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Neutral Citation No. - 2024:AHC:113149

Reserved on 9.4.2024

Delivered on 16.7.2024.

Court No. - 1

Case :- WRIT - A No. - 5033 of 2024

Petitioner :- Dinesh Prasad

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Shyam Lal

Counsel for Respondent :- C.S.C.

Hon'ble Salil Kumar Rai,J.

The petition involves a question of law and is being decided on the facts stated in the orders passed by the state officers impleaded as respondents in the present petition, therefore, no purpose would be served calling for a counter affidavit.

The petitioner is employed as Follower with the U.P Police. Disciplinary proceedings were instituted against the petitioner under Rule 14 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 (hereinafter referred to as, 'Rules, 1991') and a charge sheet dated 29.8.2018 was served on the petitioner. The charge against the petitioner was that the petitioner, without informing his Officers and without any leave, absented from duty between 24.6.2018 and 26.6.2018. Another charge against the petitioner was that after joining the petitioner went on a

hunger strike and refused to resume his mess duty which adversely affected the reputation of the police force.

The petitioner submitted his reply denying the charges. The inquiry report was submitted on 5.9.2018 holding the petitioner guilty of the charges levelled against him. A show cause notice dated 11.7.2019 was issued to the petitioner to show cause as to why he should not be dismissed from service. After considering the reply of the petitioner to the show cause notice, the disciplinary authority i.e., the Superintendent of Police, District Deoria (respondent no.3) vide his order dated 9.1.2020 dismissed the petitioner from service.

The petitioner challenged the order dated 9.1.2020 through an appeal filed under Rule 20 of the Rules 1991. The said appeal was allowed by the Deputy Inspector General of Police, Gorakhpur Region, Gorakhpur vide his order dated 4.9.2020. Through his order dated 4.9.2020, the appellate authority exonerated the petitioner of the charges levelled against him. Consequently, by order dated 29.9.2020 passed by the Superintendent of Police, District Deoria, the petitioner was reinstated in service.

The Superintendent of Police, District Deoria issued notice dated 18.1.2024 to the petitioner to show cause as to why his services for the period

the petitioner was out of service i.e., between 9.1.2020 to 29.9.2020, be not regularised without payment of salary on the principle of 'no work no pay'. The notice was ostensibly issued under Rule 73 of the Financial Handbook Volume-II Part II to IV.

The petitioner submitted his reply to the aforesaid show cause notice stating that the petitioner was out of service between 9.1.2020 to 29.9.2020 because of the order dated 9.1.2020 which had been set aside in appeal, therefore, the petitioner was entitled to his salary and other benefits for the aforesaid period.

By his order dated 11.2.2024, the Superintendent of Police, District Deoria has directed that the petitioner shall not be paid his salary for the period during which he was out of service because of the dismissal order, i.e., for the period between 9.1.2020 to 29.9.2020. The order has been passed on the principle of 'no work no pay'. In his order dated 11.2.2024, the Superintendent of Police, District Deoria has denied salary to the petitioner for the period he was out of service on the ground that the acts of the petitioner for which he had been charged were acts of gross negligence and amounted to dereliction of duty and therefore, the petitioner was not entitled to salary for the period he was

out of service. The order dated 11.2.2024 has been challenged in the present petition.

There is nothing on record and a reading of the dismissal order dated 9.1.2020 as well as the order dated 11.2.2024 do not show that the petitioner was any time under suspension during the pendency of disciplinary proceedings.

For reasons to be stated subsequently the order dated 11.2.2024 is contrary to law and liable to be quashed.

A reading of the appellate order dated 4.9.2020 passed by the appellate authority shows that the petitioner had been fully exonerated from the charges levelled against him in the charge sheet. In his order dated 4.9.2020, the appellate authority has held that the petitioner was ill and had not gone on a hunger strike and had joined mess duty after returning. The petitioner did his duties on the dates mentioned in the charge sheet. In his order dated 4.9.2020, the appellate authority held that the evidence produced by the petitioner proved his innocence. Apparently, the petitioner had been fully exonerated of the charges by the appellate authority vide its order dated 4.9.2020.

The appellate authority in its order dated 4.9.2020 had accepted the explanation of the petitioner that he was not guilty of the charges

and had not remanded back the matter to the disciplinary authority for further inquiry. The opinion/findings recorded by the competent authority in his order dated 11.2.2024 that the conduct of the petitioner for which he had been charged in the disciplinary proceedings were acts of gross negligence and amounted to dereliction of duty, are evidently without jurisdiction.

Further, the conduct of the petitioner for which he was subjected to disciplinary proceedings was not relevant to decide as to whether the petitioner was entitled to his salary for the period he was not in service because of the dismissal order. Thus, the order dated 11.2.2024 is also vitiated due to consideration of irrelevant material and factors.

