

**Court No. - 30**

**Case :-** WRIT - A No. - 14972 of 2011

**Petitioner :-** Nitya Nand Kulshrestha

**Respondent :-** Collector Aligarh And Others

**Counsel for Petitioner :-** Satyendra Kumar Singh, N.K. Shukla, Suresh Chandra Varma

**Counsel for Respondent :-** C. S. C.

**Hon'ble Vivek Kumar Birla, J.**

**1.** Heard learned counsel for the petitioner and Sri Ashok Kumar, learned Standing Counsel appearing for the respondents.

**2.** Present petition has been filed with the following prayer:-

"(i) issue a writ, order or direction in the nature of mandamus commanding the respondents to pay all retiral dues alongwith 18% compound interest and pension as per recommendation of 6th Pay Commission.

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to properly calculate the pension of petitioner which has been different from time to time and thus pay him balance of amount coming to him after this calculation.

(iii) issue a writ, order or direction in the nature of mandamus commanding the respondents not to deduct Rs. 91.232=50 from the retiral dues or pension of petitioner since charges were never proved and petitioner was exonerated from all the charges by the Collector Aligarh.

(iv) issue any other suitable writ, order or directions, as this Hon'ble Court deems fit and proper in the circumstances of the case.

(v) award the cost of writ petition."

**3.** Counter and rejoinder affidavits have been exchanged between the parties and with the consent of learned counsel for the parties present petition is being decided at this stage itself.

**4.** Pursuant to the various orders of this Court three supplementary counter affidavits were also filed. During pendency of the petition the petitioner expired and his wife Smt. Nirmala Devi was substituted.

**5.** Submission of learned counsel for the petitioner is that the petitioner was exonerated from all the charges and the charge against him regarding embezzlement of Rs. 91.232.50/- was not proved and therefore, the deduction made from the retiral dues is

illegal.

**6.** Per contra, learned Standing Counsel submitted that the petitioner was compulsorily retired and the report dated 1.3.1983 annexed as Annexure-1 to the second supplementary counter affidavit clearly indicates that the charges were found to be proved and his services were terminated and on appeal he was reinstated in service.

**7.** I have considered the rival submissions and have perused the record.

**8.** A perusal of the order dated 7.5.1981 passed by the District Magistrate indicates that the petitioner was reinstated in service subject to final decision regarding charges levelled against him. There is nothing on record to reflect that any final decision was taken against the petitioner. On the contrary, as per Annexure-6 to the writ petition, which was supplied under the Right to Information Act, reflects that there is nothing on record that charge of such embezzlement was proved against the petitioner. The date of termination, mentioned in the report dated 1.3.1983 Annexure-1 to the second supplementary, is 18.2.1976. The order annexed as Annexure-1 to the writ petition is dated 7.5.1981, which is subsequent to the aforesaid order and even a glance over Annexure-4 to the writ petition, which is a copy of the letter dated 17.9.2007 written by the Commissioner, and Secretary, Board of Revenue to the District Magistrate, Aligarh indicates that the amount of Rs. 91,232.50/- is to be recovered from the petitioner in case the charges against the employee are fully established and it is only then such deduction is to be made. Relevant extract of the aforesaid letter dated 17.9.2007 is quoted as under:-

“इस सम्बन्ध में अभिलेखों के अवलोकन से यह स्पष्ट है कि श्री नित्यानन्द कुलश्रेष्ठ के विरुद्ध रु० 91,232.50/- (रुपया इक्यानवे हजार दो सौ बत्तीस तथा पैसा पचास मात्र) के गबन का आरोप है। वित्तीय हस्तपुस्तिका

भाग-5 में दी गयी व्यवस्थानुसार बट्टे में उसीधनराशि को डाले जाने का प्राविधान है, जिसमें वित्तीयहानि में संलिप्त किसी एक अधिकारी/कर्मचारी या अधिकारियों/कर्मचारियों की गम्भीर असावधानी का पता न लगे।

प्रश्नगत प्रकरण में सम्बन्धित अपचारी कर्मचारी उपलब्ध है तथा उसकी पेंशन भी अभी निर्गत नहीं की गयी है, ऐसी स्थिति में उल्लिखित धनराशि को बट्टे खाते में डाले जाने पर नियमानुसार विचार किया जाना उचित/सम्भव नहीं है। यदि सम्बन्धित कर्मचारी के विरुद्ध रु0 91,232.50/—(रुपया इक्यानवे हजार दो सौ बत्तीस तथा पैसा पचास मात्र) की धनराशि के गबन का आरोप पूरी तरह से सिद्ध है तो सम्पूर्ण धनराशि की वसूली उनकी ग्रेच्युटी व अन्य देयों से करते हुए, पेंशन निर्गत की जा सकती है। परन्तु यदि प्रश्नगत धनराशि उनके देयकों से अधिक है, तो उक्त धनराशि को उनके पेंशन से वसूल करने के सम्बन्ध में कार्यवाही हेतु प्रस्ताव प्रेषित किया जा सकता है। तब तक श्री नित्यानन्द को अनन्तिम पेंशन दी जा सकती है।”

(emphasis supplied)

**9.** Admittedly, till the year 2007 no such charges were established against the petitioner, who had already been retired as back as on 1.3.1983.

**10.** A perusal of the supplementary counter affidavits also clearly reflect that time and again direction is being sought from the Board of Revenue by the authority concerned in this regard but till date no direction has been issued, which is clear from Annexure-4 to the supplementary counter affidavit and Annexures 3 and 4 of the second supplementary counter affidavit, which are of the year 2017.

**11.** It is unfortunate that the respondent no. 2- Commissioner/Secretary, Board of Revenue, U.P. is sleeping over the matter. Once the authority themselves are admitting that no final decision was taken in the matter and the charges were not proved against the petitioner and it is only on the audit objection the same was being deducted and the letter dated 17.9.2007 (Annexure-4 to the writ petition) is clear on the issue that the same amount is to be recovered only in case the charges are fully

established, there is nothing substantial on record to withhold such amount from the petitioner.

**12.** However, the record reflects this much that service of the petitioner were not satisfactory and he was compulsorily retired from this reason and earlier he was terminated after the charges were found to be proved and was reinstated in appeal with observation that further action will be taken only when the inquiry is completed.

**13.** Since the matter is extremely old and employee is dead, in the interest of justice, I am not inclined to remand the matter for decision afresh on merits.

**14.** In such view of the matter, the respondent no. 2 is directed to pass orders for release of the amount in favour of the petitioner no. 1/1 Smt. Nirmala Devi, who is stated to be widow of the petitioner, after verifying her identity. However, in the facts and circumstances of the case I do not find that the petitioner is entitled for any interest on the aforesaid amount.

**15.** The petitioner is permitted to file fresh representation alongwith certified copy of this order before the respondent no. 2, who shall pass appropriate orders preferably within a period of two months from the date of production of a certified copy of this order before him. The respondent no. 2 shall also pass necessary orders for time bound release of such amount in favour of the petitioner no. 1/1 within a short period, say, one month thereafter.

**16.** With the aforesaid observations, present writ petition stands allowed.

**Order Date :-** 31.1.2018

Lalit Shukla