

Court No. - 4

Case :- WRIT - A No. - 6458 of 2024

Petitioner :- Vinay Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Home U.P. Lko.
And 2 Others

Counsel for Petitioner :- Anurag Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 28.08.2024, which reads as under:-

"1. Heard.

2. This Court has passed the order dated 13.8.2024 which reads as under:

"1. Heard Shri Anurag Tripathi, learned counsel for the petitioner and Shri Ashwani Kumar Singh Rathaur, learned Standing Counsel for the State-respondents.

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

" (1) To issue, a writ, order or direction in the nature of certiorari quashing the impugned order dated 6.6.2024 passed by opposite party no. 3. (Annexure No. 1), with its consequential effect.

(II) To issue any other writ, order or direction to the opposite party to provide the salary of the dismissal period to the petitioner from 9.3.2022 to 3.8.2023 with the 12% interest."

3. The precise contention of the learned counsel for the petitioner is that the salary of the petitioner has been denied w.e.f. 9.3.2022 to 03.08.2023 only on the basis of the principle of 'No Work No Pay', whereas the said principle would not be applicable against the present petitioner in view of the settled proposition of law. The principle of 'No Work No Pay' would be applicable where the petitioner had deliberately absented from duty or he did not discharge his duties without having any cogent reasons but if the work has not been taken from an employee without any fault on his part and he was willing to discharge his duties for the concerning period, then the said principle would not be applicable.

4. Learned Standing Counsel may seek specific written instructions from Senior Superintendent Jail, Adarsh Karagar, Lucknow within three days.

5. List/put up this case on 28.08.2024 as fresh.

6. This matter may be taken up immediately after fresh cases."

3. Shri Yogendra Verma, learned Standing Counsel has informed the Court that the aforesaid order has been informed to the competent authority on 20.8.2024 but no instructions could be received, therefore, he has prayed some further time to seek instructions.

4. Considering the aforesaid request, list this case on 10.09.2024 as fresh.

5. This matter may be taken up immediately after fresh cases.

6. If no instructions are received by the next date of listing, the Senior Superintendent Jail, Adarsh Karagar, Lucknow shall appear in person along with the records to assist the Court."

3. Sri Diwakar Singh, learned Standing Counsel has produced the detailed instructions letter dated 03.09.2024 provided by the Senior Superintendent of Jail, Adarsh Karagar, Lucknow. The same are taken on record. Along with the aforesaid instructions, the relevant orders/ correspondences have been enclosed.

4. The petitioner has assailed the order dated 06.06.2024 whereby the salary of the petitioner for dismissal period with effect from 09.03.2022 to 03.08.2023 has been denied on the ground of no work no pay. Whereas such principle, as per learned counsel for the petitioner, would not be applicable in the present case inasmuch as for the period of dismissal the petitioner could not discharge his duties on account of no lapse on the part of the petitioner but on account of unwarranted inaction on the part of the opposite parties.

5. Learned counsel for the petitioner has stated that after hearing all the parties concerned and perusal of the record available before him, the dismissal order dated 09.03.2022 has been set aside by the Appellate Authority (opposite party No.2) by means of order dated 03.08.2023 and directed for reinstatement the services of the petitioner from the date of joining. He has also submitted that the opposite party No.3 rejected the claim of the petitioner on the ground of no work no pay whereas the ground of no work no pay will not be applicable in the case of dismissal. The opposite party No.3 without verifying the facts and law passed the dismissal order as there was no fault on the part of the petitioner. The petitioner has reinstated in service from the date of joining. Since the petitioner was reinstated in service from the date of joining, therefore, there is no break in service of the petitioner and he is entitled for all service benefits during the period of dismissal.

6. Learned counsel for the petitioner has further submitted that on bare perusal of the appellate order dated 03.08.2023 reveals

that the petitioner had been fully exonerated from the charges levelled against him. In the order dated 03.08.2023 the appellate authority has held that the petitioner was innocent and his name was removed from the charge-sheet. Prior to filing of the verification form the appellate authority held that the evidence produced by the petitioner proved his innocence. Apparently, the petitioner had been fully exonerated of the charges by the appellate authority vide its order dated 03.08.2023. The appellate authority in its order dated 03.08.2023 had accepted the explanation of the petitioner that he was not guilty of the charges and had not remanded back the matter to the disciplinary authority for further inquiry.

7. Learned counsel for the petitioner has further submitted that by virtue of Rules 54(2) and 54(3) of the Financial Hand Book the petitioner is entitled for full pay and allowances for the period from 09.03.2022 to 03.08.2023 and his absence from service during the said period has to be treated as a period spent on duty for all purposes. The case of the petitioner is covered with the judgment and order dated 16.07.2024 passed by this Court in ***Writ-A No.5033 of 2024; Dinesh Prasad vs. State of U.P. & others.***

8. Learned counsel for the petitioner has also submitted that the action of the opposite parties is arbitrary, illegal and violative of Article 14 and 16 of the Constitution of India and the order dated 06.06.2024 passed by the opposite party No.3 is illegal, arbitrary and unwarranted in the eyes of law as the same has been passed in utter violation of principles of law, hence, it is liable to be quashed.

