

(Reserved On 05:01:2024)

(Delivered On 25.01.2024)

Court No. - 1

Case :- SPECIAL APPEAL No. - 493 of 2021

Appellant :- U.P.Cooperative Fedearction Ltd. Thru Managing Director
And Ors

Respondent :- Abdul Rauf

Counsel for Appellant :- Shireesh Kumar

Counsel for Respondent :- Apoorva Tewari

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Brij Raj Singh,J.

(Delivered by Hon. Brij Raj Singh, J.)

1. Heard Sri Shireesh Kumar, learned counsel for the appellants and Sri Apoorva Tewari, learned counsel for the respondent.
2. This Intra-Court appeal under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 is filed against the judgment dated 7.10.2021 passed by Single Judge in writ petition i.e., Service Single No.279 of 2020 (*Abdul Rauf: Vs. U.P. Cooperative Federation Ltd. through Managing Director and others*) allowing the writ petition by granting annual increment w.e.f. 1.2.1999 to 31.7.2017, first promotional pay scale w.e.f. 2004 with benefit of Sixth Pay Commission on the basis of revised salary.
3. To understand the controversy of the case, the brief facts of the case are narrated hereinafter.
4. The sole respondent was appointed on the post of Junior Engineer in the Federation on ad hoc basis on 6.2.1984 and his services were regularised, vide order dated 19.4.1991 and he was

placed under suspension in contemplation of departmental inquiry, vide order dated 22.8.2002. During departmental proceedings, the suspension of the respondent was revoked on 6.2.2004 and he was paid 50% salary as subsistence allowance for the period of suspension with effect from 22.8.2002 to 6.2.2004. Thereafter, departmental proceedings completed and the respondent was dismissed from service by way of punishment order dated 4.2.2009 and a recovery of Rs.17,52,764.58 was directed to be made from him.

5. The respondent assailed the said order dated 4.2.2009 by filing writ petition i.e., Service Single No.2954 of 2009 (*Abdul Rauf. Vs. U.P. Co-Operative Federation Ltd. through its M.D. & another.*) and this Court quashed the punishment order, vide judgment and order dated 18.12.2017 and the writ petition was allowed with all consequential benefits restricting the benefit of past salary upto 50% from the date of dismissal order to the date of retirement. The pensionary benefits admissible to the respondent, however, were provided to remain unaffected as if he was in service upto the age of attaining the age of superannuation.
6. The judgment dated 18.12.2017 has attained finality. The judgment so rendered, was complied with vide order dated 6.7.2018 and by order dated 21.7.2018, the arrears of salary have been paid to the respondent without granting benefit of all the consequential benefits. The Federation took decision to pay the arrears of salary on the basis of salary drawn by him on 1.2.1999 and the benefit of increments of time bound scale due was not granted. The said impugned orders dated 6.7.2018 and 21.7.2018 were challenged by way of filing writ petition i.e., Service Single No.279 of 2020 (*Abdul Rauf. Vs. U.P. Cooperative Federation*

Ltd. through Managing Director and Ors.) and the said writ petition has been allowed vide judgment and order dated 7.10.2021 by quashing the order dated 6.7.2018 and 21.7.2018 and further direction was issued to revise salary of the respondent by providing annual increments to the respondent with effect from 1.2.1999 till 31.7.2017 and to grant the first promotional pay scale with effect from the year 2004 with benefits of 6th Pay Commission on the basis of revised salary. The direction was further issued to revise service benefits on the basis of last pay drawn calculating the same in view of the judgment of the Court.

7. Learned counsel for the appellants Sri Shireesh Kumar has taken stand that direction issued by the Writ Court in Service Single No.2954 of 2009 was complied with and 50% salary has been paid to the respondent calculating the same on the basis of last pay drawn salary in the year 1999. It has been submitted by the learned counsel for the appellants that the respondent cannot raise plea in the subsequent writ petition because in earlier writ petition i.e., Service Single No.2954 of 2009 he did not plead that he was entitled for the annual increments with effect from 1.2.1999 till 31.7.2017. He has submitted that in absence of such pleading in the earlier writ petition, it was not open for the respondent to claim benefit in the subsequent writ petition. He has further submitted that the reliefs of the respondent is barred by res judicata. He has further submitted that Writ Court overlooked the ground of maintainability of writ petition as envisaged under Order 2 Rule 2 of Civil Procedure Code.
8. Per contra, learned counsel for the respondent has submitted that dismissal order was challenged by the respondent by filing writ petition i.e., Service Single No.2954 of 2009 and order was

