
(1998) 05 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16276 of 1997

C.N. Thapliyal

APPELLANT

Vs

Director of Higher Education and Others

RESPONDENT

Date of Decision : 11-05-1998

Acts Referred:

Citation : (2000) 2 UPLBEC 1831

Hon'ble Judges : R.R.K. Trivedi, J;Dev Kant Trivedi, J

Bench : Division Bench

Advocate : Rajendra Dobhal, for the Appellant;

Final Decision : Allowed

Judgement

R.R.K. Trivedi and Dev Kant Trivedi, JJ.—Heard learned Counsel for the petitioner and learned Standing Counsel.

2. In this writ petition, learned Standing Counsel was granted time to file counter affidavit on 9.5.97. By order dated 26th March, 1998, further time was granted to file counter affidavit by stop order but no counter affidavit has been filed. Petitioner has filed an affidavit of service showing, service of notice on respondent No. 4. No body has put in appearance on behalf of respondent No. 4. In the circumstances narrated above, learned Counsel for the parties have agreed that this writ petition may be decided finally at this stage.

3. The facts giving rise to this writ petition are that the petitioner C.N. Thapliyal was serving as lecturer in D.A.V. (PG) College, Dehradun. His date of birth mentioned in the service record was 1st July, 1933, according to which petitioner was to attain the age of superannuation on 30th June, 1993. However, petitioner continued to serve the institution upto 30th June, 1994 and thus received the salary for the extra period to the extent of Rs. 1,01,196/- which has been directed to be recovered from the petitioner pension by the impugned order dated 19th February, 1997, Annexure-e to the writ petition. As the dispute about this amount was pending, pension was not paid to the petitioner, hence he filed

Civil Misc. Writ Petition No. 6924 of 1997 which was decided finally on 25th February, 1997 by a Bench of this Court and the petitioner was given liberty to make a representation before the authority concerned and authority concerned was directed to decide the representation within two months from the date of production of a certified copy of that order, by a speaking order. It appears that the impugned order has been passed in pursuance of the aforesaid order of the Bench.

4. Learned Counsel for the petitioner has submitted that at no point or time, petitioner has been given any opportunity of hearing for fixing the liability to pay the amount which has been received by the petitioner as salary against the work. Reliance has been placed in case of State of Bihar Vs. Narasimha Sundram, . The Hon"ble Supreme Court, while considering the identical controversy, has observed in paragraph No. 3 of the judgment as under :

"So far the question of payment of arrears of salary is concerned, we do not find any merit in the contention of learned Counsel for the appellant that the respondent can be refused his emoluments for the period in question as no proceedings were ever initiated for inquiry as to the alleged fraud played by the respondent on the department. It is not denied that the respondent worked till 30th September, 1989 and in that view we confirm that part of the impugned judgment which refers to the salary. The respondent should be paid his arrears of salary, if not already paid, within two months from today."

5. From the reading of the aforesaid judgment of Hon"ble Supreme Court, it appears that respondent Narasimha Sundram was to retire from service on 31st January, 1988 but he was allowed to continue upto 30th September, 1989 but he was not paid salary. Hon"ble Supreme Court observed that without holding any enquiry fixing responsibility that he played fraud on the department in consequence of which he was allowed to work on post even after attaining the age of superannuation, he is, entitled for the salary and in our opinion the ratio of the judgment shall be applicable to the facts of the present case also. It is not disputed that the petitioner has served for one year more after attaining the age of superannuation and has been paid salary. If the department wanted to recover the amount from the petitioner, disciplinary proceedings ought to have been initiated fixing responsibility as to whether petitioner was responsible for overstay in service or was it caused on account or negligence on the part of the officers and officials of the department, without which amount cannot be recovered from petitioner. Thus, this writ petition deserves to be allowed on this short point mentioned above.

6. The writ petition is, accordingly, allowed. Order dated 19.2.1997, Annexure-6 to the writ petition, is quashed. However, it shall be open to respondents to hold and conclude the enquiry within four months fixing liability for the overstay of the petitioner in service after he attained the age of superannuation. If petitioner is found guilty he shall be liable to refund the amount but not otherwise. As petitioner has not yet been paid his pension, respondents are directed to finalise

the payment of pension and other retrial benefits to petitioner during the above period.