

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:54464-DB

Reserved on:24.05.2024

Delivered on:08.08.2024

Court No. - 2

Case :- WRIT - A No. - 3967 of 2024

Petitioner :- Dinesh Narain Saxena

Respondent :- The State Of U.P. Thru. The Prin. Secy. Lok Nirman
Vibhag , Lko. And Others

Counsel for Petitioner :- Shambhoo Sharan Lal Srivastava,Nisha
Saxena

Counsel for Respondent :- C.S.C.,Manish Mishra

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Shri Shambhoo Sharan Lal Srivastava, learned counsel for the petitioner and Shri Nishant Shukla, learned Additional Chief Standing Counsel for the State.

2. By means of this writ petition the claim-petitioner has sought the following reliefs:-

"(a) Issue orders or directions to the opposite party no.1 to consider the petitioner's case for granting him selection grade of Rs.1660-2275 with effect from 18.11.1986 in accordance with G.O. dated 27.2.1984.

(b) Issue orders or directions to quash and ignore the orders dated 22.11.2022 and 7.2.22024 (Annexure No. 7 and 11 respectively)."

3. As regards the order dated 22.05.2024 passed by us, we were under the wrong impression that only Section 5 of the Limitation Act, 1963 applies to the proceedings under the Act, 1963, in fact, from the wordings of Section 5(1)(b) it is clear that the provisions of Limitation Act, 1976 would mutatis mutandis apply to reference under Section 4, as if, reference was a Suit filed in Civil Court, subject however to the succeeding clauses mentioned therein, therefore, the Act, 1963 applies in toto subject to the exceptions and qualifications carved out in the Act, 1976.

4. The relief (a) sought herein is the same which had been sought in Claim Petition No. 124 of 2012. The said claim petition was decided in favour of the petitioner vide order dated 21.04.2021 and the opposite parties therein were directed to take a reasoned decision on the question of grant of selection grade pay based on the letters dated 17.01.1988 and 11.08.1989 by which the matter was referred to the State Government, within four months. Certain other directions were also issued. It appears that the said judgment was not complied, as claimed by the petitioner. Consequently, he filed a contempt petition before the Tribunal bearing Contempt Petition No. 13 of 2015, wherein, a compliance affidavit was filed annexing therewith a decision dated 23.06.2015 by which he was granted requisite pay-scale i.e. Rs.3700-5000 w.e.f. 18.11.1988 as per rules, as claimed by the alleged contemnors. This order dated 23.06.2015 does not appear to have been challenged and in fact, nothing has been brought on record to show that it was challenged, though, the compliance affidavit was challenged before the Contempt Bench of the Tribunal itself which rejected the compliance report vide order dated 08.03.2021. We have perused the said order and we find that while

rejecting the compliance report, Contempt Bench of the Tribunal entered into merits of the issues involved, which, it could not have done.

5. In this context we have perused the judgment of the Tribunal in the claim petition out of which the contempt proceedings arose. We do not find any finding on merits of the claim of the petitioner as to his entitlement to Selection Grade of Rs.1660-2275 w.e.f. 01.11.1986, though, it was relief no. 1 in the claim petition. Second relief was revised pay-scale of the petitioner in the pay-scale of Rs. 3700-5000 w.e.f. 01.01.1991 and thereafter, to revise and refix the salary of the petitioner in the pay-scale of Rs.14300-18300 w.e.f. 1.1.1996 with further revision in higher pay-scales w.e.f. 01.01.2006. Relief for refixation of pension based on the aforesaid revision was also claimed. None of these reliefs were adjudicated on merits, instead, relying on a decision of the High Court and on an affidavit filed therein that claim of the petitioner had been referred to the State Government letters vide letters dated 17.01.1988 and 11.08.1999, the claim petition was disposed of. Now, in pursuance thereof, as already stated and as is borne out from the order dated 22.11.2022 passed in the contempt proceedings by the Tribunal, a decision had been taken on 23.06.2015 itself. In fact, in the compliance report filed before the Tribunal, it had been submitted that the Selection Grade of Rs.1660-2275/- would have been admissible to the petitioner w.e.f. 18.11.1986, but, on account of implementation of 4th Pay Commission 01.10.1986 the said entitlement came to an end. As a consequence of 4th Pay Commission Pay Scale being implemented w.e.f. 01.01.1986 instead of the earlier arrangement regarding pay-scales vide Government Orders dated 11.04.1990 and 31.08.1992, another arrangement had come into play, according to which, on completion of 18 years of service the pay-scale of Rs.3700-5000/- was admissible on personal basis w.e.f. 01.01.1986 and the scheme which was enforced vide Government Order dated 27.02.1984, was no longer in force, on account of which, the petitioner who was an Assistant Engineer and had

completed 16 years as on 18.11.1986 could not be given the pay-scale of Rs.1660-2275/- as, prior to it the new scheme had come into force. Keeping in mind the G.O. dated 31.08.1992 personal pay-scale of Rs.3700-5000/- was given to the petitioner w.e.f. 18.11.1988 on completion of 18 years of service. In view of the aforesaid, contempt proceedings were dropped on 22.11.2022.

