

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

Neutral Citation No. - 2024:AHC-LKO:54463-DB

Reserved on:17.05.2024

Delivered on:08.08.2024

Court No. - 2

Case :- WRIT - A No. - 3885 of 2024

Petitioner :- Sunil Singh Alias Sunil Kumar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home U.P. Civil Sect.
Lko. And Others

Counsel for Petitioner :- Ramesh Singh

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

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Shri Ramesh Singh, learned counsel for the petitioner and Shri Tushar Verma, learned counsel for the State.

2. Considering the short point involved in the writ petition and as pleadings had already been exchanged between the parties before the Tribunal, therefore, we see no reason to call for any counter affidavit in the matter.

3. By means of this writ petition the claimant/petitioner has challenged an order dated 21.04.2023 passed by the U.P. Public Service Tribunal, Lucknow (hereinafter referred to as 'the Tribunal') in Claim Petition No. 801 of 2021 dismissing the claim petition of the petitioner on account of non exhaustion of alternative remedy and non compliance of provisions of Section 4(6) of the U.P. Public Services (Tribunals) Act,

1976 (hereinafter referred to as 'the Act, 1976') and failure to amend the claim petition and challenge the appellate order dated 29.05.2021 passed during pendency of the claim petition.

4. The contention of petitioner's counsel in nutshell was that the claimant- petitioner had exhausted the remedies prescribed in the Service Rules as he has preferred an appeal against the punishment order dated 25.04.2020 on 06.07.2020 i.e. within the limitation prescribed under the Rules known as U.P. Government Servant (Disciplinary and Appeal) Rules, 1999 (hereinafter referred as 'the Rules, 1999'), but, no orders were pressed thereon and on expiry of period of six months the claim petition was filed. He has referred to Section 4(4) of the Act, 1976 to contend that once the claim petition was admitted on 07.04.2021, then, it was not open for the Appellate Authority to pass any order on the appeal filed by the petitioner in view of the said provision, as, the appellate proceedings had abated and there was no order or permission of the Tribunal to decide the appeal. As regards failure on the part of the claimant-petitioner to give one month's notice on expiry of the period envisaged under Section 4(6) and its proviso to the Act, 1976, the submission was that in the facts of the case, this can hardly be a ground for dismissing the claim petition on 21.04.2023 after it had been filed in 2021 and had been admitted on 07.04.2021, especially, in view of the use of the word 'ordinarily' in Section 4(5) of the Act, 1976, meaning thereby, if the public servant had not availed the remedies prescribed in the service rules, a claim petition/ reference could be filed, however, he also submitted that the petitioner had availed the said remedy by filing an appeal, but, no orders were passed thereon.

5. Learned Additional Chief Standing Counsel for the State has emphasized upon the proviso to Section 4(6), according to which, where no final order is made by the State Government, authority officer or other person on the appeal/ representation preferred by the public

servant, then, he is required to give one month's notice which was not done by the claimant-petitioner and without giving such notice he filed the claim petition, however, he could not deny the fact that claim petition was admitted on 07.04.2021 itself. He also could not deny the fact that in view of Section 4(6) of the Act, 1976 where a reference has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules or regulation or any contract as to redressal of grievances in relation to the subject matter of such reference pending immediately before such admission shall abate, and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules, regulations or contract.

6. Having heard learned counsel for the parties and having perused the records, looking into the facts of the case what we find is that an order was passed on 25.04.2020 against the petitioner by which punishment of censure was imposed upon him. Against this order he preferred an appeal on 06.07.2020 in terms of Rule 11 of the Rules, 1999 within the period prescribed therein for the said purpose. After expiry of the period of six months the claim petition in question was filed by the petitioner on 07.04.2021 and was admitted. By then, no orders had been passed in appeal. No doubt, as per the proviso to Section 4(6) of the Act, 1976, in such a scenario, the appropriate course for the petitioner was to give a written notice by registered post requiring the Appellate Authority to pass an order and if the order is not passed within one month of service of such notice, the public servant shall be deemed to have availed of all the remedies available to him, but, without doing so he filed a claim petition. In our opinion, in the facts of this case, once the claim petition had been admitted on 07.04.2021, especially, in view of the word 'ordinarily' used in Section 4(5) of the Act, 1976, then, it was highly technical for the Tribunal to have dismissed the claim petition in the year 2023 on the said ground. For all practical purposes, the

claimant-petitioner had availed the remedy of appeal and in the facts of the case, merely on account of his failure to give one month's notice as envisaged in the proviso to Section 4(6) of the Act, 1976 it should not have been made a ground for dismissal of the claim petition as it would be counter productive and also of no avail.

7. Moreover, the use of the word 'May' in the proviso to Sub-section (6) of Section 4 merely gives a liberty or discretion to approach the Court without waiting for a final order in his appeal. Its scope has already been discussed by us in our judgment rendered today in Writ - A No. - 16773 of 2019; Ram Babu Tripathi Vs. State Public Services Tribunal Lucknow and Ors. and connected matter.

8. As regards passing of the Appellate order dated 29.05.2021 we are of the opinion that once the claim petition had been admitted on 07.04.2021, then, Section 4(4) of the Act, 1976 barred the Appellate Authority from passing such order and in fact, the appellate proceedings stood abated, but, the Tribunal has not properly appreciated the purport and object of said provision and has wrongly dismissed the claim petition on the ground that said appellate order had been passed and had been brought on record along with counter affidavit on 29.07.2021, but, the same had not been challenged. We are of the opinion that the said order was a void order being *dehors* Section 4(4) of the Act, 1976 and the findings of the Tribunal in this regard are perverse and contrary to law.

9. Purely in the facts of the case, we are of the opinion that this was not a case where the Tribunal should have dismissed the claim petition taking such a hyper technical view, therefore, in the facts of this case, we set-aside the judgment of the Tribunal. Consequently, the claim petition stands restored to its original number and shall now be decided on merits

in accordance with law, as early as possible, say, within a period of six months.

10. With the aforesaid observations/directions, the writ petition is **allowed.** .

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

Order Date :- 08.08.2024

R.K.P.