

Court No. - 29

Case :- SPECIAL APPEAL No. - 648 of 2024

Appellant :- State Of Up Through Additional Chief Secretary Basic Education Government Of Up And 4 Others

Respondent :- Rama Shankar Tiwari

Counsel for Appellant :- Abhishek Srivastava, Tej Bhanu Pandey

Counsel for Respondent :- Kedar Nath Mishra, Samarath Singh

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Shri Ashok Mehta, learned Additional Advocate General assisted by learned Standing Counsel the appellants-respondents and Shri V.K.Singh, learned Senior Advocate assisted by Sri K.N.Mishra, learned counsel for the respondent-petitioner.

2. Present Special Appeal under Chapter VIII Rule 5 of Allahabad High Court Rules 1952 is preferred against the impugned judgement and order dated 14.9.2022 in Writ A No. 8309 of 2022 (Rama Shankar Tiwari vs. State of U.P. and 4 Others) by which learned Single Judge has allowed the writ petition with an observation that the petitioner Rama Shankar Tiwari is entitled for payment of salary from May, 1998 onwards. Further, the respondents are directed to release arrears of salary of the petitioner within three months from the date of production of a certified copy of the order.

3. In support of his submissions, learned Senior Advocate for the appellants has placed reliance upon the order dated 30.5.2018 passed by learned Single Judge in C/M Nageshwar Prasad Purva Madhyamik Vidyalaya v. State Of U.P. And 4 Others (Writ A No. 13290 of 2018, dt. 30.5.2018), wherein, Committee of management of the institution concerned has challenged an order passed by the Assistant Director of Education dated 12.4.2018, which directed the District Basic Education Officer, Deoria to release salary of the respondent no. 5 (respondent no. 1 here in the instant appeal) from 1998 onwards after verifying his signatures on the attendance register. Learned Single Judge has disposed of the aforesaid writ petition on following terms:-

"(i) Petitioner shall move an application for withdrawing all writ petitions filed by him before this Court in respect of his claim for payment of salary to the post of Headmaster.

(ii) After filing such application, respondent no. 5 shall move an affidavit before the respondent no.3, giving his undertaking not to press any claim for appointment or salary to the post of Headmaster.

(iii) Once such an affidavit is filed before the Assistant Director concerned, it shall be

open for him to pass fresh order in respect of release of arrears of salary to respondent no.5 within a period of two months. In case the petitioner committee has already certified the working of respondent no. 5 in the past, it shall not be open for the committee to raise a fresh objection, in this regard now.

(iv) Based upon the order to be passed, as indicated above, the requisite amount due and payable to respondent no. 5 shall be released within a further period of six weeks.

Till a fresh order is passed in the manner,as indicated above, by the Assistant Director of Education (Basic), the petitioner committee shall not be compelled to process the petitioner's claim in terms of the order impugned. The retiral benefits due and admissible to respondent no.5 shall also be processed accordingly, within the same period."

4. In response to the directions issued by learned Single Judge vide order dated 30.5.2018, Assistant Director of Education, Gorakhpur Region, Gorakhpur considered the claim set up by the respondent-petitioner and while passing the order dated 11.9.2019 had directed to release the salary in favour of the respondent-petitioner for the period January, 2008 to July, 2015. In this backdrop, Sri Mehta, learned Senior Advocate for the appellants fairly states that even though in response to the earlier order, the Authority concerned had categorically opined that the respondent-petitioner worked in the institution concerned from January 2008 to July 2015, whereas, learned Single Judge while passing the order impugned in most arbitrary manner has proceeded to accord the salary to the respondent-petitioner since May 1998 for the period in which, he had not worked, which is also contrary to the record.

5. Meanwhile, in the aforesaid factual situation before entertaining the instant appeal, let the Authority concerned to show its bonafide, quantify the amount w.e.f. January 2008 to March 2017 (date of superannuation) and place a Draft so that we may proceed on merits of the case.

6. Put up this matter on 10.09.2024 as fresh.

Order Date :- 23.8.2024

A.K.Srivastava