
(2010) 07 AHC CK 0312

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19179 of 2007

Daya Ram Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0312

Hon'ble Judges : A.P.Sahi, J

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.

Heard learned counsel for the petitioner and learned standing counsel for the State.

The prayer in the writ petition is to grant increments to the petitioner who retired as an Instructor in the Industrial Training Institute on 31.12.2000.

Learned counsel for the petitioner contends that in view of the Government Order dated 01.09.1996 read with Government Order dated 31.12.1997, the petitioner was entitled to the said benefit in view of the pay fixation letter of the petitioner dated 27.11.2006, a copy whereof is annexure 1 to the writ petition.

Learned counsel for the petitioner contends that the respondents have illegally denied the said benefit to the petitioner even though he is entitled for the same having completed requisite years of service and in view of the terms and conditions of refixation under the Government Order dated 31.12.1997. He has invited the attention of the Court to Clause 4 and 5 of the said Government Order to contend that the claim of the petitioner is squarely covered therein.

A counter affidavit has been filed on behalf of the respondents and in paragraph 4 of the counter affidavit, it has been categorically stated as under:

"It is submitted that in paragraph 2(9) of the said Government Order, it has been

provided that those employees/officer, who have been promoted in the same pay scale and were getting selection grade from 01.01.1996 under the personal promotional pay scale then in that event of the matter, their salary shall be fixed in view of Rule 22A(1) of Financial Hand Book Vol. 2, Part 2 to 4 in next higher pay scale and in such cases, the provisions of Rule 22B shall not be applicable and accordingly paragraphs 8(1) and 8(2) of the Government Order dated 31.12.1997 would be treated to have been cancelled. It is further relevant to mention here that Rule 22A(1) of Financial Hand Book, Vol. 2, Part 2 to 4, clearly postulates that in such cases where the salary has been fixed in same pay scale then such persons shall continue to get same pay scale so long one increment is not awarded to them in old pay scale and in that event of the matter where the salary has been fixed in higher pay scale then the one increment would be awarded in new pay scale after the completion of period of his next annual increment and in view of this, the next annual increment of the petitioner is due after one year from 03.03.2000 but since the petitioner has been retired from service on 31.12.2000 and as such he is not entitled to said increment in salary and therefore, the increment granted to the petitioner on 01.05.2000 by the Department is not admissible and accepted for the reasons stated above. The Government Order referred to above is annexed as Annexure 1 to this affidavit."

A perusal of the aforesaid assertion, which has not been effectively denied in the rejoinder affidavit, indicates that the petitioner was entitled to the benefit after one year w.e.f. 03.03.2000. The petitioner would therefore not be able to receive the benefit as he retired from service before the expiry of one year after 03.03.2000. The petitioner retired from service on 31.12.2000 itself and therefore his date of retirement fell three months prior to the qualifying date for receiving the said benefit.

In view of this position, the petitioner has missed the bus on account of that shortage of period as indicated hereinabove. The petitioner therefore cannot get the aforesaid benefit for the reasons given in the counter affidavit.

The writ petition lacks merit and is accordingly dismissed.