

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 647 of 2024

Appellant :- State Of U.P. Thru. Addl. Chief Secy. Secy. Home Deptt. Lko. And 3 Others

Respondent :- Abha Rani Singh

Counsel for Appellant :- C.S.C., Mr. Mohit Jauhari, Standing Counsel

Counsel for Respondent :- Rakesh Kumar Singh

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. Heard Shri Mohit Jauhari, learned Standing counsel for the appellants and Shri Rakesh Kumar Singh, learned counsel appearing for the private respondent.

I.A.No.1 of 2024.

2. The appeal is also accompanied by an application seeking condonation of delay as the office reports that the appeal is barred by 31 days.

3. Having considered the aforesaid application for condonation of delay which is duly supported by an affidavit and considering the cause shown for explaining the delay, the Court finds that cause shown is sufficient and the appellants have made out a case for condonation of delay. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay is allowed.

On merits

4. The instant intra court appeal has been filed by the State assailing the judgment and order dated 04.10.2024 passed in Writ-A No.8973 of 2024 (Abha Rani Singh vs. State of U.P. & others) whereby the writ court has allowed the writ petition and has set aside the order dated 20.08.2024 passed by the Director

General, Prosecution, Barabanki and the said authority was directed to refund an amount of Rs.5,36,426/- which is said to have been recovered from the respondent and also make the payment of all post retiral dues to the respondent.

5. Learned Standing Counsel has primarily submitted that the private respondent did not approach the writ court with clean hands. It is submitted that an impression was given to the Court as if the appellants had made recovery from the respondent, which was not correct.

6. It is urged that no recovery has been made from the respondent at all and thus the direction given by the learned Single Judge to refund a sum of Rs.5,36,426/- alongwith the interest on the delayed payment is not justified nor is it in accordance with law.

7. It is further urged that the respondent had withheld certain documents which she did not let it be placed before the competent authority to enable the Authority to take timely action thereupon and only when the respondent retired on 30.06.2024 that the aforesaid letter was placed for attention of the Authority where upon action was taken for re-determination of the salary, vide order dated 20.08.2024.

8. It is also submitted that though the learned Single Judge has relied upon the decision of the Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 33*** but it failed to notice that in the said case the State or the employer was not restrained from revisiting the pay fixation, if done inadvertently, and thus quashing the order of re-determination of salary and its impact on the pension payable to the respondent, is against the settled legal principles,

9. It has also been urged by the counsel for the State-appellants

that the respondent had submitted an undertaking dated 03.01.2017 and a consent letter dated 30.09.2023, to the effect, that in case if any excess amount is paid to the respondent then the recovery can be made and in this view of the matter, the learned Single Judge was not justified in quashing the re-fixation order. Thus, for all the aforesaid reasons, it is urged that the order impugned dated 04.10.2024 deserves to be set aside.

10. Shri Rakesh Kumar Singh, learned counsel for the respondent has submitted that the entire submission made by the counsel for the appellants is not tenable both on facts and law. It is urged that the appellants was given appointment upon the death of her husband under the compassionate appointment rules on 28.08.1996 on the post of a Junior Clerk. The respondent was promoted on the post of Senior Assistant vide order dated 09.06.2012 and on 30.06.2024, she retired on attaining the age of superannuation.

11. It is urged that the order impugned in the writ petition, dated 20.08.2024, would indicate that the salary of the respondent had been re-fixed on the ground the respondent has been given higher scale since 06.10.2014 on the premise that since the junior employee was given (A.C.P.) Assured Career Progression as a result the said employee was being paid higher scale hence to correct the said anomaly the higher scale was also given to the respondent but as the source of recruitment of the junior employee and the respondent was different hence the respondent was not entitled to the said higher scale and as per the Government Order dated 18.06.2024 [as annexure no.3 with the affidavit in support of the application for interim relief]. The said higher scale was not admissible to the respondent.

12. It is further urged by the counsel for the respondent that the

first and foremost the said Government Order dated 18.06.2024 was not applicable to the respondent; inasmuch as there was no difference in the source of recruitment as sought to be pointed out by the counsel for the appellants. Since the respondent was appointed on a regular post after the death of her husband under the compassionate appointment rule, hence it cannot be said that the source of recruitment of the respondent was different to the junior employee, as suggested by the appellants

13. It is further urged that as per another Government Order dated 16.01.2007, if noticed, would indicate that the authorities are required to correct any error in the pay fixation during the tenure of an employee and in order to ascertain any fact regarding wrong fixation the record upto 34 months prior to the date of retirement, can be looked into and this government order is applicable to the case of the respondent. In light of the aforesaid government order, the appellants are attempting to scrutinize the records prior to 34 months which is impermissible.

