2025:AHC:206147

AFR
Reserved on 12.11.2025
Delivered on 19.11.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 15283 of 2019

Umesh Kumar

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Petitioner(s)	:	Aishwarya Kumar Singh, Manish, Narendra Kumar Chaturvedi, Rajesh Kumar Singh
Counsel for Respondent(s)	:	Akhilesh Chandra Mishra, C.S.C., Gagan Mehta, S.B. Singh, Shashank Bhushan Pandey Chanchal

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Connected with Writ-A No. 13487 of 2018

Court No. - 32

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. In the present case, petitioner was initially appointed on the post of Deputy Librarian against a substantive post on 05.02.1991. The date of birth of petitioner is 03.01.1958 and as such since undisputedly age of retirement of a Deputy Librarian is 60 years, therefore, by giving benefit of end of Session, he was supposed to retire on 30.06.2018 and was not allowed to work beyond the age of 60 years.

2. Petitioner has claimed on basis of certain Circular and Government orders that since nomenclature of the post of Deputy Librarian was changed to Librarian and he was granted pay scale accordingly and further the post of Deputy Librarian was supposed to be abolished and only one post of Librarian to continue, the consequence would only be that petitioner was not only be entitled for salary to the post of Librarian but all consequential benefits also, such as age of retirement etc. The date of retirement of the post of Librarian is admittedly 62 years.

3. In first petition, i.e., Writ-A No. 13487 of 2018, petitioner has challenged orders dated 09.05.2018 and 10.05.2018 whereby his claim to work upto the age of 62 years was rejected with an observation that petitioner's date of birth is 03.01.1958 and he has completed 60 years on 02.01.2018 though he was granted Session benefit. Petitioner has approached this Court that said orders be quashed and he may be allowed to work upto the age of 62 years. No interim order was granted and during pendency of first writ, petitioner has crossed age of 62 years.

4. During pendency of first writ petition, an order dated 24.06.2019 was passed by Director of Higher Education, whereby an order of granting higher pay scale of Librarian was withdrawn and consequential order for recovery was also passed. Said order was challenged in second writ petition, i.e., Writ-A No. 15283 of 2019 wherein an interim order dated 22.10.2019 was passed whereby recovery was stayed.

5. Sri Rajesh Kumar Singh, learned counsel for petitioner, submitted that once petitioner was given benefit of a Circular dated 26.12.1998 whereby not only pay scale as fixed by University Grants Commission was granted but the name of post was changed from Deputy Librarian to Librarian. Said benefit was granted on 15.02.2001 and 10.07.2001, therefore, the same cannot be withdrawn at the stage of retirement, i.e., after 17 years.

6. The Court asked learned counsel for petitioner to show any document that petitioner was promoted on the post of Librarian, however, he was not able to show any such document, except Government Order dated 26.12.1998, which provides that name of post of Deputy Librarian be changed as Librarian and it's benefit was granted to the petitioner.

7. Per contra, Sri N.K. Chaturvedi and Sri S.B. Pandey Pandey Chanchal, Advocates has supported the impugned orders that petitioner was wrongly granted benefit of Government Order dated 26.12.1998 and was wrongly given benefit of higher pay scale which ought to have been given only when petitioner was earlier in pay scale of Rs. 2000-3200 whereas petitioner was earlier working in the pay scale of Rs. 1400-2300. Therefore, higher pay scale of Rs. 2200-4000 was wrongly granted and accordingly an order of recovery was passed. Petitioner was never promoted on the post of Librarian. Government Order dated 26.12.1998 does not provide that after change of name of post, the benefit of age of retirement would also be granted.

8. I have considered the aforesaid submissions and perused the material available on record.

9. Case of petitioner is based on Government Order dated 26.12.1998. For reference relevant part thereof is mentioned hereinafter:

> "2. अशासकीय महाविद्यालयों में वेतनमान रू0 2000–3200 में कार्यरत एवं पुस्तकालयाध्यक्ष पद के लिए यू०जी०सी० द्वारा विहित की गयी अर्हता रखने वाले उप–पुस्तकालयाध्यक्षों द्वारा विगत् काफी समय से यह माँग की जाती रही है कि पुस्तकालयाध्यक्ष पद की विहित अर्हता रखने एवं पूर्व में वेतनमान समान होने के आधार पर उन्हें भी विश्वविद्यालय अनुदान आयोग द्वारा संस्तुत वेतनमान रू० 2200–4000 दिया जाये। राज्य सरकार ने इस पर सम्यक् विचारोपरान्त वेतनमान रू0 2000–3200 के उप–पुस्तकालयाध्यक्ष को पुस्तकालयाध्यक्ष का पदनाम देने और इस पदनाम के

