

Court No. - 2

Case :- WRIT - A No. - 2418 of 2024

Petitioner :- Jaipal Singh Pundeer

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Finance Anubhag-I U.P. Lko. And 2 Others

Counsel for Petitioner :- Shiv P. Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Jaspreet Singh,J.

1) Heard Sri Shiv P. Shukla, learned counsel for the petitioner and learned counsel for the State.

2) By means of this petition, the petitioner has challenged judgment and order dated 17.10.2023 passed by U.P. State Public Services Tribunal in Application No.48 of 2023 which was filed in pursuance to judgment of this Court dated 04.08.2023 rendered in Writ-A No.5136 of 2020 as also earlier the judgment dated 18.02.2019 passed in Claim Petition No.1430 of 2017 (Jaipal Singh Pundeer vs. State of U.P. & Ors.).

3) The facts of the case are that the petitioner, a retired employee, had filed the above mentioned Claim Petition No.1430 of 2017 seeking the following reliefs:-

"1. Issue a order or direction to quash the impugned order dated 26.08.2016 passed by Director Agriculture U.P. (annexed as Annexure No. 1. to this claim petition), with all consequential benefits i.e. granting 2nd promotional pay scale of 8000-275-13500 w.e.f 01.07.1999 along with pay fixation and arrears of salary, in the interest of justice.

2. Issue a order or direction to the opposite parties to fix the salary of the petitioner in pay scale of 8000-275-13500 w.e.f 01.07.1999, when his juniors namely Sri Ram Karan Chaturvedi, Sri Parmeshwar Prasad, Sri T.N. Shukla has been sanctioned vide order dated 12.06.2001 & 31.07.2001 and to pay the difference of arrears of pay, in the interest of justice.

3. Issue a order or direction to the opposite parties to grant 2nd promotional pay scale of 8000-275-13500 w.e.f 01.07.1999 along with pay fixation and arrears of salary as has been granted to similarly situated person namely Sri Shambhu Nath Srivastava, Sri Sudhadhar Sharma, Sri Samar Bahadur Singh, Sri Raj Kumar Lal Srivastava & Sri Raj Vijay Singh vide orders dated 31.07.2001 & 25.06.2001, in the interest of justice.

4. Issue a order or direction to the opposite parties to fix the pay of petitioner at par with his juniors namely Sri Ram Karan Chaturvedi, Sri Parmeshwar Prasad and Sri T.N. Shukla w.e.f 01.07.1999 along with arrears of salary, in the interest of justice.

5. Any other order or direction, which this Hon'ble Court may deem fit and proper, may also be passed in the interest of justice. "

4) The claim of the petitioner to the second promotional pay scale of Rs.8000-275-13500/- w.e.f. 01.07.1999 was declined by the Director, Agriculture, U.P., Lucknow vide order dated 26.08.2016 which led to filing of above mentioned claim petition by the petitioner for the reliefs aforesaid. The claim petition was dismissed vide judgment and order dated 18.02.2019. The said judgment was put to challenge by the petitioner by means of Writ-A No.5136 of 2020 which was disposed of on 04.08.2023 with the observation that judgment being relied upon by the petitioner before the writ court which was dated 06.02.2019 having been rendered in Writ-A No.36508 of 2004 [Krishna Chandra Chaturvedi vs. State of U.P. & Ors.] was not placed before the tribunal, therefore, this court was of the view that a review application should be filed. However, while disposing of the petition, the writ court inadvertently set aside the order of the tribunal. Nevertheless, the fact of the matter is that in view of these observations, an application was filed by the petitioner - Claimant placing the aforesaid judgment before the tribunal obviously for a consideration afresh of the claim petition itself as its judgment had already been set aside. The tribunal has referred to the said judgment and then dismissed the application for review only on the ground that two different years of appointments have been mentioned by the petitioner-claimant. We do not appreciate the manner in which the tribunal has veritably ignored the spirit of the order of the High Court dated 04.08.2023 passed in the writ petition filed by the petitioner. Once the judgment of the writ court i.e. the judgment dated 06.02.2019 rendered in Writ-A No.36508 of 2004 was placed before the tribunal then it was incumbent upon the tribunal to consider the merits of the matter afresh keeping in mind the aforesaid dictum of the High Court. The fact that two different years of appointments were mentioned were also inconsequential as the premise on which the claim of the petitioner was based was satisfactory completion of 24 years of regular service. It made no difference as to whether the year of appointment was 1962 or 1963 as the petitioner having retired in the year 2000 apparently, he had completed the said period of service prior to his retirement. Moreover, if there was any doubt in this regard then this could have been got verified from the petitioner himself or from the opposite parties who were represented before the tribunal. The

tribunal for some inexplicable reason has brushed aside the main issue and has dismissed the claim petition on the ground mentioned hereinabove. We asked learned counsel as to whether learned Judicial Member who had passed the order is still a member of the tribunal, we have been informed that he is no longer a member of the tribunal. We, therefore, say no more otherwise we would have certainly passed appropriate orders so that such an action is not repeated by the tribunal.

5) In view of the above, in fact, the order dated 17.10.2023 passed on the review application is in essence an order passed finally disposing of the claim petition itself as the earlier judgment dated 18.02.2019 had already been set aside. We, therefore, set aside the said judgment and order dated 17.10.2023 treating it to be a final order in the claim petition itself.

6) As regards the earlier judgment dated 18.02.2019 passed in Claim Petition No.1430 of 2017, the same had been set aside by the writ court, therefore, it is not in existence.

7) We are of the view that the opposite parties are under an obligation to reconsider the claim of the petitioner for grant of second promotional pay scale as raised in the claim petition which shall be treated as a representation by the Director, Agriculture, U.P. and he shall take a fresh decision in this regard keeping in mind the judgment of this Court dated 06.02.2019 passed in Writ-A No.36508 of 2004 [Krishna Chandra Chaturvedi vs. State of U.P. & Ors.] against which, as informed, no special appeal has been filed. It shall be open for the petitioner to make a fresh representation in this regard. The decision shall be taken within one month from the date of receipt of certified copy of this order. In the event, the judgment passed in Krishan Chandra Chaturvedi (supra) has been challenged in special appeal then whatever orders are passed therein shall also be taken into consideration.

8) With these observations/ direction, the claim petition as also the writ petition are **disposed of**.

(Jaspreet Singh,J.) (Rajan Roy,J.)

Order Date :- 23.8.2024/Shanu/-