
(2011) 02 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48666 of 2008

Subahsh Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2011) 8 ADJ 455 : (2011) 5 AWC 4722

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : D.K. Tripathi and A.D. Dubey, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for the parties and perused the record.

2. The Petitioner has sought a mandamus commanding the Respondents to grant annual increments to him which have not been allowed since 1986.

3. The Petitioner was placed under suspension on 28.11.1986 in a contemplated departmental enquiry. It is said that no departmental enquiry was initiated at all but by order dated 16th July, 1992, Senior Superintendent of Police, Azamgarh reinstated the Petitioner observing that he was placed under suspension being implicated in a criminal case. It is interesting to notice that order of suspension nowhere mention the pendency of criminal case but clearly says that departmental enquiry is contemplated hence the Petitioner is placed under suspension. Thereafter the Petitioner appears to have made several representations to the authorities concerned about his increments and the matter remains pending between authorities hence this writ petition.

4. In the counter-affidavit, Respondents have taken stand that since Petitioner was involved in a Criminal Case No. 303 of 1986 (ST. No. 3807 of 1991) under Sections 467, 468 and 420 I.P.C. read with Sections 82/83 Registry Act in the Court of Chief Judicial Magistrate, Deoria hence no decision was taken with

respect to grant of increment in his matter and the same would be decided after decision in the aforesaid criminal case.

5. Mere pendency of a criminal case cannot justify withholding of increments unless specific order is passed in accordance with law to this effect.

6. Learned Standing Counsel failed to point out any provision under which annual increments can be denied to a Government servant on account of mere pendency of criminal case. Even during the pendency of suspension, increment could not have been withheld. This question has been decided by this Court in *Mritunjai Singh Vs. State of U.P. and Others*, of the judgment this Court has said as under:

Rule 24 of the Financial Hand Book Volume II issued under the authority of the Government of the Uttar Pradesh in Chapter IV Part II provides that an increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Government or by any authority to whom the Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments. As the contract of the service of the Petitioner continued even though he was under suspension, the increment should be allowed ordinarily to be drawn unless it is withheld in the manner provided under Rule 25. As it is not the case of the opposite parties that it has been so withheld, the Petitioner is entitled to the (sic) during the pendency of his suspension and the subsistence allowance shall be calculated accordingly, it being 1/3rd of the pay plus dearness allowance.

7. Moreover, the aforesaid criminal case has already resulted in acquittal of Petitioner vide judgment dated 23rd November, 2010.

8. In view of the above, denial of annual increments to the Petitioner for the last more than 25 years and more merely on one or the other pretext firstly; suspension and secondly; pendency of criminal case is wholly arbitrary and illegal.

9. The writ petition is allowed. Respondents are directed to allow annual increments to the Petitioner since fell due and to pay arrears of salary accordingly within two months from the date of production of a certified copy of this order. The Petitioner shall also be paid interest on arrears of salary @ 10% from the date of filing of writ petition till the amount is actually paid. The Petitioner shall also be entitled to cost which is quantified to Rs. 20,000/-.