

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 291 of 2024

Appellant :- District Basic Education Officer , Unnao

Respondent :- Swadesh Kumar @ Swadesh Kumar And Another

Counsel for Appellant :- Ran Vijay Singh

Counsel for Respondent :- Avinash Tiwari,C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(C. M. Application No. 1 of 2024)

1. This is an application for condonation of delay in filing special appeal supported with affidavit.
2. Heard learned Additional Chief Standing Counsel for appellant and Shri Avinash Tiwari, learned counsel for the respondent.
3. Learned counsel for the respondent has no objection. Even otherwise the cause shown in the affidavit filed in support of the application for condonation of delay in filing special appeal is satisfactory.
- 4.The application is allowed and the delay is condoned.

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

Order Date :- 30.5.2024

R.K.P.

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1. Heard learned Additional Chief Standing Counsel for appellant and Shri Avinash Tiwari, learned counsel for the respondent.

2. By means of this Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 the District Basic Education Officer, Unnao has challenged the judgment and order 18.05.2023 passed in Writ - A No. 3686 of 2023; Swadesh Kumar @ Swadesh Kumar Vs. State of U.P. and Anr. by which the appellant herein has been ordered to pay 6% interest on the amount which was payable to the respondent herein consequent to his reinstatement vide order dated 16.11.2019 which itself was a consequence of acquittal in criminal case, which, in fact, was the basis for order of punishment dated 25.08.2009 by which three annual increments of his were withheld permanently.

3. The facts of the case in brief are that the respondent herein is a teacher in a Basic School. An F.I.R. was lodged against him alleging certain offences including an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985. He was incarcerated and on account of his incarceration he could not inform the Authorities which led to his suspension from service on 26.11.2007. Ultimately, without any charge and regular disciplinary proceeding an order dated 25.08.2009 was passed imposing major punishment of withholding of three annual increments permanently.

4. We have perused the order. Even assuming that any charge sheet had been issued there is absolutely no discussion of the charge, any evidence which may have been collected the findings of the Inquiry Officer nor as to whether any show cause notice was given to the respondent, whether he submitted his reply there is absolutely no consideration of any of the replies which may have been called from him, but, straightway,

the punishment order has been passed.

5. Be that as it may, thereafter, the respondent was acquitted by the Court of competent criminal jurisdiction vide judgment dated 05.04.2019 passed in Special Sessions Trial No. 11 of 2008; State Vs. Swadesh Kumar arising out of Case Crime No. 994 of 2007, under Section 8/21 NDPS Act, Police State-Kotwali Nagar, District- Bahraich. On his acquittal, the respondent moved an application before the Additional Director, Basic who in turn ordered the Basic Education Officer, Unnao to take a decision in the matter. The Basic Education Officer, Unnao vide order dated 16.11.2019 restored the three annual increments to the respondent, meaning thereby, the punishment order veritably stood cancelled, however, the actual benefit of this order was not extended to the respondent, therefore, he approached the High Court by means of a Writ Petition No. 21733 (S/S) of 2020 seeking writ of mandamus commanding the opposite parties to provide balance of salary of the petitioner from the period 01.11.2007 to 28.09.2009 with 12% annual interest and with all consequential benefits within time. The said writ petition was disposed of on 25.11.2020 with a direction to the opposite party no. 2 therein, who is appellant herein, to consider the representation of the petitioner afresh and decide the same and ensure actual benefit of the order dated 16.11.2019 to the petitioner within a period of six weeks from the date a copy of this order is produced before him in case there is no other legal impediment, in which case the petitioner shall be made aware with regard to legal impediment within the same period. In response to it, an order dated 11.01.2021 was passed by the Basic Education Officer, Unnao by which the actual benefits were extended to the respondent/petitioner, however, the question of interest was not considered, though, it was specifically prayed for in the writ petition. It is not very clear as to whether interest was claimed in the writ petition. Nevertheless, once the order dated 16.11.2019 had been passed restoring the three annual increments, then, actual benefit should also have been extended at least from 16.11.2019 if not from prior date.

6. On being asked learned counsel for the respondent fairly submitted that he restricts his prayer for interest on the due amount from 16.11.2019 and not any date prior to it.

7. In the impugned judgment of the writ Court it is not mentioned as to from what date the 6% interest is to be paid.

8. At this stage, we have been informed that Contempt Proceedings have been initiated against the appellant, against which an Special Leave Petition was filed before the Supreme

Court in which an order has been passed for deferring the Contempt Proceedings till disposal of this Special Appeal and the Contempt Proceedings are fixed before the Contempt Court tomorrow.

9. Be that as it may, looking into the facts of the case, we do not find any error in the judgment of the writ Court consequent to his acquittal once the B.S.A., Unnao took a decision to restore the pecuniary benefits which had been denied to the respondent consequent to the punishment order dated 25.08.2009, then, the actual financial benefit flowing therefrom should have been extended to him with effect from the said orders dated 16.11.2019, instead, the respondent was made to file a writ petition and only thereafter the order dated 11.01.2021 was passed. Even while passing this order, though, the benefits have been extended interest was not paid, therefore, the second writ petition was filed which was maintainable, as, in the earlier writ petition there was no adjudication about the interest claimed specifically. As such, in the facts and circumstances, we are of the opinion that the order to pay 6% interest on the due amount per annum does not require any interference. We, however, make it clear that this interest shall be payable w.e.f. 16.11.2019 and not from any date prior to it. In the facts of the case, a month's time is granted to the appellant to pay the aforesaid interest.

10. The appeal, therefore, lacks merit and is, accordingly, **dismissed.**

11. As regards the cost of Rs.25,000/- imposed in the Contempt proceedings, it is open for the appellant to place this order before the Contempt Court and seek waiver as they please, in view of the order passed herein.

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

Order Date :- 30.5.2024
R.K.P.