

**AFR****Neutral Citation No. - 2024:AHC-LKO:40465****RESERVED ON 25-04-2024****DELIVERED ON 30-05-2024****Court No. - 20****Case :-** WRIT - A No. - 5280 of 2015**Petitioner :-** Ajay Pal Singh**Respondent :-** State Of U.P. Thru Its  
Prin.Secy.Deptt.Of Secondary Edu.Andors**Counsel for Petitioner :-** Pushp Raj Singh,Gaurav  
Upadhyay,Manish Misra**Counsel for Respondent :-** C.S.C.**Hon'ble Shree Prakash Singh,J.**

1. Heard learned counsel for the petitioner, Sri Shailendra Kumar Singh, learned Chief Standing Counsel and Sri Vivek Shukla, learned Additional Chief Standing Counsel for the State and perused the material placed on records.
2. By means of instant writ petition, the petitioner has assailed the order dated 02-06-2015 passed by the Deputy Director of Education,Lucknow Region, Lucknow and the order dated 13-08-2015 passed by the opposite party no. 1.
3. Contention of learned counsel for the petitioner is that the petitioner was initially appointed on the post of Assistant Teacher C.T. Grade on 01-08-1972, and subsequently, he was treated as Assistant Teacher in

L.T. Grade in Narvadeshwar Inter College, Rambagh, Raebareli(hereinafter referred to as 'Institution'). The institution is recognized by the U.P. Intermediate Education Board and imparts education upto Intermediate Classes and the provisions of Intermediate Education Act, 1921 (hereinafter referred to as 'Act, 1921'), U.P. Secondary Education Service Selection Board Act, 1982(U.P. Act No. 5 of 1982) as well as the U.P. High School and Intermediate College(Payment of Salaries to Teachers and other Employees) Act, 1971, are applicable on the teaching and non teaching staffs of the institution. Further submitted that the work and conduct of the petitioner was always above the board, but, unfortunately, in the year, 1977, he was falsely implicated in a murder case, wherein the petitioner was sentenced for life imprisonment vide Judgment and order dated 12-05-1981, whereafter, an appeal was preferred by the petitioner and he was released on bail. Thereafter, the petitioner joined the institution and kept on working and was getting salary, regularly. He next submits that the petitioner was sent to jail at the time, when the first information report was lodged and later on, when he was punished and he communicated it to the institution,but, no departmental enquiry was contemplated against him, however, he was being paid salary, except apart the period he remained in jail.

4. Again submitted that the appeal preferred by the petitioner was decided and the punishment was reduced and he was punished under section 304(ii) of

I.P.C. and was sentenced for 7 years of imprisonment and sent to jail, whereafter, the petitioner preferred Special Leave Petition before the Hon'ble Apex Court, which was also dismissed and subsequently, the review petition and curative petition were also dismissed. He further submits that after serving the punishment, the petitioner was released from jail on 03-01-2010, though in between, he had attained the age of superannuation on 30-06-2009, but, the fact remains that since 01-10-2004 upto the date of his retirement, the petitioner was not paid his salary and therefore, after release from the jail, the petitioner moved an application for release of his post retiral benefits, which were due to be paid to him, but, once, after completing the pension papers, sent to the office of Deputy Director of Education, Lucknow Region, Lucknow, the Deputy Director of Education sought the instructions from the Finance Controller of the office of the Director Secondary Education, vide letters dated 05-05-2010 and 23-02-2011, but, the same remains unresponded and therefore, the petitioner preferred Writ Petition bearing no. 1507(S/S) of 2013, wherein an order was passed on 15-03-2013.

5. The relevant portion of the order is quoted hereinunder :-

*"Heard learned counsel for the petitioner and learned counsel for the opposite parties.*

*Learned counsel for the petitioner submits retiral dues of the petitioner has not been paid, though the petitioner retired on 30.6.2009. He further states that necessary papers have already been forwarded to the authority concerned, but the post retiral*

*dues of the petitioner has not been paid up till now. The petitioner has also made a representation in this regard.*

*In the aforesaid circumstances, the writ petition is disposed of with the direction that the authority concerned shall consider and dispose of the aforesaid representation of the petitioner dated 22.1.2013, as contained in Annexure no.5 to the writ petition, in accordance with law within a period of three months from the date of receipt of a certified copy of this order."*

6. He added that in compliance of the order dated 15-03-2013, the order dated 02-06-2015 was passed, whereby the claim of the petitioner for payment of pension has been rejected and thereafter, the petitioner filed a representation/appeal before the opposite party no. 1, who without application of mind, passed the order on 13-08-2015 and upheld the order passed by the Deputy Director of Education.

7. Learned counsel for the petitioner argued that the petitioner has falsely been implicated in the criminal case and he was not involved in committing any offence. He next submits that as and when the petitioner was sent to jail, he informed the department, but, no departmental enquiry has ever been contemplated against him and in criminal appeal, the punishment is reduced upto 7 years and after serving the period of 7 years of imprisonment, the petitioner was released from jail and he has been paid all the post retiral dues. Therefore, submission is that the petitioner is also entitled for the pensionary benefits.

