

A.F.R.

Reserved

Court No. - 18

Case :- WRIT - A No. - 9908 of 2023

Petitioner :- Rajendra Dhar Dwivedi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Agriculture Lko And 2 Others

Counsel for Petitioner :- Sameer Kalia

Counsel for Respondent :- C.S.C.,Abhinav Trivedi

Hon'ble Manish Kumar,J.

1. Heard.

2. With the consent of the learned counsel for the petitioner, learned Standing Counsel representing the respondent nos. 1 and 3 as well as Shri Abhinav Trivedi, learned counsel for the respondent no. 2, the present writ petition is finally adjudicated at the admission stage itself.

3. Present writ petition has been preferred for issuing a direction to the respondents to release the post retiral benefits of the petitioner i.e. an amount of Rs. 20 lacs towards Gratuity, Rs. 33 lacs approximately towards commutation of Pension and further pay regular pension to the petitioner with interest in view of paragraphs nos. 49, 50 and 51 of the writ petition as no order has been passed either by the Governor or the State Government.

4. Learned counsel for the petitioner has submitted that the petitioner after attaining the age of superannuation had retired from the post of Director (Agriculture) on 31.10.2019 but in place of making payment of post retiral dues to the petitioner, the petitioner was served with a show-cause notice dated 04.09.2021 under Rule 10 (2) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules,1999 (hereinafter

referred to as, the Rules, 1999) for minor punishment. The said notice was challenged by the petitioner by filing a Writ Petition No. 23536 (S/S) of 2020 which was allowed in part by this Court vide its judgment and order dated 02.12.2020 and quashed the notice under challenge. The relevant extract of the said judgment is being reproduced hereunder:-

"For these reasons the issuance of show-cause notice to the petitioner for imposition of a penalty under Rule 10(2) of the Rules 1999 is apparently beyond the scope of the Rules and the jurisdiction vested thereunder with the opposite parties. The appropriate course, if at all i.e. if the conditions mentioned in Article 351-A of the Civil Services Regulations were satisfied was to proceed against the petitioner under the said provision in accordance with law, however, even in this regard the learned counsel for the petitioner says that the allegations pertain to an incident which took place more than four years earlier and, therefore, any action under Article 351-A of the Civil Services Regulations stands excluded by the provisions/prohibitions contained therein as no chargesheet was or has been issued to the petitioner within the said period of four years nor was he ever under suspension, nevertheless, it is for the State Government to see as to whether the contingencies mentioned in Article 351-A of the Civil Services Regulations are satisfied for any action against the petitioner or not, but so far as the impugned notice is concerned, same is clearly unsustainable and liable to be quashed. It is accordingly quashed subject, however, to the observations made hereinabove.

Considering the fact that only provisional pension has been sanctioned to the petitioner and has been granted which orders are also under challenge, instead of interfering with the same at this stage and quashing the same, it would be appropriate if the State Government examines the matter as to whether the petitioner is amenable to any action under Article 351-A of the Civil Services Regulations in the facts of the case or not, but, within a period of six weeks from the date an e-copy of this order downloaded from the official website of this High Court is submitted before the opposite party no. 1.

The consequences as to entitlement of post-retirement dues to the petitioner shall depend upon the same, meaning thereby, if the State

Government comes to the conclusion that the mandatory prerequisites mentioned in Article 351-A of the Civil Services Regulations are not satisfied and no action can be taken against the petitioner under the same, then the petitioner shall be entitled to all the post-retirement dues otherwise admissible as per law, which shall be paid to him within 3 months therefrom. However, if the State Government finds that contingencies mentioned in the said provision are satisfied and the petitioner can be proceeded under the said provision, then, appropriate initiation shall be made within one month and the consequences as to entitlement of the petitioner to post-retirement dues shall follow accordingly as per law. The impugned orders sanctioning and granting provisional pension shall abide by such decision which is to be taken by the opposite party no. 1 as aforesaid.

