

Court No. - 8

Case :- WRIT - A No. - 2924 of 2023

Petitioner :- Urmila Devi Pal

Respondent :- State Of U.P. Thru. Secy. Bal Vikas Sewa Evam Pustahar And 2 Others

Counsel for Petitioner :- Om Prakash Mani Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Om Prakash Mani Tripathi, learned counsel appearing for the petitioner and Sri Savitra Vardhan Singh, learned Additional Chief Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed seeking quashing of the order dated 13.01.2023 passed by the Director, Bal Vikas Sewa Evam Pustahar, 3rd Floor, Indira Bhawan, Lucknow whereby petitioner's representation filed in pursuance of the judgment and order dated 22.09.2022 passed by a coordinate Bench of this Court in Writ A No.6123 of 2022 has been rejected. In the representation, the petitioner had claimed salary from 20.06.2005 to 26.10.2006.

Second prayer, which has been made by the petitioner, is for a writ in the nature of mandamus commanding respondent No.2 to pay unpaid salary for the period from 16.05.1998 to 01.03.2001 and salary for the period from 20.06.2005 to 26.06.2005.

Third prayer, which has been made by the petitioner, is for a writ/direction in the nature of mandamus commanding respondent No.2 to ensure payment of salary for the period with effect from 02.03.2001 to 31.10.2001 besides two days' salary for September, 2002 and three days' salary in May 2003.

The petitioner has also claimed due increments for the years 1998 to 2023 and 2013 for the post of Mukhya Sevika. Thereafter, the petitioner has prayed for benefit of A.C.P. scheme with effect from 2003. The petitioner has also claimed interest @ 9 % on the alleged unpaid dues of the petitioner and prayer has been made for making

available G.P.F. pass book with complete entries to the petitioner.

3. The petitioner was appointed as Mukhya Sevika in Bal Vikas Sewa Evam Pustahar, Department of Government of U.P. vide order dated 31.05.1995. In pursuance to the said order of appointment dated 31.05.1995, the petitioner joined the post of Mukhya Sevika on 20.06.1995 after she completed training. The petitioner was transferred from Sitapur to Barabanki and she took charge of Mukhya Sevika at Barabanki on 11.07.1996. She was again transferred from Barabanki to Lucknow vide order dated 18.08.1997, and thereafter she was transferred to Budaun where she joined her duties on 02.03.2001. She was transferred back to District Barabanki on 22.10.2001, and she has been discharging her duties of Mukhya Sevika at the said place. Respondent No.2, Director, Bal Vikas Sewa Evam Pustahar vide his order dated 15.06.2005 transferred the petitioner from Barabanki to Sultanpur.

4. Being aggrieved by the said transfer from District Barabanki to District Sultanpur, the petitioner approached this Court by filing a Writ Petition No.4664(SS) of 2005. This Court passed an interim order in the said writ petition on 25.07.2005 staying transfer order of the petitioner. Said writ petition was finally disposed of vide judgment and order dated 30.09.2005. However, the said order is not placed on record by the petitioner with this writ petition.

5. The petitioner continued to perform her duties on the strength of the interim order dated 25.07.2005 at Barabanki till 26.10.2006. The petitioner approached this Court by filing a Writ Petition No.4849(SS) of 2014 claiming certain dues as such salary for certain period, medical leave and benefit of 6th Pay Commission.

6. This Court vide order dated 04.09.2014 disposed of the said writ petition by following order:-

"The petitioner has prayed for issuance of writ of mandamus commanding the opposite parties to sanction her medical leave as also for payment of salary as per recommendation of Sixth Pay Commission. For redressal of her grievance, she has also represented

to the Director, Child Development and Nutrition, Lucknow (opposite party no. 2), which is pending consideration.

Since the matter is engaging the attention of the opposite party no. 2, who is the competent authority for the same, I hereby dispose of the writ petition finally with direction to the opposite party no. 2 to take decision on the petitioner's representation within three months from the date of communication of a certified copy of this order."

7. It is relevant to mention here that when the petitioner has filed Writ Petition No.4849(SS) of 2014, she did not claim or made any prayer for the dues, which has been claimed by her in this writ petition. In compliance of the said direction issued by this Court vide order dated 04.12.2014, respondent No.2 passed an order dated 27.03.2015 and certain dues of the petitioner were paid.

8. As per the said order dated 27.03.2015 (Annexure-3), the Director sanctioned payment of salary to the petitioner for the period from 03.08.2007 to 20.08.2007 (18 days) from 03.07.2008 to 17.07.2008 (15 days) from 04.06.2009, 26.06.2009 and 27.06.2009 (3 days) from 01.02.2011 to 02.08.2011 (28 days) and salary for medical leave from 01.07.2013 to 31.08.2013.

9. It is evident that the petitioner never claimed salary for the period from 20.06.2005 to 26.06.2006, and salary and arrears for the period from 16.05.1998 to 09.02.2001, which are being claimed in the present petition.

