
(2004) 12 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 22959 of 2003

Ramesh Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-12-2004

Acts Referred:

Citation : (2005) 2 AWC 1948 : (2005) 1 ESC 242 : (2005) 104 FLR 596 :
(2005) 2 UPLBEC 1305

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : Ashok Bhatnagar, for the Appellant;

Final Decision : Allowed

Judgement

Shishir Kumar, J.—The present writ petition has been filed challenging the order, dated 11.9.2002 (Annexure-12 to the writ petition) passed by Respondent No. 3 and the order, dated 31.1.2003 (Annexure 13 to the writ petition) passed by Respondent No. 2, whereby Rs. 98,125.00 have been deducted from the gratuity and commutation amount in the order of revision of pay of the petitioner. The fact arising out of the present writ petition is that the petitioner was appointed as Overseer on 5.12.1960 in U.P. Lok Nirman Vibhag and later on the petitioner was made permanent as Junior Engineer subsequently to the post. The petitioner retired on the aforesaid post on 31.10.1997. At the time of retirement of the petitioner, the petitioner was drawing salary of Rs. 11,300.00 per month since 1.1.1997. The method of fixation of pension is an average of last month of salary drawn multiplied by number of years of service (subject to maximum 33 years) divided by 66. In the case of petitioner, the amount of pension as per calculation came to Rs. 5,650.00. The petitioner was accordingly being given the calculated amount as provisional pension plus D.A. per month by the respondents up to 31.1.2003. Thereafter, on 27.7.1998, the Respondent No. 2 pointed out certain irregularities in the pay scale of the petitioner as on 1.12.1979 and accordingly issued a letter to the Respondent No. 3, dated 22.7.1998, to refix the pay scale

in accordance with the G.O. No. VA-2191/Dus-39 (M)-98, dated 20.11.1981. In the said letter, the Respondent No. 2 directed the Respondent No. 3 to refix the pay scale on the basis of the Option-I exercised by the petitioner while opting for the new selection grade. It has been submitted that the Respondent No. 3 replied the letter, dated 22.7.1998, vide letter, dated 26.8.1998, stating therein that there has been no irregularity in calculating the pay scale and the pension of the petitioner and the same has been done in accordance with law. It has also been stated in the said letter that the petitioner has opted for Option-II while opting under the notification, dated 20.11.1981, for new selection grade, which is clear from the service book of the petitioner. A copy of the said letter has been annexed by the petitioner as Annexure-2 to the writ petition. Subsequently again on 23.6.1999, the Respondent No. 2 wrote a letter to the Respondent No. 3 directing him to recalculate the pay scale of the petitioner on the basis of the Option-II exercised by the petitioner and in accordance with G.O., dated 4.2.1983 and has been directed to make necessary recovery of the salary from the petitioner. Again, the Respondent No. 3 replied back on 9.7.1999 that in view of the Option-II exercised by the petitioner and in view of the Notification, dated 4.2.1983, the petitioner's basic pay scale as on 1.12.1979 has been rightly fixed at Rs. 690.00. Accordingly, Rs. 930.00 is correct in accordance with the pay scale and has been rightly fixed in accordance with the G.O. dated 4.2.1983. It was also pointed out that Respondent No. 2 has also applied the same ratio in the case of Sri Giri Prasad Sharma vide its Letter No. 1560 Lekha, dated 19.5.1994, and therefore, the service book is being returned for the follow up action in accordance with law. Again the Respondent No. 2 on 28.12.1999 has issued a letter to Respondent No. 3 asking him to refix the pay of the petitioner in accordance with the G.O. dated 20.11.1981. The Respondent No. 3 again reiterating the same reply that the fixation of the pay of the petitioner is in accordance with letter, dated 19.5.1994, and the same is according to law and has stated that the pension of the petitioner has been fixed as per rules. Again by the similar type of letter, dated 1.7.2000, the Respondent No. 2 issued a letter making some queries from the Respondent No. 3 in respect of the Option exercised by the petitioner in the Notification, dated 20.11.1981. The Respondent No. 3 again replied the said letter and has clearly stated the fact that the pay of the petitioner as on 1.12.1979 has been rightly fixed on the basis of the Option-II exercised by the petitioner. It was also pointed out that in the cases of Sri Jagdish Prasad Agarwal and Sri R.P. Gupta, both junior engineers, who have exercised Option-II have been given the pay scale which is being given to the petitioner and no objection to that effect has been raised and as such there is no illegality in the calculation of the petitioner's pay scale and thus the pension of the petitioner may be fixed as early as possible.

2. That inspite of the aforesaid fact, the petitioner submits that vide its Order No. 1524/PF, dated 27.7.2001, the concerned respondent has refixed the pay of the petitioner as on 1.12.1979 with a basic pay of Rs. 780.00 (Instead of Rs. 930.00) and, accordingly, after the subsequent calculation the average of last ten months

pay drawn on 1.1.1997 came to Rs. 9,650.00. The petitioner submits that no notice of hearing was given or opportunity was given before passing the order dated 20.7.2001.