The writ petition is allowed in part."

5. It is further contended that after the said judgment, an another notice dated 23.02.2021 was issued by the Additional Chief Secretary (Agriculture) to the petitioner for the same charges as mentioned in the earlier notice issued under Rule 10 (2) of the Rules 1999, mentioning therein that the Show-Cause notice dated 04.09.2021 has now been converted into notice Under Regulation 351 (A) of the Civil Services Regulation (hereinafter referred to as, the C.S.R).

6. The said notice was again challenged by the petitioner by filing Writ Petition No. 8799 (S/S) of 2021, which was partly allowed by this Court vide its judgment and order dated 22.06.2021. The relevant extract of the said judgment is quoted hereinebelow:-

"14. Learned Senior Advocate on the other hand has submitted that a perusal of the notice dated 29.11.2018 filed at page 126 of the writ petition would show that it was not issued with regard to any preliminary enquiry or with regard to any disciplinary proceedings to be initiated against the petitioner. It had only called for an explanation and such a notice cannot be termed to be an order initiating disciplinary proceedings

because disciplinary proceedings are said to be initiated as per the Explanation given under Article 351-A of the Civil Services Regulations, only when the employee concerned is suspended or a charge-sheet is issued to him.

15. Be that as it may, this Court is only concerned with the careless manner in which the order impugned has been issued by the respondent no.2. He has not referred to the conditions mentioned under Article 351-A of the Civil Service Regulations nor the specific directions issued by the Court in its judgment and order dated 02.12.2020. He has merely converted the earlier show cause notice dated 04.09.2020 which was already quashed by the Court, into a show-cause notice under Article 351-A of the Civil Services Regulations. The order impugned dated 23.02.2021 deserves to be quashed on this ground alone. It is hereby quashed.

16. His Excellency the Governor of Uttar Pradesh in exercise of power under Article 351-A may pass a fresh order as expeditiously as possible. The post retiral benefits of the petitioner shall be subject to order passed by His Excellency the Governor of the Uttar Pradesh as already been observed by this Court in its judgment and order dated 02.12.2020.

17. If the Government comes to a conclusion that no case under Article 351-A of the Civil Services Regulations is made out for proceeding against the petitioner, then the post retiral benefits of the petitioner shall be released within three months.

18. The writ petition stands partly allowed."

7. It is further submitted that the judgment was passed on 22.06.2021 and now more than two and a half years have passed but till date no order has been passed by the Governor while exercising its power under Regulation 351 A of C.S.R. and depriving the petitioner of his lawful claims of post retiral benefits which is neither a charity or a bounty as per the law settled in the case of **R.Sundaram Vs. Tamil Nadu State Level Scrutiny Committee (2023) SCC OnLine SC 287.**

8. It is further submitted that in the show cause notice dated

04.09.2020 issued under Rule 10 (2) of the Rules, 1999 and the Show Cause notice dated 23.02.2021 (both are quashed by this Court, as mentioned above), the allegation or the explanation which were sought from the petitioner related to the period of four years prior to the retirement of the petitioner and as per Regulation 351 (A) of C.S.R., no inquiry can be initiated against the petitioner for the charges which relate to for the period of four years of retirement.

9. On the other hand, learned Standing Counsel on the basis of instructions received has submitted that the legal opinion has been taken and the matter is under consideration but unable to dispute that the charges which were alleged in the earlier two show cause notices were related to the period four years before retirement of the petitioner.

10. Learned counsel for the respondent no. 2 on the basis of instructions has submitted that the Office of the Governor has not received the complete file from the Department for consideration under Regulation 351 (A) of C.S.R. and till date no such order under said regulation has been passed against the petitioner.

