of charge sheet or otherwise was taken, as such, the petitioner is also held entitled for salary for the period of suspension i.e. from 17.04.1989 to 11.10.1994. The respondents are directed to comply with this order within a period of three months from the date of receipt of the certified copy of this order.

Order Date :- 16.5.2024

S. Shivhare