

Court No. - 5

Case :- WRIT - A No. - 9795 of 2017

Petitioner :- Mohd. Hasan Khan

Respondent :- Provincial Co-Operative Federation Of Up
Thru M.D. And Anr.

Counsel for Petitioner :- Shishir Chandra

Counsel for Respondent :- Gaurav Mehrotra, Utsav
Mishra

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner and Shri Utsav Mishra, learned counsel for the respondents.

2. By means of the instant petition, the petitioner has prayed for the following main relief(s):

"(i). Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 04.10.2016 passed by the respondent No.1, a copy of which is annexure 1 to the writ petition.

(ii). Issue a writ, order or direction in the nature of mandamus commanding the respondents to make payment of 25% of the back wages to the petitioner along with an interest @ 18% P.A. in terms of the directions of this Court contained in judgment and order dated 04.04.2012 passed in Writ Petition No.6759(S/S) of 1992.

(iii). Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner in regular continuous service and allow him all the benefits of seniority, increment in pay & fixation of pay consequent to pay-scale revision and make payment of arrears of salary arising there from along with an interest @18% P.A., forthwith, in accordance with law."

3. Bereft of unnecessary details, the facts set forth by learned counsel for the petitioner are that the petitioner was appointed in the year 1981 as the Store In-charge. He

was dismissed from service vide order dated 25.05.1992. Being aggrieved, he filed **Writ Petition No.6759(S/S) of 1992 in Re: Mohd. Hasan Khan vs. State of U.P. and Others**. The writ Court, vide judgment and order dated 04.04.2012, a copy of which is annexure 2 to the petition, quashed the dismissal order dated 25.05.1992. The writ Court also held that since the matter could not be remanded back for correction and lapses committed by the disciplinary authority, the respondents were directed to reinstate the petitioner in service forthwith and the petitioner was also held entitled for 25% of the back wages for the period he was not in service. The period was required to be counted as continuous service for the purpose of post retiral benefits, if any.

4. In pursuance thereof, the petitioner was reinstated in service in July, 2012. Subsequently, vide order dated 02.11.2012, a copy of which is annexure 5 to the petition, the pay of the petitioner had been fixed as Rs.11,360/-.

5. The petitioner had also given an affidavit / undertaking on 06.07.2012, the legible copy of the same has been annexed as annexure CA-3 to the counter affidavit filed by the respondents, which indicates that the petitioner undertook that in case the order of the writ Court in Writ Petition No.6759(S/S) of 1992 is complied with and the respondents do not file a special appeal and the petitioner is reinstated in service then he would not claim any back wages from the respondents.

6. Perhaps, based on the said undertaking, admittedly the respondents did not file any special appeal challenging the order passed by the writ Court.

7. After a period of almost four years, the petitioner raised a grievance pertaining to 25% back wages to be paid to him as directed by the writ Court and also for correct fixation of his pay inasmuch as, his case was that the juniors of the petitioner were receiving higher pay than the

petitioner. When the said representation was not decided then the petitioner was constrained to approach this Court by filing **Writ Petition No.16345(S/S) of 2016 in Re: Mohd. Hasan Khan vs. Provincial Co-Operative Federation of U.P. & Anr.** The writ Court, vide order dated 18.07.2016, a copy of which is annexure 8 to the petition, disposed of the petition with a liberty to the petitioner to approach the respondents for redressal of his grievances and the competent authority was required to decide the said representation in accordance with law.

8. In pursuance thereof, the petitioner submitted his representation dated 26.07.2016, a copy of which is annexure 9 to the petition, primarily praying for (a) being paid 25% back wages in terms of the order passed by the writ Court and (b) correct fixation of his pay along with service benefits to be paid along with interest.

9. The said representation has been rejected by the respondents vide order impugned dated 04.10.2016, a copy of which is annexure 1 to the petition, hence the instant petition.

