

Court No. - 35

Case :- WRIT - A No. - 2791 of 2016

Petitioner :- Ram Sahay Dubey

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shruti Malviya,Lal Vijai Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Ms. Shruti Malviya, learned counsel for the petitioner as well as Sri Pradeep Kumar Sahi, learned Standing Counsel who appears for the respondents.

The present petition has been filed with a direction in the nature of mandamus directing the respondents to make payment of retiral dues i.e. G.I.S., encashment and the arrears of salary from 01.8.2012 to 10.2.2014 and also to re-fix the fixation of the pay of the petitioner and to consider the representation of the writ petitioner stated to be filed and pending since 14.8.2015 and 9.11.2015.

This Court on 16.9.2021 proceeded to pass following order:-

Following orders were passed on 09.11.2017:

"There is dispute relating to the absence of the petitioner in service from 01.08.2012 to 06.02.2014. The petitioner has already attained to age of superannuation on 13.04.2014. According to the petitioner, he has moved an application for grant of medical leave but it has not been considered. Thus, the fact remain that appropriate authority has not passed any order in relation to absence of the petitioner during that period. Whether the petitioner is entitled for medical leave, earned leave and casual leave etc. have to be examined by the appropriate authority.

In the fact of the case, an interim mandamus is issued directing the Chief Medical Officer to consider the representation as well as various certificate relating to the petitioner in respect of his absence during 01.08.2012 to 06.02.2014 and pass appropriate order within a period of one month. The petitioner is given liberty to file the copies of the application as well as all the medical certificate etc. before Chief Medical Officer along with certified copy of this order within a period of ten days. As to whether, the petitioner was not permitted to join, although he submit his joining, may also be considered.

List in the second week of January, 2018.

Petitioner's claim, however, has been rejected on the ground that no material has been placed by him in respect of his plea of illness despite an opportunity

given to the petitioner.

Counsel for the petitioner states that no such opportunity was given and the documents evidencing petitioner's illness otherwise are on record.

Before proceeding further, it would be appropriate to permit the petitioner to approach respondent no.4, once again, alongwith all documents/details with regard to his illness and subsequent attempt to join in terms of the government order dated 05.03.2013. Such claim of the petitioner shall be considered by the Chief Medical Officer, Maharajganj, after getting the facts ascertained in that regard. For such purposes petitioner shall appear before the respondent no.4 on 04.10.2021. Required consideration would be made by the authority concerned within a period of one month, thereafter.

List this matter in the additional cause list on 10.11.2021."

Thereafter the matter was listed on 10.11.2021, 18.11.2021 and 26.7.2022 requiring the learned Standing Counsel to obtain instructions in that regard.

Ms. Shruti Malviya, learned counsel for the petitioner on the strength of the averments made in paragraph 6 of the second supplementary affidavit sworn on 6.8.2022 has sought to content that till date no orders have been passed and rather no reply has been filed to the said supplementary affidavit.

Sri Sahi who appears for the State on the other hand submits that he may be accorded suitable time so as to obtain instructions and report back on the next date fixed.

Put up this case on 17th July, 2023 as unlisted by which time Sri Sahi shall obtain instructions and also file response to the second supplementary affidavit.

Order Date :- 3.7.2023

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