9. Learned counsel for the petitioner has stated that almost identical controversy has been decided by this Court vide judgment and order dated 16.07.2024 passed in ***Writ-A No.5033 of 2024; Dinesh Prasad vs. State of U.. & others*** (Annexure No.11). While deciding the controversy, this Court in re: ***Dinesh Prasad (supra)*** has been reproduced Rule 73 of Financial Hand Book Volume-II (Part-II to IV) and Rule 54. The relevant extract of the aforesaid judgment is being reproduced here-in-below:-

"The Superintendent of Police, District Deoria has passed the order dated 11.2.2024 ostensibly exercising his powers under Rule 73 of the Financial Hand Book Volume-II Part II to IV which is reproduced below:

"73. A Government servant who remains absent after the end of his leave is entitled to no leave salary for the period of such absence, and that period will be debited against his leave account as though it were leave on half average pay, unless his leave is extended by the Government. Wilful absence from duty after the expiry of leave may be treated as

misbehaviour for the purpose of Rule 15."

Rule 73 is invoked where the government servant is absent after the end of his leave, i.e., the government servant overstays his leave. The petitioner was not on leave between 9.1.2020 to 29.9.2020 but stood dismissed for the said period because of the dismissal order passed against him by the disciplinary authority. Thus Rule 73 was not applicable in the present case.

The issue as to whether the petitioner was entitled to his salary for the period between 9.1.2020 to 29.9.2020, i.e., the period during which the petitioner was not in service had to be considered and decided under Rule 54 of the Financial Hand Book Volume-II (Part II to IV). Rule 54 is reproduced below:

"54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case be; and

(b) whether or not the said period shall be treated as a period spent on duty."

(2) When the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

[(4) In cases other than those covered by sub-rule (2) [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the 14

ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held], the Government servant shall, subject to the provision of sub-rules (6) and (7) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.]

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose: Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant. Note-The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.

(6) The payment of allowances under sub-rule (2) of sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowance admissible under Rule 53.

(8) Any payment made under this rule to Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of his removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

Note—Where the Government servant does not report for duty within reasonable time after the issue of the orders of the reinstatement after dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge."

A reading of Rules 54(2) and 54(4) shows that, in Uttar Pradesh, the principle 'no work-no pay' is not applicable while considering the entitlement of State Government employees for pay and allowances for the

period they were not in service if the order dismissing, removing or compulsory retiring them from service is set aside either in appeal or review and the government servant is reinstated in service and no further inquiry is proposed to be held. Rule 54 provides that if the government servant who has been reinstated in service after the order dismissing or removing him from service has been set aside in appeal or review and he has been fully exonerated of the charges, the government servant shall be entitled to full pay and allowances that he would have been entitled had he not been removed or dismissed from service and the period of absence from service shall be treated as period spent on duty for all purposes. However, where the government servant is not exonerated of the charges but is still reinstated in service or the order dismissing or removing a government servant is set aside in appeal or review solely on the ground of non-compliance with the requirements of Article 311(1) and (2) of the Constitution and no further enquiry is proposed to be held, the government servant shall not be entitled to full pay and allowances but will be entitled to be paid such amount (not being the whole) of the pay and allowances as the competent authority may decide after giving the employee notice of the quantum proposed and after considering his representation but it shall not be less than the subsistence allowance and other allowances admissible under Rule 53. It is apparent that, on his reinstatement after the order of dismissal or removal is set aside, a government servant can not be denied his entire pay and allowances for the period he was out of service. The amount which the government servant would be entitled to get would depend on whether the case of the government servant is covered by Rule 54(2) or by Rule 54 (4).

The only circumstance in which the government servant can be denied his pay and allowances or part of the same for the period he was out of service is specified in Rule 54 (8). The rule provides that any payment made to a government servant on his reinstatement shall be subject to adjustment of the amount earned by the employee through an employment during the period he was out of service and nothing shall be paid to the government servant where the emoluments payable to him are equal to or less than those earned by him during employment elsewhere.

The order dismissing the petitioner has been set aside in appeal and the petitioner has been fully exonerated by the appellate authority vide its order dated 4.9.2020, therefore, the case of the petitioner is covered by Rule 54(2)."

10. Learned counsel for the petitioner has drawn attention of this Court towards Annexure No.8 of the writ petition, which is an order dated 03.08.2023 passed by the Deputy Inspector General of Prison, Lucknow Region, Lucknow whereby the relevant fact has been considered that in a criminal case in question no charge-sheet has been filed against the petitioner, rather, final report was submitted.

11. Learned counsel for the petitioner has stated that since the information of filing the police report was not within the knowledge of the petitioner, therefore, he could not apprise this fact replying the show cause notice. However, when the Appellate Authority has set aside the punishment order by

speaking and reasoned order, then the salary for dismissal period may not be denied.

12. Per contra, Sri Diwakar Singh, learned Standing Counsel tried to defend the impugned order dated 06.06.2024 on the basis of the aforesaid instructions but no evidence/ fact has been brought into the notice of the Court justifying the order dated 06.06.2024 inasmuch as in view of the present fact and circumstances the salary of the petitioner for dismissal period may not be denied.

13. Therefore, considering the facts and circumstances of the issue in question in entirety and the detailed judgment passed by this Court in re: **Dinesh Prasad (supra)**, which is squarely applicable in the present case, I hereby **allow** this writ petition and quash the impugned order dated 06.06.2024 (Annexure No.1) passed by the opposite party No.3.

14. The opposite party No.3 i.e. Senior Superintendent of Jail, Adarsh Karagar, Lucknow is directed to provide the salary to the petitioner for dismissal period i.e. from 09.03.2022 to 03.08.2023 along with interest at the rate of 6% per annum within a period of six weeks from the date of production of a certified copy of this order, failing which, the petitioner would be entitled the interest at the rate of 10% per annum on the delayed payment.

15. No order as to cost.

[Rajesh Singh Chauhan,J.]

Order Date :- 10.9.2024
Suresh/