14. It is also urged that there is no allegation that the respondent had resorted to fraud or manipulation in order to get the pay incorrectly fixed or the employ was instrumented in obtaining wrongful benefit in the year 2014. In the aforesaid circumstances, it is urged that the order impugned in the writ petition dated 28.08.2024 is apparently erroneous and by another separate order of the same date the appellants held that excess amount has been paid to the respondent which is also incorrect as uptill now no post retiral benefits have been released by the appellants and in the aforesaid fact situation the impugned order has been set aside by the writ court and for the aforesaid reasons, there is no merit in the appeal and it is liable to be dismissed.

15. The Court has considered the rival submissions and also perused the material on record.

16. It could not be disputed by the counsel for the appellants that the respondent was appointed on the post of Junior Clerk on regular basis under Dying-in-Harness Rules after the death of her husband vide order dated 28.08.1996. It also could not be disputed that the respondent was promoted on the post of Senior Assistant vide order dated 09.06.2012 and she retired on attaining the age of superannuation on 30.06.2024.

17. Apparently, the ground taken by the appellants as indicated in the order dated 20.08.2024 states that the respondent was granted the higher scale from 06.10.2014 on the premise that such higher scale can only be permissible where the source of recruitment of two employees of the department being common, but on account of A.C.P. being granted to a junior employee, his pay exceeds the pay of the senior hence to correct this anomaly the higher pay would be given to the senior employee too, however, since the source of recruitment of the respondent was different hence she was not entitled to the said higher scale and this has been corrected and this reasoning is based on the Government Order dated 18.06.2024.

18. However, the learned counsel for the appellants could not demonstrate as to how the source of recruitment of the respondent was different so that she could not be granted the higher pay scale. It is an admitted fact that the respondent was appointed as a Junior Clerk on a regular post on compassionate ground upon the death of her husband and this is the direct source of recruitment and it cannot be said that the grade which is available to a senior has wrongly been given to the respondent. The said Government Order dated 18.06.2024 is apparently not applicable nor its applicability could be

demonstrated by the learned Standing Counsel, hence the reason for passing the impugned order is legally unsustainable as it has no applicability to the case of the respondent.

19. It is also an undisputed fact that the respondent was promoted on 09.06.2012 and the assertion of the appellants that the pay of the respondent had been incorrectly fixed with effect from 06.10.2014 is much prior to 34 months from the date of retirement of the respondent i.e. 30.06.2024.

20. In light of the Government Order dated 16.01.2017, the appellants could not have gone beyond the period of 34 months prior to the retirement of the respondent. This aspect has been considered by the Apex Court in ***Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others reported in (2014) 16 SCC 444*** which has been noticed by the learned Single Judge as well as the decision of **Rafiq Masih (supra)** while allowing the writ petition of the respondent.

21. Learned counsel for the appellants could not substantiate nor establish that the respondent was in any manner guilty of any manipulation in making a wrong fixation in 2014. The same was done by the authorities and the respondent has been given the benefit from 06.10.2014 and this appears to have come to notice after nine years and that too after two months from the retirement of the respondent. Moreover, the impugned order is to be tested on the reasons mentioned therein and it cannot be improved or be supplanted by reasons subsequent to passing of the order. Hence, the impugned order in the writ petition, for the aforesaid reasons was rightly set aside.

22. The record further indicates that even though appellants may be technically right in making a submission that no recovery has been made from the respondent, hence no issue of refund arises but the fact remains that in the instant case, the

respondent has not been granted any post retiral benefits and it is a case of withholding the entire dues. It is not the case of the appellants that by withholding the alleged amount of Rs.5,36,426/- the other dues have been paid. In the aforesaid circumstances, the submission of the appellants that despite there being no recovery made and yet an order of refund has been passed by the learned Single Judge does not find favour with this Court.

23. For the aforesaid reasons, this Court is of the clear view that there is no palpable error in the order passed by the learned Single Judge dated 04.10.2024 in Writ-A No.8973 of 2024, which may require any interference hence it is affirmed. The intra court appeal is devoid of merits and is consequently **dismissed**. Costs are made easy.

Order Date :- 18.12.2024

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(Jaspreet Singh, J.) (Arun Bhansali, CJ.)