



2023 INSC 1031

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3887-3890/2023

STATE OF U.P. & ANR. ETC.

APPELLANT(S)

VERSUS

BALESHWAR SINGH & ORS.

RESPONDENT(S)

J U D G M E N T

ABHAY S. OKA, J.

This is an unfortunate litigation which arises out of bifurcation of the State of Uttar Pradesh into the State of Uttaranchal, which was subsequently renamed as Uttarakhand, and the State of Uttar Pradesh, by virtue of the provisions of the U.P. Reorganization Act, 2000. Interestingly, the bifurcation was given effect exactly 23 years back on 9th November, 2000. Today, we have a case of the first respondent - Baleshwar Singh, who was admittedly an employee of the undivided State of Uttar Pradesh and who has been deprived of salary for a considerable long time and retiral benefits though there was no fault on his part.

It is not in dispute that there was a policy of the Central Government for mutual transfer. The communications to that effect have been placed on record. On 25th September, 2007, the first respondent - Baleshwar Singh, who was appointed on the post of Assistant Conservator of Forest, gave his written consent opting for posting in the newly created State of Uttarakhand. The third respondent - Mahendra Pratap Singh gave his consent for posting in

the reconstituted State of Uttar Pradesh. He was also holding the post of Assistant Conservator of Forest. Ultimately, by consent of the second respondent - State of Uttarakhand and the third respondent - Mahendra Pratap Singh, a mutual transfer order dated 6th August, 2008, was issued by which the first respondent - Baleshwar Singh was allocated to the State of Uttarakhand and the third respondent - Mahendra Pratap Singh was allocated to the State of Uttar Pradesh.

In September, 2008, letters were issued by the respective Governments relieving the first respondent - Baleshwar Singh and the third respondent - Mahendra Pratap Singh. The first respondent - Baleshwar Singh accordingly joined duty in the State of Uttarakhand on 30th September, 2008. Then came a decision of the High Court of Uttarakhand on 26th July, 2010. As a result of the said order, the policy of the mutual transfer was set at naught. As a result of which, the first respondent - Baleshwar Singh made an application to the State of Uttarakhand to relieve him from duty. On 5th April, 2011, the State of Uttarakhand directed the first respondent - Baleshwar Singh to resume his duty in the reconstituted State of Uttar Pradesh and a similar direction was issued to the third respondent - Mahendra Pratap Singh to resume duty in the State of Uttarakhand. The third respondent - Mahendra Pratap Singh by filing a writ petition, challenged the said order in which the Allahabad High Court on 15th April, 2011 stayed the order dated 5th April, 2011. This compelled the first respondent - Baleshwar Singh to file a writ petition. We may note here that in the petition filed by the third respondent - Mahendra Pratap Singh,

on 28th May, 2012, the Allahabad High Court passed the following order:

"The Circular dated 30.11.2011 be placed on record through supplementary affidavit to enable learned counsel for the other counsel to make their submission.

List on 11.7.2012.

In the meantime, without disturbing the petitioner of Writ Petition No.663 (S/B) of 2011, the State Government may permit Sri Baleshwar Singh, the petitioner of Writ Petition No.852 (S/B) of 2011, to resume duty which shall be subject to further orders passed by this Court."

Admittedly, the first appellant - State of Uttar Pradesh never abided by the said order. We may note that there was a review application filed by the State, which was dismissed on 11th June, 2012. The said review application was filed seeking review of the aforesaid order dated 28th May, 2012 passed by the High Court of Uttarakhand.

The net result of this situation is that the first respondent - Baleshwar Singh was relieved by the State of Uttarakhand and notwithstanding the order dated 28th May, 2012, the State of Uttar Pradesh did not allow him to resume his duty. There was one more development in the meanwhile. On 2nd April, 2013, final allocation of personnel of Provincial Forest Service to the State of Uttarakhand was published in which it was shown that the third respondent - Mahendra Pratap Singh was allocated to the State of Uttarakhand.

By the impugned judgment, the petitions filed by the first respondent - Baleshwar Singh and the third respondent - Mahendra Pratap Singh were disposed of by the Division Bench of the Allahabad High Court. The effect of the said order is that the

posting of the third respondent - Mahendra Pratap Singh in the State of Uttar Pradesh and his promotion to the Indian Forest Service was not disturbed and a direction was issued to the State Government to pay salary to the first respondent - Baleshwar Singh with effect from 9th April, 2011 till the date of promotion of the third respondent - Mahendra Pratap Singh as ex-cadre employee and from the date of promotion of the third respondent - Mahendra Pratap Singh as against the cadre post. The State Government was also directed to make payment of the current salary starting from May, 2016 and the arrears of salary were ordered to be paid to the first respondent - Baleshwar Singh within three months. A direction was also issued that the first respondent - Baleshwar Singh shall be entitled to regain his seniority on the basis of his placement in the allocation order dated 30th/31st October, 2006, which had been given effect from 9th November, 2006. Even consequential benefits were also ordered to be given to the first respondent - Baleshwar Singh, without disturbing the promotion granted to the third respondent - Mahendra Pratap Singh. It is this order which is impugned in the present Appeals.

