
(2003) 07 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 38161 of 2000

Shiv Sahai Singh

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 16G(3)

Citation : (2003) 6 AWC 4786

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : R.U. Ansari, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the counsel for the parties and perused the record.

2. The Petitioner was a Principal in Chaudhary Baldeo Singh Higher Secondary School, Bannauli, Bijnor. The institution is registered under the Societies Registration Act and is aided institution under the Payment of Salary Act, 1971.

3. It is alleged that the Committee of Management obtained a registered letter from the Petitioner by use of force at the point of gun on 10.6.1977 and thereafter it was accepted by the alleged Committee of Management. The District Inspector of Schools, Bijnor, by order dated 17.1.1984 approved/accepted the resignation letter of the Petitioner.

4. Aggrieved by the approval granted by the District Inspector of Schools, the Petitioner preferred an appeal u/s 16G (3) (c) before the Regional Deputy Director of Education, who allowed the appeal of the Petitioner and set aside the order dated 17.1.1984, passed by the D.I.O.S., Bijnor vide order dated 28.7.1984.

5. Aggrieved by the order dated 28.7.1984, the Committee of Management filed

Writ Petition No. 10018 of 1984 Ram Gopal Singh and Ors. v. Deputy Director of Education and others. It was dismissed by order dated 1st August, 1988, holding that the resignation cannot be said to be legal and in accordance with the prescribed procedure.

6. The Committee of Management challenged the validity and correctness of the judgment/order of this Court dated 1.8.1988 by means of SLP (C.) No. 11294 of 1988 before the Hon"ble Supreme Court of India. The same was dismissed on 5.10.1988 with direction to reinstate the Petitioner as Principal of the institution within one month from the date of order and for payment of a sum equal to one year"s salary for the antecedents period, he was forced to remain unemployed. The copy of the order of the Hon"ble Supreme Court is as under :

ORDER

Special Leave Petition is rejected. It is, however, directed that Respondent No. 3 shall be reinstated as Principal of the Institution within one month from today. He shall be paid in a sum equal to one year"s salary in lieu of salary for the antecedents period. There will be no order as to costs.

Sd./ M.S. Bhawe Court Master 5.10.1988.

7. Aggrieved by the order dated 5.10.1988 aforesaid, the Petitioner filed a review petition praying for direction for payment of full salary with interest from the date of obtaining resignation by the Committee of Management. The review petition was allowed by the Hon"ble Supreme Court vide order dated 22.9.1993 with direction that the salary of the Petitioner shall be paid to him since June, 1998. It was left open for the Committee of Management to take work of Principal from the Petitioner or not, but to pay him salary month to month regularly. In pursuance of the judgment and order dated 22.9.1993 on the review application, the concerned authority has paid the full salary to the Petitioner on 21.1.2000 without any interest.

8. The Petitioner alleges that since June, 1978, the entire salary of the Petitioner was in the hands of the Government, which has been paid to him after about 20 years and if the said amount had been invested by him in the bank, he would have earned interest on the said amount to almost seven times of the total salary.

9. Further grievance of the Petitioner is that he had retired on 30.6.1992 from service, but neither pension nor gratuity, etc. have been paid to him. He has also not been paid his retirement benefits inspite of repeated requests to the Respondents.

10. Ten years have passed since the Petitioner has retired, yet he has not been paid his retirement dues. He has, therefore, by means of the present writ petition, prayed for issuance of a writ of mandamus directing the Respondents for payment of arrears of salary to him since June, 1978 to June, 1992 with 18% interest per annum, pension and gratuity within a specified period.

11. This Court vide order dated 29.8.2000 had directed the Respondents either to pay pension and other retiral benefits to the Petitioner or to show cause within a period of one month from the date of production of a certified copy of this order as to why the same is not being paid to him. It was further directed that the question of payment of interest would be considered on the next date of listing.

12. From the perusal of the order-sheet, it appears that notices were issued on 29.8.2000. The order is as under :

"Notice on behalf of opposite party No. 1 has been accepted by learned chief standing counsel. Issue notice to opposite party No. 2 returnable within six weeks. Opposite parties may file their counter-affidavit within six weeks. List immediately after expiry of six weeks.

In the meantime, the opposite parties are directed either to pay pension and other retiral benefits to the Petitioner or show cause as to why the same is not being paid to him within a period of one month from the date of production of a certified copy of this order. The question of payment of interest shall be decided on the next date of listing.