8. Further contention is that since there is no criminal case pending against the petitioner and therefore, under Regulation 351 of the Civil Services Regulations, the petitioner is entitled for payment of the pensionary benefits. Next submits that the Deputy Director of

Education and the State Government have passed the orders in an arbitrary manner and without adhering to the provisions of Civil Services Regulations as neither any departmental enquiry nor any criminal case is pending against the petitioner. Thus, submission is that the orders dated 02-06-2015 and 13-08-2015 may be quashed.

9. On the other hand, learned counsel appearing for the State has vehemently opposed the contentions aforesaid and submitted that initially, when the first information report was lodged, the petitioner was sent to jail and thereafter, when he was convicted, he was again sent to jail and finally, the conviction is upheld by the Apex Court. He submits that so far as the provisions of Regulation 351 of the Civil Services Regulations are concerned, that speaks about the implied condition of future good conduct for ever grant of pension and since the petitioner is convicted and therefore, as per the abovesaid provisions, he is not entitled for pension.

10. Adding his arguments, he submits that in compliance of the order dated 15-03-2013 passed by this court, the claim of the petitioner with respect to payment of pension has thoroughly been considered and decided by the Deputy Director of Education and once the representation is preferred against the same, the State Government has also passed an order on 13-08-2015 and has rightly turned down the claim of the petitioner. Thus, submission is that the petitioner is not entitled for any relief.

11. Having heard learned counsels for the parties and after perusal of the material placed on record, it transpires that the petitioner was initially appointed on the post of Assistant Teacher,whereafter, the first information report was lodged against him, for committing murder and he was punished. Thereafter, the petitioner filed an appeal before this court, which was also dismissed on 06-07-2004 and the Special Leave Petition was preferred before the Hon'ble Apex Court and that too, was dismissed on 27-09-2004 and the petitioner after serving the 7 years of sentence, was released from jail and admittedly, he is a convicted person.

12. After the petitioner was released from jail, serving the sentence, raised claim for payment of pension and thereafter, filed a writ petition, wherein a direction is given for taking a decision on the representation of the petitioner and ultimately, the decision was taken by the Deputy Director of Education on 02-06-2015, rejecting the claim of the petitioner.

13. When this court examines the matter in facts and law, it emerges that so far as the claim of the petitioner is concerned, the same is covered with the provisions of Regulation 351 of the Civil Service Regulations, which provides implied condition for grant of pension.

14. Provision of Regulation 351 of the Civil Services Regulations is extracted as follows :-

**"351.** *Future good conduct is an implied condition of ever grant of a pension. The State Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.*

*The decision of the State Government on any question of withholding or withdrawing the whole or any part of pension under this regulation shall be final and conclusive."*

15. A bare reading of the abovesaid provision is evident that the same confers power upon the State Government for withholding or withdrawing pension or any part of it, if a person claiming pension is convicted of 'serious crime' or guilty of 'grave misconduct', meaning thereby, that if a criminal case or disciplinary proceeding is pending, it would not be sufficient to withhold or withdraw the pension, unless such person is convicted or hold the guilty of grave misconduct. Infact, the expression 'serious crime' indicates towards the offences, which are having the dangerous possible consequences. The 'serious offences' have been defined under section 2(54) of the Juvenile Justice Act, 2015, which is extracted as follows :-

*"Serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years."*

16. The aforesaid provision is very clear in it's term as the same provides that the State Government reserves the 'right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

17. This court is also aware of the law laid down in the case of **Shiv Gopal and Others Vs. State of U.P. and Others and other connected matters (Special Appeal No. 40 of 2017 decided on 08-05-2019.**

Paragraph nos. 31,32 & 36 of the said Judgment are quoted hereinunder:-

*"31. The decision of the above Division Bench as contained in the later part is based upon equitable principle and is not the law that has been laid down. The decision on equity is confined to the fact situation of that case. Moreover, equity has no place where the provisions of law are express.*

*32. The decision in the case of Bal Krishna Tiwari<sup>39</sup> has been rendered simply following the equitable principle of Faini Singh (Supra) in context with the fact situation of the said case wherein the government servant had retired 10 years ago but was not getting his gratuity as a case was pending against him. The said decision also does not lay down any binding precedent.*

*36. The decision dated 5.10.2013 in Writ No. 12574 of 2013 (Narendra Singh Vs. State of U.P., and others) is also of no consequence as it again fails to take into consideration the specific provision of Regulation 919-A with regard to withholding of gratuity during the pendency of the judicial proceedings."*

18. Undisputedly, the petitioner is a convicted person and therefore the Deputy Director of Education as well as the State Government have rightly passed the orders on 02-06-2015 and 13-08-2015, respectively, while rejecting the claim/prayer of the petitioner for grant of pension.

19. Thus, the provision of Regulation 351 of the Civil Services Regulations cannot be ignored or make it inoperative or redundant only on the ground that no departmental enquiry was contemplated against the petitioner as the provision speaks and includes not only the past but, of future good conduct, as well and since, it is undisputed fact that the petitioner is a convicted person, therefore, the provision of Regulation 351 of the Civil Services Regulations, shall apply.

20. Resultantly, the petitioner is not entitled for pension.

21. Consequently, the writ petition lacks merits and hence, is **dismissed**.

22. No order as to costs.

**Order Date :- 30-05-2024**

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