3. In view of the aforesaid fact, the petitioner requested the Respondent No. 2 to make the necessary rectification and immediately release to the petitioner the amended pension, gratuity and commutation amount, so that the matter is closed. Petitioner submits that inspite of the aforesaid fact, vide letter, dated 26.4.2002, the Respondent No. 2 reduced the pay scale of the petitioner as on 1.12.1979 from Rs. 515.00 to Rs. 495.00 and has directed the Respondent No. 3 to refix the pay scale in accordance with the reduced pay scale and to make the necessary recovery of the excess amount paid to the petitioner. It has been submitted that the Respondent No. 2 has neither considered the various letters and nor even considered the last calculation chart issued by the Respondent No. 3 and has arbitrarily fixed the basic pay of the petitioner as on 1.12.1979 at Rs. 495.00 and in view of the aforesaid fact, the Respondent No. 3 vide its letter dated 11.9.2002 and the recalculated pay fixation chart at the reduced basic pay of Rs. 495.00 on 1.12.1979 and fixed the last pay drawn as on 1.1.1997 to be Rs. 9,925.00. Petitioner further submits that before passing the aforesaid order, dated 11.9.2002, the petitioner has not been issued any notice or opportunity of hearing while it was necessary for the respondents to give an opportunity of hearing to the petitioner.

4. In view of the aforesaid fact, the petitioner submits that the order, dated 11.9.2002 (Annexure-12 to the writ petition) and 31.1.2003 (Annexure-13 to the writ petition) are liable to be quashed. The petitioner further submits that the basic pay revised in the year 1979 cannot be re-revised after the retirement in the year 1997 and in view of the settled principle of law, the salary and benefit which has already been paid to the petitioner cannot be recovered from the retiral benefits of the petitioner. The petitioner also states that the petitioner is entitled to pension on the basis of G.O., dated 16.7.2001, which has been filed as Annexure-RA-1 being average salary of the last ten months. It has also been submitted by the petitioner that whether on the aforesaid basis the other post retiral benefits like gratuity, the respondents can withhold commutation amount. The petitioner has relied upon the judgment in State of U.P. and Others Vs. State Public Services Tribunal and Another, and also relied upon the judgment of this Court in Harish Chandra Srivastava v. State of U.P. 1996 (2) ESC 317 (All). On behalf of the petitioner, it has been argued that if the salary has wrongly been fixed and paid in view of the well settled principle of law cannot be recovered from the employee unless and until it is established that the said benefit has been given to the petitioner on the basis of the misrepresentation or fraud played with the department. The petitioner submits that the pension of the petitioner which has been fixed on the basis of the G.O., dated 16.7.2001, has correctly been fixed and after the retirement in 1997, the respondents cannot say that since the salary was wrongly fixed in the year 1979, therefore, the same is being refixed with effect from 1979 and on that basis the pension is to be fixed. The

petitioner has given a reference in this regard in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, .

5. I have heard learned Counsel for the petitioner and learned Standing Counsel and perused the record.

6. In the counter-affidavit, the respondents have also stated the fact that the order, which has been passed against the petitioner, is wholly Just and legal. The legal proposition, which has been raised by the petitioner, that once the salary, the pay scale has been fixed by the respondents, not by misrepresenting by the petitioner whether that can be refixed. The respondents have not stated and argued that the grade, which was fixed in the year 1979 that was fixed on the misrepresentation of the petitioner or the petitioner, has played any fraud.

7. I have considered the rival submissions of the petitioner and the respondents and considered the various Judgments cited on behalf of the petitioners. I am of the opinion that the order passed by the respondents reducing the pay scale of the petitioner with retrospective effect and on that basis reducing the pension is not Just and proper and is against the well settled principle of law, because it has not been established that there was any misrepresentation by the petitioner. It has also been verified from the record that the Respondent No. 3 himself has written various letters on the basis of the relevant record to the Respondent No. 2 that scale of the petitioner was fixed in accordance with law and there was no manipulation by the petitioner. The Division Bench of this Court (supra) has clearly held that the pay scale and selection grade, which was fixed, and there is nothing to say that the petitioner was instrumental in such benefits and the petitioner was not responsible for any wrong acts, therefore, the pay scale cannot be revised and the payment which has already been made cannot be recovered. The Division Bench of this Court reported in 1996 (2) UPLBEC 1840 (supra) has clearly held that at no point of time the respondents have stated that the pay scale which was fixed, the same was fixed on the misleading by the petitioner and has held that petitioner cannot be held responsible and the benefits which has already been given that cannot be recovered from the person concerned. It has also been submitted that no recovery can be made from the petitioner.

8. In view of the aforesaid fact, the writ petition is allowed. The orders passed by the respondents (Annexures-12 and 13 to the petition), dated 11.9.2002 and 31.1.2003 are hereby quashed and the respondents are restrained from making any recovery of any amount which has already been paid to the petitioner and the Respondent Nos. 2 and 3 are directed to refix the pension on the basis of the Option given by the petitioner. The respondent No. 3 is further directed to refix the pension of the petitioner as it was being paid before the impugned order.

9. The petition is allowed. No order as to costs.