Sd./ Hon. P.C. Verma, J. 29.8.2000.

13. From the office report dated 10.11.2002, it is evident that the Petitioner did not take steps for service upon Respondent No. 2. On 28.11.2002 a prayer was made by the counsel for the Petitioner praying for one months' time for taking steps by registered post to serve Respondent No. 2. The prayer was allowed by order dated 28.11.2002, which is as under :

From office report dated 10.11.2002, it is evident that the Petitioner did not take steps for service upon Respondent No. 2. On 28.11.1992, a prayer was made by the counsel for the Petitioner praying for one month's time for taking steps by registered post to serve Respondent No. 2. The prayer was allowed by order dated 29.11.2002, which is as under :

When the writ petition was filed, on 29.8.2000 this Court issued notice to opposite party No. 2 returnable within six weeks. The Petitioner did not take any steps to issue notice to opposite party No. 2. Instead he filed SLP before the Apex Court in which on 14.8.2001, the Apex Court in which on 14.8.2001 the Apex Court directed this Court to decide Writ Petition No. 38161 of 2000 within a period of not more than three months by submission of the order. The order of the Apex Court has been filed by the Petitioner along with an application dated 25.1.2002. Three months period, as directed by the Apex Court, expired in April, 2002. Learned Counsel for the Petitioner did not take any steps to get the matter listed within the time allowed by the Apex Court.

When the matter was taken up today, it was revealed that on 29.8.2000 this Court issued notice to opposite party No. 2 but the Petitioner did not take any steps to serve opposite party No. 2.

Learned Counsel for the Petitioner prays for and is allowed one month's time to take steps by registered post to serve opposite party No. 2. learned standing counsel shall also file his rejoinder-affidavit within next three weeks.

List thereafter.

Sd./ V.M. Sahai, J. 28.11.2002.

14. This case was thereafter listed on 8.4.2003 in the revised list, but neither the counsel for the Petitioner nor counsel for the Respondents was present. The order dated 8.4.2003 is as under :

"Case has been called out in the revised list. None of the counsel for the parties appeared. A prayer has been made in the application for fixing a specific date for hearing, as the Apex Court has directed to decide the matter at an early date. The case was directed to be listed on 8.4.2003.

Since no counsel is present for the parties, another opportunity is granted and the matter be posted for hearing in the next cause list.

Sd./ Rakesh Tiwari, J. 8.4.2003.

15. There is also an application for fixing a specific date for hearing on the ground that the Apex Court by order dated 14.8.2001 directed that this matter may be decided within a period not more than three months from the date of submission of the order, this case was directed to be listed in the next cause list and was again listed on 17.4.2003. The matter was heard on 17.4.2003 and the judgment was reserved.

16. There is a Government policy for making payment of pension, gratuity and other retirement benefits to its employees at the earliest and for that purpose, papers are to be completed prior to the retirement of their employees. The Petitioner has retired from service on 30.6.1992, but neither pension, gratuity nor other retirement benefit have been given to him inspite of the specific directions of the Apex Court for making payment of the same.

17. Inspite of notice issued to Respondents, no counter-affidavit has been filed. On the direction of the Apex Court, this matter is being decided at the earliest.

18. It is contended that the amount of arrear of salary, pension and gratuity cannot be withheld. If there is any delay in payment of the same, it should be paid with normal interest. Reliance has been placed on the judgment of the Apex Court in R.Kapur v. Director of Inspection (Printing and Publication) Income Tax and Anr. 1994 (69) FLR 1137. In the aforesaid case, the Division Bench of the Apex Court has held that : "Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable right and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

19. For the aforesaid reasons and the law, the writ petition is allowed with the direction to the Respondents as well as other concerned authorities to make payment of arrears of salary, pension, gratuity and other retirement benefits to the Petitioner within a period of two months from the date of production of a certified copy of this order along with 12% compound interest with half yearly rest. If the amount is not paid, the same shall be recovered from Respondent No. 2 by the Collector as arrears of land revenue and paid to the Petitioner immediately within a week of recovery being made. The Collector, Bijnor, shall send report of compliance of this order positively within fifteen days thereafter. The interim order dated 29.8.2000, is vacated. No order as to costs.