10. The contention of learned counsel for the petitioner is that a perusal of the order impugned would indicate that though the representation of the petitioner was in two parts namely (a) payment of 25% of the back wages, as had been granted by the writ Court vide judgment and order dated 04.04.2012, and (b) the correct fixation of his pay at par with his juniors yet the respondents, while deciding the said representation, have only considered one aspect of the matter i.e. grant of 25% back wages by contending that as the petitioner had given an undertaking on 06.07.2012 that in case a special appeal would not be filed and he would be reinstated in service he would not claim any back wages and as no special appeal has been filed, consequently, he would not be entitled for back wages as granted by the writ Court. However, the order is

completely silent on the aspect of the pay fixation of the petitioner at par with his juniors which ought to have been done by the respondents considering that the writ Court, vide the judgment & order dated 04.04.2012, has granted continuity in service to the petitioner and he has been directed to be "reinstated in service" by the respondents.

11. On the other hand, Shri Utsav Mishra, learned counsel for the respondents argues that the instant petition would not be maintainable inasmuch as, the petitioner should have filed a contempt petition in case the earlier judgment of the writ Court dated 04.04.2012 was not complied with in letter and spirit by the respondents and further, once the petitioner had himself given an undertaking of not claiming any back wages in terms of the order passed by the writ Court in case a special appeal was not filed and he was reinstated in service and the respondents have acceded to the said undertaking and had reinstated the petitioner in service, consequently, it is now too late for the petitioner to stake a claim for being paid 25% back wages. However, Shri Mishra does not dispute that while passing the order impugned, whereby the representation of the petitioner has been rejected, no consideration to the continuity of past service has been considered by the respondents for the purpose of pay fixation of the petitioner.

12. Heard the learned counsels for the parties and perused the record.

13. From a perusal of record, it emerges that after the petitioner had been dismissed from service on 25.05.1992, the writ petition filed by him had been allowed by the writ Court vide judgment & order dated 04.04.2012 and he was directed to be reinstated in service with 25% back wages and with continuity of service.

14. The petitioner gave an undertaking on 06.07.2012 that in case the petitioner is reinstated in service, he would be forgoing the 25% back wages. Admittedly, no special

appeal has been filed by the respondents perhaps swayed by the undertaking that had been given by the petitioner.

15. Be that as it may, once the petitioner had given an undertaking of being reinstated in service and he would be forgoing his 25% back wages in case the respondents did not file a special appeal and no special appeal had been filed, consequently, the petitioner would be bound by the undertaking that had been given by him, more particularly, when the respondents proceeded to reinstate the petitioner in service in July, 2012.

16. Subsequent thereto, the petitioner staked his claim for being given 25% back wages and for correct fixation of his pay.

17. The same has been turned down by the respondents vide the order impugned dated 04.10.2016 while considering the undertaking, that had given by the petitioner

18. There cannot be said to be any error in the order dated 04.10.2016 when, as already indicated above, the respondents have acted upon the undertaking of the petitioner in forgoing the back wages in case he was reinstated in service and no special appeal is filed.

19. However, once the writ Court, vide judgment & order dated 04.04.2012, had granted continuity in service to the petitioner and he had been reinstated in service, the same would itself entail the previous service of the petitioner to be counted and obviously, counting of the previous service would also entail fixing of the pay of the petitioner correctly at least at par with the juniors.

20. However, this aspect of the matter has been completely ignored by the respondents while passing the order impugned dated 04.10.2016.

21. So far as the argument of Shri Mishra i.e. the petitioner

should have filed a contempt in case he was aggrieved by non compliance of the judgment and order dated 04.04.2012 is concerned, the same may not detain the Court inasmuch as the petitioner had approached this Court praying for redressal of his grievances by filing a second writ petition namely Writ Petition No.16345(S/S) of 2015 which had been disposed of vide judgment & order dated 18.07.2016 leaving it open to the petitioner to submit a representation which was required to be decided by the respondents and in fact, the same has been decided by the respondents vide the order impugned dated 04.10.2016, which in turn has given a fresh cause of action to the petitioner to file the instant petition. Hence, the aforesaid argument of Shri Mishra is rejected.

22. Keeping in view of the aforesaid discussion, the writ petition is **disposed of** with a direction to the respondent No.1 to consider the claim of the petitioner for fixation of his pay at par with his juniors considering the judgment of the writ Court dated 04.04.2012 which had granted continuity in service to the petitioner. Let such consideration be done within a period of six weeks from the date of receipt of certified copy of this order.

23. Consequences to follow.

Order Date :- 10.12.2024

S. Shivhare