
(2010) 07 AHC CK 0496
In the Allahabad High Court
Case No : C.M.W.P. No. 49959 of 2008

Lalta Prasad Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Citation : (2011) 2 ADJ 781 : (2010) 6 AWC 5715

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the Petitioner and learned standing counsel for the State.

2. The challenge in this writ petition is to the directions issued under the impugned order for deducting the excess amount of payment made to the Petitioner from his gratuity after his retirement on the allegation that the selection grade awarded to the Petitioner has been wrongly calculated while he was in service.

3. Learned Counsel for the Petitioner contends that such matters have been engaging the attention of this Court as well as the Apex Court that after retirement any amount, which has been paid on account of an incorrect calculation, cannot be recovered, inasmuch as, there is no element of fraud or misrepresentation on the part of the Petitioner. Learned Counsel for the Petitioner in support of his contention cited the decision of this Court in the case of Dr. Gopalji Mishra Vs. State of U.P. and Others,

4. Learned standing counsel, on the other hand, has attempted to distinguish the said decision on the strength of the decision in the case of State of Jammu & Kashmir Vs. Pirzada Ghulam Nabi,

5. It is undisputed that neither the Petitioner has played any fraud nor has he misrepresented. It was only the mistake of the Respondents, if any, in fixation of

the selection grade that has been awarded to the Petitioner. The Petitioner was allowed to retire on 31st July, 2005. The Respondents allege that under a Government order dated 5th December, 2001, the State Government is entitled to proceed to carry out any correction of errors with regard to the fixation of pay, if the said fixation has been made within 10 months prior to the retirement of the employee.

6. I have perused the impugned order and the reports, which were submitted in this regard and the impugned order categorically records that the Petitioner was awarded selection grade w.e.f. 1st March, 1995. The error as indicated to have crept in and as such a recalculation has been made accordingly. Even applying the principles of the Government order and keeping in view the fact that the Petitioner is nowhere responsible for any fraud or misrepresentation, the Respondents could not have proceeded to deduct the gratuity of the Petitioner.

7. Accordingly, the order dated 30.6.2006 is quashed. The matter is remitted to the Deputy Director, Agricultural (Extension), Azamgarh to proceed to pass a fresh order in the light of the observations made hereinabove within a period of three months from the date of presentation of a certified copy of this order before him.

With the aforesaid observations, the writ petition is disposed of.