passed that the respondent would be entitled to 50% salary from the date of dismissal upto the date of retirement and pensionary benefit admissible to the respondent, shall, however, remain unaffected and he would be treated as if he was in service upto the date of attaining the age of superannuation. It has been submitted by the learned counsel for the respondent that when the impugned orders dated 6.7.2018 and 21.7.2018 were passed denying the revised salary to the respondent to provide annual increment with effect from 1.2.1999, the respondent challenged the same by filing writ petition i.e., Service Single No.279 of 2020 and has taken specific ground that the respondent is entitled for all consequential benefits for the reason that once the dismissal order was quashed with direction that he was entitled for all consequential benefits, the respondent was entitled for annual increments including all service benefits which would have accrued to him while in service. It has been submitted by the learned counsel for the respondent that as soon as they denied the increments as well as other service benefits, the respondent filed writ petition i.e., Service Single No.279 of 2020 challenging the impugned action of the appellants.

9. Heard Sri Shireesh Kumar, learned counsel for the appellant and Sri Apoorva Tewari, learned counsel for the respondent.
10. The dismissal order passed against the respondent dated 4.2.2009, was challenged in writ petition i.e., Service Single No.2954 of 2009 and the same was allowed, vide judgment and order dated 18.12.2017. The operative portion of the said judgment and order dated 18.12.2017 is quoted below:-

"This Court having regard to the facts and circumstances of the case, is of the considered opinion that the impugned order being illegal and arbitrary calls for the issuance of a writ of certiorari and accordingly

the order contained in Annexure-1 issued on 4.2.2009 is hereby quashed with all consequences. The petitioner would be entitled to 50% salary from the date of dismissal from service up to the date of retirement. The pensionary benefits admissible to the petitioner shall, however, remain unaffected and he shall be treated as if he was in service up to the date of attaining the age of superannuation. The consequential benefits shall be paid not later than a period of three months from the date of service of a certified copy of this judgement. The writ petition is allowed with no order as to cost. "

11. In compliance of Writ Court judgment and order dated 18.12.2017, the impugned orders dated 6.7.2018 and 21.7.2018 were passed by which the increment with effect from 1.2.1999 and other service benefits were denied and the Writ Court discussed all the aspects and has taken into consideration by detailed finding that the respondent was entitled for increments with effect from 1.2.1999 till 31.7.2017 and further promotional pay scale with effect from the year 2004. The case laws cited by both the sides, have been considered by the Writ Court.
12. The argument that relief of respondent was barred in view of Order 2 Rule 2 of Civil Procedure Code, is not sustainable for the reason that the respondent was dismissed from service and the dismissal order was challenged in writ petition i.e., Service Single No.2954 of 2009 and the dismissal order was quashed with all consequential benefits with direction that the respondent was entitled for pensionary benefits. The Writ Court has taken due care of the service of the respondent. Once the Writ Court has quashed the dismissal order, it may be inferred that the respondent was in service because the Writ Court found that the order of dismissal was illegal. The Writ Court has further observed that the pensionary benefits admissible to the respondent will be unaffected. Thus, the argument that even the fresh cause of action arising out of orders dated 6.7.2018 and

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21.7.2018 was barred, in our humble view, is wholly misconceived and misplaced.

13. The Writ Court judgment dated 18.12.2017 was complied with but for the first time, it came on record through the orders dated 6.7.2018 and 21.7.2018 that the increments from 1.2.1999 and other consequential benefits were not released. As soon as the respondent came to know the aforesaid anomaly, he filed writ petition i.e., Service Single No.279 of 2020 espousing his cause and submitted that denial of annual increments and other pensionary benefits would not be permissible in view of the judgment order passed by Writ Court. We uphold the judgment of the Single Judge. The finding recorded by the Single Judge requires no interference by this Court in appellate jurisdiction.
14. The special appeal is accordingly dismissed. No order as to cost.

(Brij Raj Singh, J.)

(Attau Rahman Masoodi, J.)

Order Date :- 25.01.2024

Rajneesh JR-PS)