

State of U.P. and ors. Vs. State Public Services Tribunal and anr.

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Court : Allahabad

Decided On : Oct-13-2003

Reported in : 2004(1)AWC438; (2004)1UPLBEC127

Judge : A.K. Yog and ;K.N. Ojha, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : C.M.W.P. No. 45707 of 2003

Appellant : State of U.P. and ors.

Respondent : State Public Services Tribunal and anr.

Advocate for Pet/Ap. : S.C.

Disposition : Petition dismissed

Judgement :

A.K. Yog and K.N. Ojha, JJ.

1. The claimant-respondent of this writ-petition Naubat Singh was appointed on 31.5.1961 as Panchayat Mantri : he became Panchayat Sewak and thereafter Village Panchayat Officer : which was declared Government Service cadre with effect from 1.10.1971., vide Government order dated 28.9.1971 : on completion of 10 years continuous service claimant-respondent was given Selection Grade with

effect from 1.7.1982 ; under para 10 of the Government order dated 3.6.1989 he became entitled to and was granted promotional pay scale on completion of 6 years satisfactory service : the claimant-respondent received promotional pay scale with effect from 1.7.1988 : he continued to work without objection at any point of time with regard to grant of selection grade and promotional pay scale, he retired on 30.12.1996 on attaining age of superannuation at the age of 58 years ; on retirement his usual pensionary benefits were not released : he was. however, given some pensionary benefits in April, 1999 but not paid other arrears ; the claimant-respondent represented against arbitrary withholding of pensionary benefits ; this apparently ignited and given rise to re-calling action on the part of the pension department which, vide letter dated 21.6.1999, raised an objection on the ground that the claimant-respondent was wrongly granted selection grade/promotional pay scale about 20 years back without giving notice or opportunity of hearing to the claimant (in violation of principles of natural justice) and State Government agencies passed impugned orders of recovery alleging excess payments for three years : being aggrieved the claimant-respondent filed Claim Petition No. 1781 of 1999. Naubat Singh v. State of U.P. and Ors. ; the State of U.P. filed written statements : parties led an evidence and were heard as they desired, finally the State Public Services Tribunal U. P. vide impugned judgment and order dated 4.10.2002 partly allowed the aforesaid claim petition whereby it quashed the impugned order of recovery dated 22.3.1999. (Annexure-No. 1 to the claim petition) and another impugned order dated 21.6.1999 (Annexure-No. 2 to the said claim petition) along with other claim petitions mentioned therein (Annexure-No. 5 to the writ petition) ; Tribunal left it open for the petitioners to give opportunity of hearing to the concerned if so desired, (on receiving certified copies of the impugned judgments) and decide the question as to whether grant/fixation in selection grade and promotional pay scale was not proper and granted prematurely in the past against relevant Government orders, rules etc. ; in case petitioner was not eligible or by oversight or mistake got selection grade/promotional pay scale then correctly fix pay as per Government order in question and accordingly calculate pensions in future.

2. The Tribunal has referred to several judgments of the Apex Court and held that once payment, like present case is made, even though under bona fide mistake,

the same cannot be recovered later but on the basis of proper calculation relying upon correct interpretation of relevant Government orders can be done for making payment as may be actually due.

3. There is no whisper or even on iota of evidence to show that the beneficiary, the present respondent, was in any manner instrumental in misrepresenting facts when alleged wrong fixation was done or selection grade or promotional pay scale was given.

4. The petitioners have come up before this Court against the above mentioned impugned order of the Tribunal partly allowing claim petition against them.

5. We shall not fail to express that it cannot be appreciated on the part of the State Government, its officers ; that the State has already attempted to indulge in digging old matters which too old and attempting to raise forgotten issues. Let the respondent appreciate that rule of reasonableness, fair play and good conscience particularly when State is the employer, and require that it should not dig old graves to disturb and let the buried remained buried. We see no ground or justification to unsettle, long settled issue.

6. Orders impugned in claim petition led various adverse consequences. The claimant-respondent (and the like), who is the old pensioner, cannot be expected to have with him, now after a decade old records of his service or even sufficient fund to bear expenses of litigation for no fault of his besides being handicapped physically and financially over obsolete and bygone issues. The claimant shall be harassed for no fault of his by petitioner (State Government), if it is permitted to maintain this writ petition.

7. Impugned orders, passed without giving notice or opportunity of hearing, are nullity. We are not prepared to accept that responsible Gazetted Officers are not aware of a basic principle of law, opportunity of hearing is must. In other words principles of natural justice must be adhered to even in the matters of administrative orders, if such order adversely affects/prejudices the rights of anyone.

8. Government would have been better advised to take action against the erring officials, who did not act diligently and cautiously at the relevant time. Which and how that those officers failed to discharge their duties faithfully viz., granting selection grade and promotional pay scale, and on more than one occasion before suitable pay was allowed to the concerned respondent employee (Naubat Singh). Such irresponsible work of Government officials if permitted even so belatedly the Government shall be saddled with unnecessary litigation burdening public exchequer. Apart from the above, recovery action besides being illegal and nullity, shall be against the concept of reasonableness, fairness and good conscience.

9. There is no mention that action has been taken against the erring officers who are responsible for wrong grant of selection grade and giving promotional pay scale at a time, when it was not actually due.

10. Court is not expected to invoke its extraordinary jurisdiction if the Government itself is bent upon passing illegal orders, suffering from manifest error apparent on face of record.

11. It is apparent that the State Government did not take reasonable care to check and also made no effort to detect the mistake on its part or on the part of its employees for a long time and at different stages. Needless to repeat 'law helps those, who are alert and not those who sleep on their rights (Vigilentibus Et Non Dormientibus Jura Subvenient)'.
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12. In spite of Court pointedly requiring the learned standing counsel to place material and satisfy us that the concerned employee/ respondent in the writ petition were wrongly given selection grade and promotional pay scales (as is alleged) in the written statement before the Tribunal, the petitioner has miserably failed to file material on the record of this writ petition and thus unsuccessful in demonstrating that fixation in question was not in order.

13. This Court shall, before exercising its extraordinary discretionary jurisdiction under Article 226 of the [Constitution of India](#) re-assume and satisfy that whether petitioner has an arguable case or not to justify quashing of the impugned order. Court will not invoke its jurisdiction in setting aside same order and direct re-

adjudication as a matter of futile exercise.

14. In view of the above, we find no merit in the petition and also not a fit case to exercise extraordinary discretionary jurisdiction under Article 226 of the [Constitution of India](#).

15. The writ petition is dismissed in limine. No order as to cost.

16. A copy of this order will be kept on the record of the connected writ petitions.

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