
(2011) 08 AHC CK 0247

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34737 of 1994

Imtiaz Ahmad

APPELLANT

Vs

U.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2011) 08 AHC CK 0247

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Judgement

Rakesh Tiwari, J.—Heard counsel for the Petitioner, Sri Samir Sharma for the Respondents and perused the record.

2. The Petitioner has prayed for a writ in the nature of mandamus commanding the Respondents to pay salary/wages as well as arrears of pay to the Petitioner in accordance with the fixation made by order dated 12.6.1991 and not to give effect to the impugned order of recovery dated 31.10.1992 and refund the amount already recovered from him.

3. Counsel for the Petitioner submits that the Petitioner was appointed as conductor in U.P.S.R.T.C., on 27.12.1976 and after completion of ten years service as per second Pay Commission Report, he became entitled for selection grade with effect from 27.12.1986. The selection grade was granted to him by Respondent No. 3-Assistant Regional Manager, Varanasi vide order dated 12.6.1991 with effect from 27.12.1986 in compliance of circular dated 16.2.1990 and the Petitioner was paid his salary accordingly. Thereafter, by the impugned order dated 31.10.1992, salary of the Petitioner was reduced from 1275/-to Rs. 1200/-without affording any opportunity of hearing to him.

4. Counsel for the Respondent contends that Petitioner was wrongly given higher grade with effect from 27.12.1986 and when the aforesaid mistake was detected, the appointing authority by the impugned order has corrected the mistake by cancelling the order dated 12.6.1991 with direction to recover the excess amount

paid to him.

5. Counsel for the Petitioner has relied upon a judgment dated 14.11.2007 rendered by the High Court in Writ Petition No. 7346 of 1991, Prahlad Narain Jaiswal v. U.P.S.R.T.C. and Ors. connected with four other petitions. According to him, the controversy in the aforesaid petition is exactly the same and the judgment aforesaid squarely covers facts of the present case. He further submits that Petitioner has retired from service on 30.6.2007 In Prahlad Narain Jaiswal's case (supra), the employees of U.P.S.R.T.C. had approached the Court against the order by which a decision had been taken that since incorrect fixation had been made which resulted in excess payment made to the Petitioners, hence an order was passed to recover the excess amount so paid. Contention of the workmen in that case was that they have No. role whatsoever in the matter of fixation which was done by Respondent authorities themselves, hence it was wholly inappropriate, unwarranted and arbitrary exercise on the part of the Respondents to pass order of recovery on the ground of excess payment and that too without affording opportunity of hearing to the Petitioners. The Court after considering the decisions in the cases of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, Bindeshwari Sahai Srivastava v. Chief Engineer, Irrigation Department, Lucknow and Ors. (1996 A.W.C. 947) and Awadh Nath Tripathi Vs. Chief Development Officer and Others, allowed the writ petition holding that it is not open to the Respondents to recover any amount from the Petitioner on the fact mentioned in the impugned order that salary of Petitioner was wrongly fixed in the selection grade as the Petitioner had No. role in the fixation of pay and there has been No. fraud or misrepresentation on their part. The Court in that case further held thus:

Next question is that as to whether the Respondent corporation can re fix salary of the Petitioner if there had been a mistake in fixation thereof, for the purposes of revising his pension etc. In the opinion of the Court if there has been a mistake in the matter of calculation/fixation of salary of an employee, it is always open to the Corporation to correct the mistake. However, the correction can only be made after affording opportunity of hearing to such employee and No. ex part order can be passed. The re fixation of salary, after such correction, would take effect only from the date of the correction and same would confine itself only qua retiral benefits.

With these observations, writ petition is allowed. No. order as to costs.

6. Sri Sameer Sharma appearing for the Respondents after going through the aforesaid judgment, fairly states that controversy in Prahlad Narain Jaiswal's case (supra), is almost the same as in the present case.

7. After hearing the counsel for the parties and on perusal of the record, the present petition is also disposed of in terms of the Prahlad Narain Jaiswal's case (supra). As the Petitioner has retired from service in 2007, the Respondent corporation will proceed to pay his retiral dues in accordance with law

expeditiously within a period of six months from today. No. order as to costs.