
(2009) 04 AHC CK 0322

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29946 of 2001

Chhedi Lal Gupta

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0322

Hon'ble Judges : V.K. Shukla, J

Final Decision : Allowed

Judgement

V.K. Shukla, J.—In the present case petitioner is questioning the validity of the decision dated 28th July, 2001 taken by Medical Officer Incharge, Employees State Insurance Dispensary, NainiI, Allahabad informing the petitioner that fixation of his salary w.e.f. 18th July, 1981 has been wrongly made, and for the same Audit Department has made different fixation, and as per same the excess amount has been paid, and the same is liable to be recovered.

2. Contention of petitioner is that he had no role to play in the matter of fixation of salary, and as such after 20 years such a direction could not be issued for recovery of said amount.

3. Counteraffidavit has been filed and therein entire emphasis is on the fact that fixation of petitioner's salary has wrongly been made, and petitioner was not all entitled for the said pay scale.

4. Rejoinder affidavit has been filed, and therein the statement of fact mentioned in the counteraffidavit has been disputed, and that of writ petition has been reiterated.

5. The issue which has been sought to be raised in the writ petition has already been answered by this Court in Civil Misc. Writ Petition No. 3376, "Mohd. Moosa v. State of U.P. and others", wherein this Court has taken the view that in the matter of fixation of salary and allowances in case there is no fraud or

misrepresentation on the part of the employee concerned in the matter of fixation that amount paid in case, on account of wrong fixation cannot be recovered, and further opportunity should be provided, in case, the earlier order passed is incorrect, and same requires modification.

6. The case in hand is squarely covered by the Principal laid down in the aforementioned case of "Mohd. Moosa v. State of U.P. and others." As here also fixation has been done in the year 1981. Different objections have been raised after 20 years, and no opportunity has been provided to the petitioner, as such in this background the order passed cannot be sustained.

7. Consequently, present writ petition is allowed. Present writ petition is decided on the same terms as Civil Misc. Writ Petition No. 3376 of 1981 "Mohd. Moosa v. State of U.P. and others." The order dated 28th July, 2001 is hereby quashed and set aside.