6. It is pertinent to mention that during pendency of the contempt proceedings the petitioner had also filed an application under Rule 24 of the U.P. Public Services Tribunal (Procedure) Rules, 1992 (hereinafter referred to as 'the Rules, 1992'), however, the said proceedings have been dismissed on 07.02.2024. The said proceedings were dismissed on the ground of limitation and also taking into considering the dismissal of the contempt proceedings initiated prior to the initiation of such proceedings. While dismissing the proceedings under Rule 24 of the Rules, 1992 the Tribunal has taken into consideration the observation by the Contempt Bench that substantial compliance of judgment and orders had been made. It has considered the decision of Hon'ble the Supreme Court rendered in the case of *Asia Resource Limited Vs. Usha Breko Limited* reported in *AIR 2002 SC 55* and Section 5(b)(1) of the Act, 1976 to arrive at a conclusion that the Limitation Act, 1963 is applicable to the proceedings before the Tribunal, as, it applies to a suit and has opined that Article 136 of the Schedule to the Limitation Act, 1963 would not apply for the purposes of limitation to the proceedings under Rule 24 of the Rules, 1992, instead, as no limitation is prescribed for the said purpose and it is not an application under the Code of Civil Procedure, Article 137 would apply, consequently, under the said residuary provision, limitation for filing of an application under Rule 24 would be three years.

7. We may point out that none of these orders dated 22.11.2022 or 07.02.2021 passed in the contempt proceedings or under Rule 24 of the

Rules, 1992 have been challenged by the petitioner at any point of time, not even in this writ petition, but, surprisingly enough, relief no. 2 prayed herein is that both these orders should be ignored. We see no reason as to how and why these orders can be ignored.

8. We may in this very context refer to a judgment of the Tribunal rendered in a bunch of case leading case bearing ***Misc. Case No. 07 of 2022; Shanti Prakash Jain Vs. State of U.P.*** wherein the question of limitation in initiating proceedings under Rule 24 had been considered by Chairman of the Tribunal in an elaborate and well discussed judgment and considering various provisions of law and precedents of Hon'ble the Supreme Court on the question of limitation and other relevant issues, he has been opined that limitation for initiating proceedings under Rule 24 is three years with reference Article 137 to the Schedule to the Limitation Act, 1963, as, the application to be filed under Rule 24 is not under the Code of Civil Procedure on account of which Article 136 would not apply. We have gone through the said decision. We concur with the reasoning given therein and, consequently, we also concur with the reasons given in the order dated 07.02.2024 passed in this case.

9. We are indeed surprised as to how without any challenge being raised to the decision taken by the Competent Authority on 26.03.2015 and to the order dated 07.02.2024 passed by the Tribunal under Rule 24, this writ petition has been filed for the reliefs claimed and how the same relief which was the subject matter of the claim petition, can be claimed herein. It seems that the petitioner has not been advised properly. This writ petition, in fact, is not maintainable, certainly not in the format in which it has been filed, without challenging the order dated 07.02.2024 or for that matter the order dated 22.11.2022, assuming that it could have been challenged.

10. Moreover, the learned Standing Counsel has also pointed out that in fact, the claim petition which was filed in 2012 was heavily barred by limitation, as, the cause of action, if any, had arisen in 1986 i.e. on 01.11.1986 which is the date from which the Selection Grade of Rs.1660-2275/- is being claimed by the petitioner. The petitioner conveniently retired and filed a claim petition in 2012 when he was 79 years of age, meaning thereby, he filed it almost 21 years after his retirement, as, earlier the age of retirement of government servants was 58 years. Though, the Tribunal has considered the point of limitation, it has done so erroneously, but, as this writ petition is even otherwise not maintainable in view of the reasons already given hereinabove, we do not enter into this aspect of the matter, however, we make it clear that this order shall not be treated as an affirmation of any finding recorded by the Tribunal in the impugned judgment on the point of limitation.

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

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 08.08.2024

R.K.P.