Ajit Kumar Sen Vs. State of U.P. and ors.

Ajit Kumar Sen Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/487579

Court : Allahabad

Decided On : Jan-21-1998

Reported in : (1998)2UPLBEC1152

Judge : S.H.A. Raza and ;Bhagwan Din, JJ.

Appeal No. : Civil Misc. Writ Petition No. 24816 of 1989

Appellant : Ajit Kumar Sen

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ajit Kumar and ;Manu Saxena, Advs.

Judgement :

S.H.A. Raza and Bhagwan Din, JJ.

1. The petitioner was initially appointed on 20.7.1970 in the Department of Chemistry as Lecturer in Ewing Christian College, Allahabad. The scale was revised from time to time and. on 7.1.1976 date 7.1.1976 petitioner's salary was revised to the scale of Rs. 300-600/- and he was placed at Serial No. 51 in the list of lecturers of the College. The scale was again revised w.e.f. 20.7.1983 from Rs. 700-1600/- to the scale of Rs. 1200-1300-60-1900/-. The petitioner was also granted selection grade on 9.9.1982. In the month of November, 1989 without any

intimation to him and without calling for any show-cause notice or opportunity to the petitioner, an order was passed to the effect that the increment given to the petitioner on 14.7.1974 ought to have been on 6.11.1974 and the increment which ought to have been given in the month of July, 1989 was ordered to be given w.e.f. 6.11.1989. On the pay roll of the college, it was written that from the salary of the petitioner the additional payment made would be recovered from 14.7.1974.

2. It was submitted that the petitioner was senior to Sri R.L. Gupta, and if deduction from his salary would be made the petitioner would get lesser emoluments, which is being paid to Sri. R.L. Gupta. No order was passed in that regard indicating the reasons for such deduction, but only on the pay roll of the College, it was stated that the deduction was made from the salary of the petitioner from 14.7.1974 and he was paid salary on the basis of increment given on 6.11.1989 instead of 14.7.1974. The dearness allowance was also increased in the amount of increment, w.e.f. 14.7.1974 which was fixed in the tenure of service of the petitioner, which about 15 years since the order has been passed by the respondent No. 2, the salary of the petitioner shall be reduced and the increment which was given in the petitioner from 14.7.1974 shall also be deducted. On 22.12.1989 a Division Bench of this Court, ordered that till further orders of this Court, opposite parties are restrained from deducting any amount from the salary of petitioner in respect of which increment was granted as far back in the year 1974.

3. No counter-affidavit has been filed rebutting the allegations made by the petitioner, in spite of lapse of about 9 years. Leaving no alternative for this Court except to accept the averments made in the writ-petition.

4. We are of the view that by means of the petitioners to deduct the amount already paid, would adversely affect the petitioner. It is well settled that if there is a Lis is the order, meaning thereby, if the order effects the right of a person, then such orders should be passed only after giving opportunity to the person effected. In the present case there existed no material to indicate that petitioner was ever given an opportunity to show cause as to why deduction should not be made. In view of the aforesaid situation the impugned directions are violative principles of

natural justice.

5. In view of the said position, we direct that the amount already paid shall not be recovered from the salary of the petitioner on account of any shifting of the increment. However, it will be open for the respondents to pass appropriate orders after giving an opportunity to the petitioner to submit his explanation against the said directions.

In view of the aforesaid directions, the writ petition is finally disposed of.