We may note here that there was an interim order passed by this Court way back on 22nd August, 2016, by which a direction was issued to the State of Uttar Pradesh to release all the retiral benefits to the first respondent - Baleshwar Singh. There are interlocutory applications filed on record which make a grievance that though pensionary benefits were released, the same were released on the footing that the date of superannuation of the first respondent - Baleshwar Singh is 18th April, 2011. It is not

in dispute that the first respondent - Baleshwar Singh reached the age of superannuation on 30th June, 2016.

We have heard detailed submissions made by the learned senior counsel appearing for the appellants (State of Uttar Pradesh). His submission is that a peculiar situation has been created under which the third respondent - Mahendra Pratap Singh has been retained in the service of the State of Uttar Pradesh and at the same time, the State is burdened to pay the salary and other benefits to the first respondent - Baleshwar Singh. He places reliance on the subsequent events.

After having carefully considered the submissions, we are constrained to note that the default is on the part of the State of Uttar Pradesh. There was a clear order passed on 28th May, 2012 directing the State of Uttar Pradesh to permit the first respondent - Baleshwar Singh to resume the duty subject to further orders which may be passed in the writ petition filed by the third respondent - Mahendra Pratap Singh.

The learned senior counsel appearing for the State of Uttar Pradesh tried to submit that the word 'may' has been used in the said order which we have quoted above. However, the order, if read in its entirety, makes it clear that the same enjoined the State of Uttar Pradesh to permit the first respondent - Baleshwar Singh to continue his duty with the State of Uttar Pradesh. The State of Uttar Pradesh neither challenged the said order nor complied with the same. But, surprisingly, on 31st October, 2012, it addressed a letter to the Chief Secretary of the State of Uttarakhand requesting that the order dated 5th April, 2011, issued by the

Forest Department of the State of Uttarakhand relieving the first respondent - Baleshwar Singh be cancelled. To say the least, the action of the State of Uttar Pradesh of addressing the letter dated 31st October, 2012 in the teeth of the order dated 28th May, 2012, amounts to making an effort to circumvent the order dated 28th May, 2012. The propriety required the State of Uttar Pradesh to apply either for modification of the order dated 28th May, 2012 or grant of permission to request the State of Uttarakhand to accommodate the first respondent - Baleshwar Singh. Neither was done by the State of Uttar Pradesh. The said order continued till the passing of the impugned order dated 19th April, 2016.

Therefore, considering the aforesaid conduct of the State of Uttar Pradesh, it is impossible to find fault with the direction issued by the Allahabad High Court to the State of Uttar Pradesh to pay arrears of salary, etc. as directed therein to the first respondent - Baleshwar Singh. We may record here that the first respondent - Baleshwar Singh has suffered for no fault on his part.

Learned senior counsel appearing for the first respondent - Baleshwar Singh pointed out that in the meanwhile, the first respondent - Baleshwar Singh had to undergo liver transplant. The interlocutory applications filed on record indicate that the retiral benefits were released to the first respondent - Baleshwar Singh in terms of the interim order by assuming that he was superannuated on 18th April, 2011. Admittedly, the first respondent - Baleshwar Singh reached the age of superannuation on 30th June, 2016. We fail to understand why the State of Uttar Pradesh did not comply with the interim order of this Court by releasing the

pensionary benefits on the footing that the first respondent - Baleshwar Singh superannuated on 30th June, 2016.

In the circumstances, while dismissing the Appeals, with a view to make complete justice, we direct the State Government to release the salary and all other consequential benefits in terms of the impugned order dated 19th April, 2016 to the first respondent - Baleshwar Singh within a period of three months from today. The said amount will carry simple interest at the rate of 6% per annum from 30th June, 2016. In the event, the amount is not paid within a period of three months from today, the first appellant - State of Uttar Pradesh shall pay simple interest on the said amount at the rate of 9% per annum.

As noted earlier, in terms of the interim order of this Court, only a part of the retiral dues have been paid to the first respondent - Baleshwar Singh. We direct the first appellant - State of Uttar Pradesh to calculate the retiral dues payable to the first respondent - Baleshwar Singh on the footing that he has superannuated on 30th June, 2016. The balance amount payable to the first respondent - Baleshwar Singh shall be paid within a period of three months from today with simple interest thereon at the rate of 6% per annum from 22nd August, 2016 when the interim order was passed by this Court.

On the failure of the first appellant - State of Uttar Pradesh to pay the remaining retiral dues within the stipulated period of three months, the simple interest payable will be at the rate of 9% per annum.

If the first respondent - Baleshwar Singh is entitled to

reimbursement of medical expenditure incurred by him, on an application made by the first respondent - Baleshwar Singh, necessary amount be released to him in accordance with law within a period of three months from today.

The Appeals are, accordingly, dismissed. We direct the first appellant - State of Uttar Pradesh to pay costs quantified at Rs.10,000/- (Rupees Ten Thousand) to the first respondent - Baleshwar Singh within a period of three months from today.

The Advocate-on-Record for the State of Uttar Pradesh, to our surprise, expresses an apprehension that the observations made in this judgment may be taken by the Government as a reflection on his professional ability. The observations made in the judgment and the direction to pay the costs are no reflection on the Advocate-on-Record appearing for the appellants.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
November 09, 2023.