फलस्वरूप यू०जी०सी० द्वारा संस्तुत रू0 2200–4000 का वेतनमान दिये जाने का निर्णय लिया है। अतएवं प्रश्नगत 29.02.96 के शासनादेश में आंशिक संशोधन के तदन्तर्गत विहित शर्तों व प्रतिबन्धों पर श्री राज्यपाल अशासकीय महाविद्यालयों में रू 0 2000–3200 के वेतनमान में उप–पुस्तकालयाध्यक्ष पद पर वर्तमान में कार्यरत / पूर्णकालिक / नियमित रूप से नियुक्त कर्मचारियों जो उसके (29.02.96 के शासनादेश के) साथ संलग्न परिशिश्ट "क" में निर्दिष्ट यू०जी०सी० द्वारा निर्धारित अर्हता रखते है, को भी रू० 2200–4000 का वेतनमान सहर्ष स्वीकृत करने के आदेश प्रदान करते हैं।

3. मुझे यह भी कहने का निदेश हुआ है कि उपर्युक्तानुसार अशासकीय महाविद्यालयों में उप –पुस्तकालयाध्यक्ष पद पर वर्तमान में कार्यरत कर्मचारियों को पुस्तकालयाध्यक्ष पदनाम, स्वीकृत हो जाने के फलस्वरूप उप–पुस्तकालयाध्यक्ष पद स्वतः समाप्त हो जायेगें और साथ ही पुस्तकालयाध्यक्ष का एक से अधिक पद हो जाने पर कालान्तर में सेवानिवृत्ति अथवा अन्य कारणों से इनके रिक्त होने पर अन्ततः पुस्तकालयाध्यक्ष के पद को छोड़कर शेष पद भी स्वतः समाप्त समझे जायेंगे।"

10. From a careful perusal of above referred part of Government Order dated 26.12.1998, it is evident that it only provides that Deputy Librarian who were working under pay scale of Rs. 2000-3200 will be provided pay scale of Rs. 2200-4000 and name of post will be changed as Librarian. Said Government order does not provide that all other service benefits would be granted to such employees after change of nomenclature. Said Government order is silent on this issue.

11. Determination of age of retirement would only depend on basis of service rules since it attached a financial liability on Government. Conspicuously said observation and determination is absolutely missing in Government Order dated 26.12.1998. There is no subsequent Government order on the issue, whether age of retirement would be

determined from change of nomenclature of post, i.e., Deputy Librarian to Librarian. Therefore, claim of petitioner that he ought to have been retired at the age of 62 years does not follow from Government Order dated 26.12.1998. Accordingly, there is no illegality when petitioner was retired at the age of 60 years by giving Session benefit.

12. Now the other issue is, whether petitioner was wrongly granted pay scale of Rs. 2200-4000 or not.

13. Petitioner was working in the pay scale of Rs. 1400-2300, however, Government Order dated 26.12.1998 strictly provided that it was available only to those Deputy Librarian who were working in the pay scale of Rs. 2000-3200. Petitioner does not fulfill the said condition. Therefore, strict interpretation of said Government order is against the petitioner. A document on record showing that petitioner was in pay scale of Rs. 2000-3200 is being disputed by the respondents.

14. Even after making aforesaid observations, the Court finds that petitioner was granted benefit of higher pay scale in the year 2001 and he has worked on same pay scale for 17 years and also granted other benefits on basis of said pay scale. He was also granted UGC pay scale and benefits of revised pay scale also. Therefore, after he crossed the age of 60 years, any order that determination of pay scale made about 17 years ago, was bad in law and consequential order of recovery, would be against the interest of justice.

15. Though there is no absolute bar that such recovery cannot be made but in the light of **State of Punjab and others Vs. Rafiq Masih (2014) 8 SCC 883** and considering that it is not a case of fraud on the part of petitioner and probably since he has agitated the case that he may be permitted to work upto the age of 62 years, a scrutiny was made of earlier order passed in his favour and order of recovery was passed. The order of recovery has already been stayed by this Court.

16. In view of above, while rejecting the prayer of petitioner to work upto the age of 62 years, both these writ petitions are disposed of that respondents will not make any recovery of payment made pursuant to higher pay scale granted to petitioner as well as consequential financial relief and petitioner's pension shall be determined only on basis of his last pay drawn. Impugned order of recovery and a direction to determine pension as per earlier pay scale paid to petitioner (i.e., before higher pay fixation), is interfered accordingly.

(Saurabh Shyam Shamshery,J.)

November 19, 2025
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Digitally signed by :-
AWADESH KUMAR
High Court of Judicature at Allahabad