



2023:JHC-1 K03:28h:50h

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 6335 of 2023

Atul Kumar Saxena

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Public Work Deptt. Lko.
And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Raj Priya Srivastava, Hemendra Pratap
Counsel for Respondent(s)	:	C.S.C.

Court No. - 7

HON'BLE MANISH MATHUR, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. The present petition has been filed seeking following reliefs:-

"i. Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 21.02.2023 so far it relates to para No.5(i) to 5(iv), 18.04.2023 and 22.06.2023 contained as Annexure No.1, 2 and 3 to this writ petition, in the interest of justice.

ii. Issue a writ, order or direction in the nature of Mandamus commanding and directing opposite parties to sanction and pay the admissible pensionary benefits, the pension, 40% commutation pension and death cum retirement gratuity on the basis of pay of earlier fixed/drawn Rs.1,12,400/- and on that basis sanction of commutation of pay admissible at age of 61 years along with payment of interest on the amount withheld from the next date of retirement to the date of actual payment."

3. It has been submitted that once service benefit of pay fixation had been granted to petitioner, opposite parties could not have withdrawn aforesaid benefit by means of impugned order without indicating any reasons for deviating with the earlier grant of such benefit only on ground of recommendations by the Pay Committee of 2008.

4. Learned counsel has placed reliance on judgment rendered by this Court in **Ram Krit Ram v. State of U.P.** [Writ Petition No. 2582 (S/S) of 2011] to submit that for the purposes of grant of pensionary benefits as in the case of petitioner who has superannuated in 2017, pay-fixation of such an employee prior to 34 years from the date of superannuation is not to be interfered with even if it has been incorrectly fixed particularly in view of various judgments as well as Rule 22B of the U.P. Fundamental Rules.

5. Learned State Counsel does not dispute applicability of aforesaid judgments in present facts and circumstances of the case. Even otherwise, from a reading of aforesaid judgment, it is evident that the said judgment has been passed following the judgment rendered by Hon'ble the Supreme Court in **Sushil Kumar Singhal v. Pramukh Sachiv, Irrigation Department and others** reported in 2014 (2) ESC 271 (SC). Relevant paragraphs of the judgment are quoted here-in-below:-

"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.

8. The learned counsel appearing for the respondent employer could not deny any of the facts stated hereinabove.

9. In the aforestated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting

aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.

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.

12. For the reasons recorded hereinabove, we quash and set aside the impugned judgment as well as the order dated 23.03.2005 whereby salary of the appellant was re-fixed and order dated 23.04.2005 whereby recovery of excess amount of Rs.99,522/- was ordered to be recovered from the appellant. The appellant shall be paid pension which had been determined at the time of his retirement, i.e. immediately after 31st December, 2003. The appeal is disposed of as allowed with no order as to costs."

6. Considering the aforesaid facts that present case is squarely

covered by aforesaid judgments as well as Fundamental Rules, impugned orders dated 21.02.2023 so far as it relates to para No.5(i) to 5(iv), 18.04.2023 and 22.06.2023 are quashed by issuance of a Writ in the nature of Certiorari. A further Writ in the nature of Mandamus is issued commanding opposite parties to provide pensionary benefits to petitioner.

7. Benefits, as claimed, be paid to petitioner within a period of three months from the date a certified copy of this order is produced before the authority concerned. Since petitioner has superannuated in the year 2021, with such pos-retiral benefits having been withheld, opposite parties are directed to pay interest at the rate of 6% per annum from the date it was due till the date of actual payment.

8. The petition succeeds and is **allowed**. Parties to bear their own costs.

December 17, 2025
lakshman

(Manish Mathur,J.)