

Court No. - 18

Case :- WRIT - A No. - 1440 of 2024

Petitioner :- Rajendra Prasad Pandey

Respondent :- State Of U.P. Thru. Prin.Secy. Revenue And 2 Others

Counsel for Petitioner :- Ramesh Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

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

2. With the consent of the learned counsel for the parties, the present writ petition is decided finally at the admission stage.

3. The present writ petition has been preferred for quashing of the impugned order dated 15.01.2024 to the extent it does not give the provisional pension equal to the maximum pension on the basis of law laid down by the Full Bench of this Court in the case of **Shivagopal vs. State of U.P. & Ors. [2019 (37) LCD 1859]**, copy of which has been enclosed as Annexure no. 12 to the present writ petition.

4. Learned counsel for the petitioner has submitted that the petitioner after attaining the age of superannuation has retired from the post of Revenue Peon on 31.12.2010. At the time of retirement, an FIR was lodged against the petitioner and his family members under Sections 304-B, 498-A, 201 IPC read with Section 3/4 of the Dowry Prohibition Act and the criminal case is still pending.

5. It is further submitted that due to pendency of the criminal case, the petitioner has been given provisional pension the meagre amount of Rs. 9,124/- per month. It is further submitted that the petitioner is entitled for the provisional pension equal to the maximum pension as per Article/Regulation 351-AA read with Article/Regulation 919-A of the Civil Services Regulation and as per the law laid down by the Full Bench decision of this Court in the case of Shivagopal (supra).

6. It is further submitted that when no decision had been taken on the representation of the petitioner, the petitioner had approached this Court by filing Writ A No. 7237 of 2023, which was disposed of by this Court by its judgment dated 26.09.2023 with a specific direction to consider and decide the representation of the petitioner in the light of law laid down by the Full Bench of this Court in the case of Shivagopal (supra).

7. It is further submitted that in compliance of the judgment, the petitioner had made a representation which has been decided by the impugned order dated 15.01.2024 and giving the same provisional pension which the petitioner was getting, prior to the judgment of this Court dated 26.09.2023 and the petitioner has not been given the provisional pension equal to the maximum pension as provided under the Regulations and the judgment of this Court in the case of Shivagopal (supra).

8. It is further submitted that the impugned order has been passed without dealing with the Regulations applicable in the case of the petitioner which has been decided by the Full Bench of this Court.

9. On the other hand, learned Standing Counsel has very fairly submitted that the impugned order does not indicate that the Article/Regulation 351-AA read with Article/Regulation 919-A has been discussed nor there is any reference of the judgment of Full Bench decision of this Court in the case of Shivagopal (supra).

10. After hearing learned counsel for the parties and going through the record of the case, the impugned order has been passed without considering Article/Regulation 351-AA read with Article/Regulation 919-A. For convenience, the Article/Regulation 351-AA read with Article/Regulation 919-A is quoted hereinbelow:-

Article/Regulation 351-AA

"351-AA. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned."

Article/Regulation 919-A

"919-A. (1) In case referred to in Article 351-AA the Head of Department authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date and retirement up to the date immediately preceding the date on which he was placed under suspension.

(2) The provisional pension shall be authorized for the period commencing from the date of retirement up to and including the date on which after conclusion of departmental or judicial proceeding or the enquiry by the administrative Tribunal; as the case may be, final orders are passed by the competent authority.

(3) No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings, judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

(4) Payment of provisional pension made under clause (1) above shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceeding or enquiry referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or withheld either permanently or for special period."

11. From perusal of the Full Bench decision of this Court in the case of Shivagopal (supra) in pursuance of the Regulations mentioned hereinabove, pendency of disciplinary/judicial proceedings on the date of retirement the Govt. Servant is entitled for provisional pension equal to the maximum pension. The relevant paragraphs are quoted hereinbelow:-

"70. It is not open to the government servant to contend that he is facing 'hardship' due to the prolonged pendency of the proceedings. The Regulations entitles the government servant provisional pension 'equal to maximum pension' (Article 919-A(1)) during the period until conclusion, thereby, taking care of the likely hardship, and that what is postponed is commutation of pension and gratuity.

78. (iii) Pendency of disciplinary/judicial proceedings on the date of retirement, or instituted after retirement, provisional pension equal to maximum pension as mandated under Article 919-A may be sanctioned to the government servant for the period upto conclusion of the proceedings. (Article 351-AA/Article 919-A(1)/(2))"

12. The respondent no. 3/District Magistrate, District Lucknow while passing the impugned order has not followed either the provisions of the statute nor the law laid down by the Full Bench judgment of this Court in the case of Shivagopal (supra) though he was directed to decide the claim of the petitioner in the light of the judgment passed in the case of Shivagopal (supra) by judgment dated 26.09.2023 passed in Writ A No. 7237 of 2023 filed by the petitioner. Thus, the impugned order passed by respondent no. 3 is arbitrary and without application of mind.

13. In view of the above, the writ petition is allowed.

14. The impugned order dated 15.01.2024 passed by respondent no. 3 is hereby quashed.

15. The Respondent no. 3 is directed to ensure the provisional pension equal to the maximum pension to the petitioner in the light of provisions of the Civil Services Regulation i.e. Article/Regulation 351-AA read with Article/Regulation 919-A and the law laid down by this Court in the case of Shivagopal (supra) within a period of six weeks from the date of production/receipt of certified copy of this order.

Order Date :- 26.2.2024
Nitesh