

(2005) 05 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8525 of 2002

Ravindra Nath Mishra

APPELLANT

Vs

District Inspector of Schools and Joint Director (Treasury and Pension) Varanasi Division

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2005) 4 AWC 3394

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Shiv Kumar Pal, for the Appellant; B.P. Singh, Addl. Chief Standing C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard learned counsel for petitioner and learned standing counsel.

2. Sri Sanjeev Kumar Singh, District Inspector of School, Varanasi and Dr. Vimal Shankar Srivastava, Joint Director (Treasury & Pension), Varanasi Division, Varanasi, are present in person and have filed their affidavits in compliance with the order dated 7.4.2005 by which they were required to show cause as to why the interim mandamus dated 4.3.2002, as confirmed on 5.5.2003, has not been complied with and the pensionary benefits were not paid to the petitioner.

3. The petitioner was appointed as Clerk in the office of District Inspector of School in the year 1962. He retired on 31.1.2001, while serving as Senior Assistant Clerk in the same office.

4. By this write petition, filed on 25.2.2002, the petitioner has prayed for payment of retrial dues, including pension gratuity, leave encashment, travelling allowance etc.

5. A letter dated 17.4.2001 was issued by the Joint Director (Treasury & Pension), Varanasi to the District Inspector of Schools, Varanasi calling for all the petitioner. By this letter the District Inspector of Schools Varanashi was requested to put his office stamp on the joint photographs of the petitioner and his wife; to make entry of the increments of the year 1994 and 1995 in the service-book and to rectify the discrepancy with regard to pay scale on 1.1.1996 and the revised pay scale. The matter was kept pending for long and co action was taken by the office of the District Inspector of School, Varanasi.

6. In this write petition, an interim mandamus was issued on 4.3.2002 to pay provisional pension to the petitioner within two months or show cause. Since no counter affidavit was filed, the interim mandamus was confirmed on 5.5.2003. The respondents, however, did not make any payment to the petitioner and thus by order dated 7.4.2005, both the concerned officers were called upon to appear in person before the Court along with their explanations by way of affidavits.

7. Sri Sanjiv Kumar Singh Co-District Inspector of school, Varanashi has admitted petitioner's appointment and retirement. It is stated in para 5 of this counter affidavit that by letter dated 17.2.2001, all the papers for sanction of pension were submitted to the Joint Director (Treasury & Pension), Varanasi, on which he had made the aforesaid question for removing the defects vide his letter dated 17.4.2001. The office of the District Inspector of School resubmitted the paper to the Joint Director (Treasury & pension), Varanasi on 12.10.2001. The Joint Director by his letter dated 9.11.2001 have a director for calculation of the excess amount which were paid to the petitioner by mistake in fixation of salary and for deposit of the same by the petitioner to which the petitioner. In para 7 of the counter affidavit, it is stated that as per the service rules, the sanction for pension and commutation has been given on 8.9.2004. The gratuity was sanctioned but the same was stopped for want of deposit of the difference of salary after recalculating the applicability of the revised pay and that on 5.4.2004, the payment has been made. The matter of the payment of provident fund has been taken-up with the competent authority. With regard to pay difference and allowances etc, the matter was also been taken up with the Joint Director (Treasury & Pension), Varanasi.

8. Dr. Vimal Shanker Srivastava, Joint Director (Treasury & Pension), Varanasi revision, Varanasi states in para 3(ii) of his counter affidavit, that on 17.4.2001 his office had raised certain objections by sending a letter of objection to the District Inspector of Schools and thereafter letters were sent as reminder to remove those objections. It is further stated that since the objection was not removed by the department, the payment of gratuity was stopped whereas the pension and commutation were sanctioned vide letter dated 8.9.2004. Since the release of gratuity was delayed, the matter, in the meantime, was referred by the District Inspector of Schools, Varanasi to the Accountant General U.P., Allahabad where it is still pending. However, looking into the delay from the off ice of the Accountant General, all dues except an amount of Us. 19,269/- have been

released on 13.4.2005. In para 12 of the counter affidavit, it is stated that vide letter dated 27.4.2002, the petitioner was informed by the District Inspector of Schools, Varanasi to deposit the excess amount of Rs. 34,099/- by treasury challan and to send a copy whereof to the District Inspector of Schools. This amount apparently is by way of refixation of pay on applicability of the date from which the revised pay was payable.

9. It has been held by Supreme court that post retirement benefits are not dependent upon the discretion of the employer. These are not given by way of any grace or bounty. The petitioner has statutory right as also fundamental right under Article 21 of the Constitution of India, to be paid the benefits earned out of his long service rendered and to get retiral dues as well as pension immediately upon his retirement. Time and again, the State Government has been issuing Government Orders to the concerned authorities to deal with the pension matters expeditiously. It appears that the department has no sympathy and has forgotten the retired person on account of which the pensioner is running from pillar to post.

10. The present case is the classic example of gross negligence which has resulted into great injustice and hardship to the petitioner. He has been deprived of his statutory dues and payment of pension for four years and three months. In spite of an interim mandamus issued by this Court on 4.3.2002, as confirmed on 5.5.2003, the respondents did not care to take steps in the matter, and to comply with the orders.

11. I have gone through the reasons given for delaying the sanction of pension. These reasons had nothing to do with the petitioner. The objections, taken by the office of the Joint Director (Treasury & pension) Varanasi Division, Varanasi, could be removed within few days. The first objection related to the stamp of the office of District Inspector of Schools; the second with regard to the making of entry about the increments for the years 1994 and 1995 in the service book/and the 3rd and 4th objections were with regard to the applicability of revised pay scales before they were actually due to the petitioner and the refixation of pay in the revised pay scale which only required calculations to be made. Although, the petitioner has disputed the correctness of fixation of pay, I am not inclined to entertain the challenge in this writ petition as no prayer has been made to set aside the order. It will be open to the petitioner to challenge the order by making an appropriate representation.

12. The Court is, however, concerned with the delay caused in the settlement of pension and disobedience of the interim mandamus issued on 4.3.2002, confirmed on 5.5.2003. The Government Orders issued from time to time, have provided that even if there is any defects in the pension papers, the provisional pension must be paid from the next month of the retirement. In the present case, there was no impediment to pay the provisional pension. In the aforesaid facts and circumstances, I find that the respondents were not at all justified in with-holding pensionary benefits for a long period of four years and three

months, learned counsel for the petitioner submits that in the meantime the petitioner has suffered severe hardship and mental agony and was left to survive, with his wife at the mercy of his children. In such cases where the officers of the State Government have failed to perform their statutory duties, the liability must be put upon them, to compensate the petitioner for the hardship and mental agony suffered by him. The petitioner has lost four years and three months of life with dignity and has suffered severe harassment and insult from these officers of his own department.

13. The writ petition is consequently allowed. The petitioner is made entitled for 9 percent simple interest on the delayed payment of pensionary benefits which the petitioner could have earned from this amount if the pensionary benefits were paid to him within reasonable time. The Joint Director (Treasury & Pension), Varanasi Region, Varanasi shall work out this amount of interest within a period of six weeks, which shall be recovered from the salaries of the Joint Director (Treasury & Pension) Varanasi Region, Varanasi and the District Inspector of Schools, Varanasi in equal proportion. The payment shall be realised within six weeks, and the amount so deducted shall be paid to the petitioner without any delay. The provisional pension shall be paid to the petitioner from 1st May, 2005.

14. The petitioner shall also be entitled to the costs of this writ petition.