

Court No. - 4

Case :- WRIT - A No. - 4796 of 2024

Petitioner :- Bibhuti Singh

Respondent :- State Of U.P. Thru. Addl. Chief / Prin. Secy.,
Medical Health And Family Welfare, Lko. And Others

Counsel for Petitioner :- Rakesh Chandra Tewari

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri R.C. Tiwari, learned counsel for the petitioner and Sri Aniruddha Singh, learned Standing Counsel for the State-respondents. Sri R.C. Tiwari, learned counsel for the petitioner has filed rejoinder affidavit, the same is taken on record.

2. Since the pleadings are complete therefore, on the request of the parties, the present matter is being decided finally at the admission stage.

3. By means of this petition, the petitioner has prayed the following relief(s):-

"(i) Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned order dated 16.4.2024 passed by opposite party No.5 contained in Annexure No.1 to this writ petition.

ii) Issue a writ, order or direction in the nature of Mandamus commanding/directing the opposite parties to pay Rs.9,16,900/- to the petitioner which has illegally been recovered from the leave encashment of the petitioner, on the basis of wrong fixation, with admissible interest.

iii) Issue a writ, order or direction in the nature of Mandamus commanding/directing the opposite parties to pay the pension and leave encashment of the petitioner on the basis of last pay drawn by him at the time of his retirement i.e. Rs.88,400/-."

4. Learned counsel for the petitioner has submitted that the order dated 16.4.2024 has been passed by opposite party No.5 by which an amount of Rs.9,16,900/- has been deducted from the Leave Encashment of the petitioner without any authority of law. Along with the impugned order a chart (Annexure No.1 of the petition) in the name of adjustment pay chart from 31.12.1987 i.e. the date of appointment till December, 2021 i.e. the date of retirement, has been given in which at the bottom of chart where calculation has been done a sum of Rs.14,34,773/- has been mentioned as total adjustment.

5. Learned counsel for the petitioner has further submitted that

the G.O. dated 16.1.2007 has been upheld by the Hon'ble Supreme Court vide its judgment and order dated 17.4.2014 passed in Civil Appeal No.5262 of 2008 and the same has been followed by this Hon'ble Court in Writ A No.9289 of 2020 vide judgment and order dated 21.8.2003 and against the aforesaid judgment dated 21.8.2023 passed in Writ - A No.9289 of 2024 Special Appeal No.87 of 2024 has been dismissed vide judgment and order dated 30.4.2024.

6. Learned counsel for the petitioner has further submitted that the petitioner was initially appointed on the post of Anveshak-cum-Sangarak, in the pay scale of Rs. 470-735 on ad hoc basis vide order dated 24.12.1987 and an order of appointment was issued on 2.1.1996 thereby appointing the petitioner against the existing post in pay scale of Rs. 1400-2300.

7. Learned counsel for the petitioner has further submitted that while working and discharging his duties on the aforesaid post of Computer the petitioner was promoted on the post of Assistant Research Officer (ARO) on 1.12.2008 and he was also given the promotional pay scale. The petitioner was also given the benefit of 3rd A.C.P. w.e.f. 31.12.2013 after completion of 26 years of service from the date of his initial appointment/joining i.e. 31.12.1987.

8. Learned counsel for the petitioner has further submitted that vide order dated 28.9.2013 the petitioner was given the benefit of Second A.C.P. after completion of 18 years of regular satisfactory service in the Grade pay of Rs.4800-5400 w.e.f. 1.12.2008 and petitioner was granted the benefit of 3rd A.C.P. after completion of 26 years service vide order dated 28.7.2014 w.e.f. 31.12.2013.

9. Learned counsel for the petitioner has further submitted that while working and discharging his duties on the post of ARO in P.H.C. Khorabar in the pay scale of Rs.88,400/- the petitioner has attained the age of superannuation and retired effectively on 31.12.2021.

10. Learned counsel for the petitioner has further submitted that a pay adjustment chart was prepared w.e.f. December, 2008 to December, 2021 by which it was calculated that the petitioner has been paid Rs.3,87,203/- as extra salary and accordingly from the gratuity of the petitioner as per his entitlement was Rs.1445847/- the aforesaid amount which was paid to the petitioner i.e. Rs.3,87,203/- was illegally adjusted and the petitioner was paid his gratuity and pension payment order was issued.

