
(2011) 12 AHC CK 0305

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62867 of 2008

Jai Prakash Shukla

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2012) 1 ADJ 295

Hon'ble Judges : Pankaj Naqvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Pankaj Naqvi, J.—Heard Shri Ravi Shanker Mishra, learned counsel for the petitioner and Shri V.N. Upadhyay, learned standing counsel appearing for the State respondents.

2. By means of the present writ petition, the petitioner seeks a writ in the nature of mandamus directing the respondents not to deduct the amount in any manner pursuant to the order dated 3.9.2007 (Annexure 1 to the writ petition) and further to release the same forthwith @ 18% per annum.

3. The petitioner claimed to have been appointed on 1.7.1976 in C.T. grade as Assistant Teacher in the institution known as Sri Dandi Swami Keshwashram Uchhtar Madhyamik Vidyalaya, Gunie, Meja, Allahabad. In the year 1986 C.T. grade was merged in L.T. grade and accordingly, the petitioner was promoted in L.T. grade w.e.f. 1.1.1986 and since then he has continuously discharged his duties, as L.T. grade teacher and after completion of ten years of satisfactory service a selection grade was accorded to the petitioner w.e.f. 1.7.1996.

4. The case of the petitioner is that he was getting his full salary till August, 2007 and no deduction till then has been made. It was only by an order dated 3.9.2007 passed by respondent No. 3 wherein it has been ordered that Rs. 1000/- per month will be deducted from 3.9.2007.

5. The contention of the learned counsel for the petitioner is that the aforesaid order of deduction is absolutely without jurisdiction, inasmuch as, neither he was given any notice or opportunity prior to the order of deduction nor the impugned order is based on fraud/misrepresentation on the part of the petitioner and, therefore, the impugned order dated 3.9.2007 is liable to be set aside.

6. A counter-affidavit has been filed on behalf of respondent Nos. 1 to 4 wherein, inter alia, it has been stated that the petitioner was granted incorrectly the L.T. grade pay scale w.e.f. 1.1.1986 and the selection grade pay scale w.e.f. 1.1.1996 and, as the pay fixation of the petitioner was done wrongly, hence the impugned order has been passed, which is more in the nature of a rectification.

7. Be that as it may, the fact remains that the impugned order dated 3.9.2007 proceeds on the assumption that the petitioner has been wrongly granted the pay scale of Rs. 6500-200-10,500/- w.e.f. 1.1.1996, whereas in law he was entitled to a prescribed pay scale of Rs. 5250/-w.e.f. 1.4.1996. The fact remains that there was no overt act on the part of the petitioner, such as a fraud misrepresentation before the authority concerned so as to entitle him to claim a higher pay scale.

8. The Apex Court in the case of Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, and the Full Bench of this Court in the case of in Surya Deo Mishra v. State of U.P. and others, 2006 (1) ESC 379 (FB), have taken the view that unless the petitioner is privy to a fraudulent act, which has let the respondents to pay certain amount to which the petitioner was not entitled, then alone the amount can be recovered.

9. In the instant case, no such fact exists, as is apparent from the impugned order dated 3.9.2007. This being so, the impugned order becomes vulnerable in law and is liable to be quashed.

10. Accordingly, the writ petition is allowed. The order dated 3.9.2007 (Annexure 1 to the writ petition) is hereby quashed. No order as to costs.