
(2010) 01 AHC CK 0090
In the Allahabad High Court

Prem Chandra Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Citation : (2010) 3 AWC 2178 : (2010) 125 FLR 56

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.

The challenge is to the order whereby a recovery of Rs. 57,138 is sought to be made being excess salary paid to the petitioner after he attained the age of superannuation on 30.6.2008. Learned Counsel contends that the petitioner had worked and he had not been served with any retirement memo, therefore, there is no fault on the part of the petitioner and, as such, the recovery cannot be made.

2. It is undisputed that the age of superannuation of the petitioner was completed on 30.6.2008. It is also undisputed that the petitioner was to retire on the said date. In view of this undisputed position, the Rules do not permit the continuance of the petitioner-beyond the said date except in cases of a valid extension order. There is no order extending the services of the petitioner. In this view of the matter, the amount which is sought to be recovered, cannot be said to be unjustified and incorrect payment made to a public servant beyond the period of retention in service cannot be sustained in law. The petitioner does not have a vested right to receive the salary after having attained the age of superannuation. Salary is paid for services rendered in accordance with rules. Any service rendered beyond the period of retirement is in violation of rules which cannot entitle the petitioner to claim salary as a vested or accrued right. There being no right to continue in service, there is occasion to infer entitlement of payment of salary. The petitioner in fact and in law shall be presumed to have

knowledge about his date of retirement according to the service conditions applicable. The petitioner, having knowledge, has voluntarily chosen" to continue which in turn cannot confer a legal right to claim salary. In view of this, the impugned order cannot be interfered with.

3. Learned Counsel contends that if that is so then the amount which is sought to be recovered, may be adjusted and he may be paid retiral benefits for which the petitioner is entitled in accordance with law.

4. Accordingly, after having heard learned Counsel for the petitioner and Sri Govind Saran for the respondents, this writ petition is disposed of with a direction to the competent authority to proceed to prepare the pensionary papers of the petitioner and to receive payment to which he is entitled treating him to retire after adjusting the excess salary which is said to be recovered under the impugned order within 3 months.