11. Learned counsel for the petitioner has further submitted that the Chief Medical Officer, Gorakhpur vide letter dated 27.4.2022 recommended the case of petitioner before the opposite party No.2 who is the competent authority, in which he has mentioned that the petitioner has retired on 31.12.2021 and as per his service book his 300 days earned leave is pending.

12. Learned counsel for the petitioner has further submitted that by means of the impugned order dated 16.04.2024, not only the recovery has been directed from the petitioner but also the pay of the petitioner has been reduced.

13. Attention has been drawn towards the Annexure No. 15 of the petition, which is a Government order (G.O.) dated 16.01.2007 which categorically provides by Para- 4(1) that for doing the needful exercise for the retired employee for fixation/re-fixation of this pension etc., past 34 months period is granted to revisit the issue. In another words after the competent authority wishes to revisit on the issue for making payment of pension, such exercise may be undertaken for the period of last 34 months.

14. In the present case, the petitioner retired from service on 31.12.2021 therefore, the required period would be upto February, 2019. The aforesaid issue has been settled by the judgment and order of the Apex Court in re: **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others, 2014 16 SCC 444.**

15. The aforesaid judgment has been enclosed as Annexure No. 16 of the petition, para-7, 10 and 11 thereof reads as under:-

" 7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant."

16. As per Para 11 of the aforesaid judgment in the case of **Sushil Kumar Singhal (supra)**, after expiry of that period in terms of the G.O dated 16.01.2007, the pension of the employee may not be reduced. However, in the present case, the chart which has been enclosed as Annexure No. 1 clearly indicates that the aforesaid deduction starts w.e.f from December, 1988 till December, 2021 which is not permissible in the eyes of law.

17. Learned counsel for the petitioner has also drawn attention of this Court towards the Annexure No. 2 of the petition which is an order passed by the Division Bench of this Court vide order dated 30.04.2024 in Special Appeal No. 87 of 2024 (*State of U.P. Thru Prin. Secy. Deptt. Of Ayush U.P. Govt. Civil Secr. Lko and Others Vs. Dr. Rakesh Kumar Gupta*), whereby the appeal of the State Government has been dismissed on the basis of judgment and order of Apex Court in the case of **Sushil Kumar Singhal (supra)**.

18. By means of the aforesaid judgment, the Division Bench of this Court has refused to permit the State Government for further revision of time scale/financial upgradation of the writ petitioners of that petition who are respondents in the aforesaid special appeal.

19. Notably in the counter affidavit, no specific reply to that effect has been given. On being confronted the learned counsel for the State Government, as to why, the impugned order has been passed contrary to the G.O. dated 16.01.2007 (Annexure No. 15 of the petition) which has been interpreted and upheld by the Apex Court in the case of **Sushil Kumar Singhal (supra)** and being followed by this Court time and again, learned Standing Counsel could not explain the proper reasons to that effect.

20. Therefore, in view of the above, it is clear that the impugned order dated 16.04.2024 passed by opposite party no.5 is contrary to the G.O. dated 16.01.2007 and also in derogation of the direction is being issued by the Apex Court in the case of **Sushil Kumar Singhal (supra)**. If it was so required to revisit on the benefit of pay scale etc. so given to the petitioner time to

time, only 34 months period prior to his retirement could have been considered.

21. In the present case, the period with effect from December, 1988 has been considered to revisit the issue therefore, the aforesaid impugned exercise is patently illegal, arbitrary and infringes.

22. Accordingly, the writ petition is ***allowed*** and the impugned order dated 16.04.2024 passed by opposite party no.5 i.e. Joint Director, Pension, Gorakhpur Division, Gorakhpur is hereby set-aside/quashed. The opposite parties are directed to pay sum of Rs. 9,16,900/- to the petitioner which has been recovered from leave encashment of the petitioner on the basis of wrong fixation. The opposite parties are also directed to pay pension and leave encashment on the basis of last pay drawn by him at the time of retirement i.e. of Rs. 88,400/-. The aforesaid payment shall be paid to the petitioner within a period of one month from the date of receipt of certified copy of this order, failing which, the petitioner would be entitled for the interest at the rate of 8% on the delayed payment.

[Rajesh Singh Chauhan,J.]

Order Date :- 30.7.2024
Preeti.