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**(2003) 08 AHC CK 0088**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 12643 of 1998**

Amar Babu Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 04-08-2003

**Acts Referred:**

**Citation :** (2003) 4 AWC 3254

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Advocate :** I.N. Singh, Ajay Yadav, Siddharath and Narendra Mohan, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Rakesh Tiwari, J.—Heard the counsel for the parties and perused the record.

2. By means of this writ petition, the petitioner has challenged the order dated 30.3.1998 by which his salary for the prior 27.5.1987 to 27.10.1997 has been withheld.

3. The case of the petitioner is that he was working as Junior Division Clerk, N.C.C., Allahabad and subsequently he was made permanent. By the order dated 22.5.1987 he was transferred from Allahabad to Mirzapur, but the transfer order was not served upon him. Thereafter, the transfer order was published in the Newspaper "Amrit Prabhat" on 31.5.1987, which was challenged by means of Writ Petition No. 10824 of 1987. The order of transfer was stayed by an interim order dated 24.6.1987.

4. The petitioner thereafter served the certified copy of the interim order on the respondent on 26.6.1987, but he was not permitted to join at Allahabad.

5. The order of this Court passed in Writ Petition No. 10824 of 1987 is as under :

"Heard Sri S.K. Garg, learned counsel for the petitioner and learned standing counsel.

Petitioner has challenged the impugned order of transfer Annexure-1 to the petition by which he was transferred from Allahabad to Mirzapur.

Petitioner is a Junior Division Clerk in N.C.C., which is transferable post, and hence this Court cannot interfere in the transfer matter because transfer is an exigency of Government. However, I am informed that the petitioner is not being permitted to join either at Mirzapur or at Allahabad. I direct the authorities concerned to give the petitioner a posting within a month of production of a certified copy of this order before him.

Petition is finally disposed of. Sd/- M. Katju. J. 24.4.1997."

6. In pursuance of the aforesaid order, the petitioner submitted representations before the respondents on 3.10.1991 at Allahabad as well as Mirzapur, i.e., the place where he was transferred, but there he was not permitted to join on the ground that his case is pending in the Court.

7. Aggrieved, the petitioner wrote to various authorities vide letters dated 12.3.1989, 3.10.1991, 3.7.1993, 16.1.1995 and 8.4.1997 praying that he may be permitted to Join at either of the places, i.e., at Allahabad or at Mirzapur. Copies of letters are annexed as Annexure-5 to Annexure-9 to the writ petition.

8. By the order dated 24.4.1997 this Court had directed the authority concerned to permit the petitioner to join either at Allahabad or at Mirzapur within one month from the date of the order. The petitioner served the aforesaid order dated 24.4.1997 upon the respondent on 26.4.1997, but no action was taken, hence he filed Contempt Application No. 2201 of 1997. After issuance of the notices in the contempt petition, the petitioner was directed to join his duties at Mirzapur vide order dated 22.10.1997, Annexure-11 to the writ petition. In pursuance thereof the petitioner joined at Mirzapur on 28.10.1997, but the respondents were not paying his salary. He approached this Court by means of Writ Petition No. 2673 of 1998, wherein this Court directed the respondent to pay current salary to the petitioner vide order dated 27.1.1998, In so far as the past salary is concerned, the respondents were directed to take decision within a period of 45 days, but they have neither paid the current salary nor the past salary to the petitioner. Aggrieved the petitioner filed Contempt Application No. 638 of 1998.

9. In the aforesaid contempt application, notices were issued to the respondent by this Court. After receipt of notices, they have paid the salary to the petitioner on 28.2.1998 for the period 28.10.1997 to 31.12.1997 and directed the petitioner to submit his representation for payment of his past salary. In compliance of the order, the petitioner made a detailed representation requesting the authority for payment of his past salary. The representation was also rejected by order dated 30.3.1998, which is impugned in the writ petition.

10. The counsel for the respondents submits that the respondent have not denied the allegation contained in para 5 of the writ petition, wherein it has been

alleged that the petitioner made a request to permit, him to join duty either at Allahabad or at Mirzapur.

11. The facts narrated above, show that the petitioner was not at fault that the order of transfer dated 22.5.1987 was not served on him and as such he did not join the transferred post of posting at Mirzapur. It is not denied that the petitioner was present himself on 3.6.1988 for joining at Mirzapur, since then he was entitled for the salary and all consequential benefits because he was not permitted to work and as such his salary for the period 27.5.1987 to 27.10.1997 cannot be withheld.

12. It appears that the respondents are habitual of not complying the order of this Court only after contempt proceedings are initiated against them.

13. For the reasons stated above, the writ petition is allowed with costs assessed at Rs. 1,000 directing the respondents to make payment of the past salary for the period 27.5.1987 to 27.10.1997 with 10% compound interest with half yearly rest, to the petitioner within two months from the date of production of a certified copy of the order. In case respondent Nos. 2, 3 and 4 fail to make payment to the petitioner within the time allowed by this Court, an adverse entry be recorded in their service books.