The Superintendent of Police, District Deoria has passed the order dated 11.2.2024 ostensibly exercising his powers under Rule 73 of the Financial Hand Book Volume-II Part II to IV which is reproduced below:

*“73. A Government servant **who remains absent after the end of his leave is entitled to no leave salary** for the period of such absence, and that period will be debited against his leave account as though it were leave on half average pay, unless his leave is extended by the Government. Wilful absence from duty after the expiry of leave may be treated as misbehaviour for the purpose of Rule 15.”*

Rule 73 is invoked where the government servant is absent after the end of his leave, i.e., the government servant overstays his leave. The petitioner was not on leave between 9.1.2020 to 29.9.2020 but stood dismissed for the said period because of the dismissal order passed against him by the disciplinary authority. Thus Rule 73 was not applicable in the present case.

The issue as to whether the petitioner was entitled to his salary for the period between 9.1.2020 to 29.9.2020, i.e., the period during which the petitioner was not in service had to be considered and decided under Rule 54 of the Financial Hand Book Volume-II (Part II to IV). Rule 54 is reproduced below:

“54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

(2) When the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay allowances to which he would have been entitled, had he not been dismissed, removed or

compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

[(4) In cases other than those covered by sub-rule (2) [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the 14 ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held], the Government servant shall, subject to the provision of sub-rules (6) and (7) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.]

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a

period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose: Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant. Note-The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.

(6) The payment of allowances under sub-rule (2) of sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to subrule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowance admissible under Rule 53.

(8) Any payment made under this rule to Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of his removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

Note—Where the Government servant does not report for duty within reasonable time after the issue of the orders of the reinstatement after dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge.”

A reading of Rules 54(2) and 54(4) shows that, in Uttar Pradesh, the principle 'no work-no pay' is not applicable while considering the entitlement

of State Government employees for pay and allowances for the period they were not in service if the order dismissing, removing or compulsory retiring them from service is set aside either in appeal or review and the government servant is reinstated in service and no further inquiry is proposed to be held. Rule 54 provides that if the government servant who has been reinstated in service after the order dismissing or removing him from service has been set aside in appeal or review and he has been fully exonerated of the charges, the government servant shall be entitled to full pay and allowances that he would have been entitled had he not been removed or dismissed from service and the period of absence from service shall be treated as period spent on duty for all purposes. However, where the government servant is not exonerated of the charges but is still reinstated in service or the order dismissing or removing a government servant is set aside in appeal or review solely on the ground of non-compliance with the requirements of Article 311(1) and (2) of the Constitution and no further enquiry is proposed to be held, the government servant shall not be entitled to full pay and allowances but will be entitled to be paid such amount (not being the whole) of the pay and allowances as the competent authority may decide after giving the employee notice of the quantum proposed and

after considering his representation but it shall not be less than the subsistence allowance and other allowances admissible under Rule 53. **It is apparent that, on his reinstatement after the order of dismissal or removal is set aside, a government servant can not be denied his entire pay and allowances for the period he was out of service.** The amount which the government servant would be entitled to get would depend on whether the case of the government servant is covered by Rule 54(2) or by Rule 54 (4).

The only circumstance in which the government servant can be denied his pay and allowances or part of the same for the period he was out of service is specified in Rule 54 (8). The rule provides that any payment made to a government servant on his reinstatement shall be subject to adjustment of the amount earned by the employee through an employment during the period he was out of service and nothing shall be paid to the government servant where the emoluments payable to him are equal to or less than those earned by him during employment elsewhere.

The order dismissing the petitioner has been set aside in appeal and the petitioner has been fully exonerated by the appellate authority vide its order dated 4.9.2020, therefore, the case of the petitioner is covered by Rule 54(2).

It is not the case of the respondents that the inquiry proceedings against the petitioner had been delayed by any act of the petitioner. The charge sheet was issued to the petitioner on 29.8.2018 and the inquiry report was submitted on 5.9.2018. However, the show cause notice was issued to the petitioner on 11.7.2019 to which the petitioner submitted his reply on 31.7.2019. The dismissal order was passed on 9.1.2020. During this period, the petitioner was not under suspension. The petitioner filed the appeal within time which was decided on 4.9.2020. Apparently, the proviso to Rule 54(2) is not applicable in the present case.

It is also not the case of the respondents that the petitioner was earning through any employment elsewhere for the period he was out of service. Thus, the petitioner can not be denied his salary by invoking Rule 54(8).

Thus, by virtue of Rules 54(2) and 54(3), the petitioner is entitled to full pay and allowances for the period between 9.1.2020 to 29.9.2020 and his absence from service during the said period has to be treated as a period spent on duty for all purposes.

For the aforesaid reasons, the order dated 11.2.2024 passed by the Superintendent of Police, District Deoria is illegal and contrary to law and is, hereby, quashed.

The petitioner had been wrongly denied his salary for the period between 9.1.2020 to 29.9.2020, therefore, he is entitled to the cost of the writ petition which is quantified as Rs.25,000/- and is also entitled to interest on the pay and allowances payable to him for the period the petitioner was out of service, i.e., for the period between 9.1.2020 to 29.9.2020.

The Superintendent of Police, District Deoria is directed to pay to the petitioner his full pay and allowances for the period 9.1.2020 to 29.9.2020 along with simple interest calculated at the rate of 6% per annum and also the cost of the writ petition within a period of one month from today.

The petition is **allowed** with the aforesaid directions.

The Registrar (Compliance) shall send a copy of this order to the Superintendent of Police, District Deoria within one week from today.

Order Date :- .16.7.2024

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