10. The petitioner said to have moved representation after the order dated 27.03.2005 was passed by the Director for release of her salary from 20.06.2005 to 26.06.2006 on 19.10.2015.

11. It is also said that the petitioner has made several representation for payment of salary for the period from 02.03.2001 to 31.10.2001. It is a new demand and prayer, which was never made by the petitioner in earlier writ petition. The petitioner also did not claim the benefit of A.C.P. in the earlier writ petition, which was filed by her in the year 2014 i.e. Writ Petition No.4849 (SS) of 2014. The aforesaid alleged

claims were very much in existence as per the petitioner herself, however, she chose not to press these claims in Writ Petition No.4849(SS) of 2014.

12. 17 years after the alleged not payment of salary for the period from 20.06.2005 to 26.10.2006, the petitioner approached this Court by filing Writ-A No.6123 of 2022, and this Court had entertained the writ petition and directed the Director to decide the representation of the petitioner within a period of 8 weeks in respect of her claims for salary for the period from 20.06.2005 to 26.06.2006, and salary for the period from 02.03.2001 to 31.10.2001, and claim for A.C.P. etc.

13. This Court while disposing of the Writ Petition No.6123 of 2022 vide order dated 22.09.2022 passed the following order:-

"1. Heard Sri O.P.M. Tripathi, learned counsel for petitioner as well as learned Standing Counsel for the respondents.

2. It has been submitted that petitioner who was working on the post of Mukhya Sevika raised several grievances with regard to non-payment of her salary from 02.03.2001 to 31.10.2001 and also she is entitled for the salary and other allowance for the period under suspension from 16.05.1998 to 01.03.2001 in light of the order dated 17.10.2001 and ACP for the year 2003 apart from other dues.

3. Learned counsel for petitioner after arguing at some length confines his prayer to a direction to respondent No. 2 to consider and decide the representation of the petitioner dated 10.08.2022 (Annexure No. 3) expeditiously.

4. Learned Chief Standing counsel does not dispute or object to the aforesaid prayer made by learned counsel for petitioner.

5. Accordingly, without entering into merit of the case, present writ petition is disposed of with direction to respondent No. 2 to consider and decide the representation of the petitioner dated 10.08.2022 as contained as Annexure No. 3 to the writ petition with reasoned and speaking order in accordance with law within a period of eight weeks from the date a certified copy of this order is produced before him and communicate the decision to the petitioner."

14. In pursuance to the liberty granted to the petitioner, she filed a representation on 29.09.2022 before the Director-respondent No.2 as the Director could not decide the representation of the petitioner. She filed a contempt petition being Contempt Application No.3033 of 2022 arraying the Director by name as Contemnor. The Court issued notice on the said contempt petition and, thereafter under the pain of the contempt notice, the Director passed the impugned order dated 13.01.2023.

15. Impugned order would disclose facts and circumstances of the case for non payment of alleged salary etc., and this Court would not like to substitute the reasoning given in the said impugned order. Impugned order noted that the petitioner had remained absent from duty for 665 days unauthorizedly. It appears that the administration has been very benevolent towards the petitioner as despite her absence for such a long time around 2 years, the petitioner was retained in service. In respect of the G.P.F. passbook, it has been said that same has been sent to the District Program Officer, Lucknow for making relevant entries.

16. This Court is amused to find that writ petition after writ petition are being filed for stale/time barred claim(s) and then prayer is confined to direction for deciding a representation. When representation is not decided, a contempt petition is filed. It is nothing but a gross abuse of the process of the Court. There is no provision under any statute for deciding a representation in respect of belated claim(s) of a person particularly when he did not make any such claim(s) in earlier writ petition(s).

17. This subsequent writ petition is not only barred by principle of constructive res judicata but also there are gross delay and laches in approaching this Court after 27 years from the date of alleged cause of action. The writ petition ought to be dismissed on the first instance with heavy cost. However, since this Court had entertained the earlier writ petition and directed for deciding the representation, which came

to be decided by the impugned order giving all the reasons, and, therefore, the writ petition is also decided on merit.

18. The petitioner has filed the present petition and has approached this Court again for such a stale and belated claim. Such claims suffer from gross delay and laches. This Court finds that the claims of the petitioner are not only stale and belated but are also barred by principle of constructive res judicata inasmuch she had earlier approached this Court for certain claims but did not make any prayer for the claims which have been made in the present petition. Further, this Court cannot entertain a writ petition for money claim after 27 years from the alleged cause of action allegedly arose in her favour. Such a writ petition is liable to be dismissed with exemplary cost but for the reason that the petitioner is a Class III employee and would be on the verge of retirement, the Court is refraining to impose any cost.

19. Dismissed.

(Dinesh Kumar Singh, J.)

Order Date :- 19.4.2023
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