11. After hearing learned counsel for the parties and going through the record, it is found that the petitioner has retired on 31.10.2019 and as on today, there is no inquiry pending against the petitioner. Earlier two proceedings i.e. first Show Cause notice dated 04.09.2020 issued under Rule 10 (2) of the Rules, 1999 and thereafter a second Show Cause notice dated 23.02.2021 issued by the Additional Chief Secretary (Agriculture) converting the earlier show cause notice issued under Rule 10 (2) of the Rules, 1999 to Regulation 351 (A) of C.S.R. had already quashed by this Court as mentioned in the preceding paragraphs.

12. The petitioner had earlier also approached this Court by filing writ petitions against the show cause notices issued against him with a prayer for payment of post retiral dues. Both the petitions were partly allowed by quashing of the notices issued against the petitioner and giving liberty to the respondents to look into the case of the petitioner as to whether any approval is required under Regulation 351-A of C.S.R.

13. This Court vide its judgment and order dated 22.06.2021 had granted liberty to proceed under Regulation 351 (A) of C.S.R. but more than two and a half years have passed but the department has not forwarded the complete file to the Governor to pass an order under Regulation 351 (A) of C.S.R. , as informed by learned counsel for the respondent no. 2- Additional Chief Secretary, Hon'ble Governor Secretariat, Raj Bhawan, Lucknow and it has also informed that no order under Regulation 351 (A) of C.S.R. has been passed so far.

14. Under these circumstances as mentioned above, next it may be examined whether Regulation 351-A of C.S.R. is attracted or not for that the necessary questions which may require attention of this Court are as follows:-

firstly, any order has been passed by the competent authority under Regulation 351-A of C.S.R. or not;

secondly, and most importantly whether Regulation 351-A is applied to the present case or not; and

thirdly, as to whether there is any impediment existing in payment of post retiral benefits to the petitioner.

15. The questions framed above are being dealt with as below:

Firstly, it may be seen whether any order has been passed under

Regulation 351-A and it is to be found that so far, no such order has been passed as would be clear from submission made by the learned counsel for the respondent no. 2-Additional Chief Secretary, Hon'ble Governor Secretariat. Learned counsel for the respondent no. 2 informed this Court on the basis of his instructions that complete file was never made available by the department to the office of Governor so till date no order under Regulation 351 A has been passed against the petitioner.

Secondly, perusal of the show-cause notices show that the allegations relate to 24.07.2015 and the petitioner has retired on 31.10.2019, so the allegation is more than four years prior to the retirement of the petitioner. This fact is not disputed by the learned counsel for the respondents. Regulation 351 (A) of C.S.R. Regulation 351 (A) of C.S.R. is reproduced hereinbelow:-

" 351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement.

Provided that :-

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) Shall not be instituted with the sanction of the Governor,

(ii) shall be in respect of event which took place not more than four years before the institution of such proceedings, and"

It is thus clear that since matter relates to the event which took

place four years prior to the retirement of the petitioner which is an undisputed fact as accepted by Counsel for respondents, so no action can be taken against the petitioner and inquiry cannot be initiated hence, there is no occasion to consider the matter relating to grant of any approval under Regulation 351-A of C.S.R.

And lastly, it is found that there exists no impediment in making the payment of post retiral benefits to the petitioner.

16. After retirement, an employee is dependent upon his/her post retiral dues but in place of getting the same the petitioner had been compelled by the arbitrary action of the respondents to approach this Court time and again. In place of getting any dues the petitioner is spending the cost of litigation from his life long savings. The petitioner has been deprived from getting his lawful claim due to wrong actions, inaction and non action by the authorities at different stages which is making the petitioner to suffer great hardship.

17. In view of the discussions made hereinabove, the writ petition is **allowed**.

18. Respondent no. 1 is directed to make payment of all post retiral dues to the petitioner including computation of pension within a period of two months from the date of production of certified copy of this order. In case, the payment is not made in the period mentioned hereinabove, the respondents will liable to pay the simple interest at the rate of 7.5% from the date of retirement till actual payment is made.

Order Date :- 21.2.2024
Ashish