

Court No. - 35

Case :- WRIT - A No. - 9047 of 2018 (***Leading Petition***)

Petitioner :- Rajeev Kumar Singh

Respondent :- State Of U.P. And 03 Others

Counsel for Petitioner :- Kripa Shanker Mishra

Counsel for Respondent :- C.S.C.

::Connected with::

Case :- WRIT - A No. - 53991 of 2008 (***Connected C-1 Petition***)

Petitioner :- Trilok Nath Misra And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- S.P. Pandey,S.N. Singh

Counsel for Respondent :- C.S.C.

:With:

Case :- WRIT - A No. - 58160 of 2008 (***Connected C-2 Petition***)

Petitioner :- Vipin Kumar And Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- S.P. Pandey

Counsel for Respondent :- C.S.C.

:With:

Case :- WRIT - A No. - 4358 of 2021 (***Connected C-3 Petition***)

Petitioner :- Devesh Kumar Pandey

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Kripa Shanker Mishra

Counsel for Respondent :- C.S.C.

:And:

Case :- WRIT - A No. - 3645 of 2021 (***Connected C-4 Petition***)

Petitioner :- Mukesh Kumar And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shivendra Nath Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Kripa Shankar Mishra, Sri S.N. Singh holding brief of Sri S.P. Pandey, learned counsel for the petitioners as well as Sri Shailendra Singh, learned Standing Counsel, who appears for the Respondents.

Since common question of laws and facts are involved in all the writ petitions and the counsel for the parties have made a joint statement that they do not propose to file any further response to

the present writ petition, thus this writ petition is being decided at the admission stage.

Essentially, the writ petitioner in the leading writ petition and the writ petitioners, who are 29 in number in connected C-1 petition, writ petitioner in connected C-2 petition, writ petitioners in connected C-3 petition and the writ petitioners in connected C-4 petition had applied in pursuance of the Advertisement published by the U.P. Public Service Commission, Advertisement No.A-2/E-1/1998-99 on 06.09.1998. They claim that they appeared in the interview held on 01.11.1999, 04.12.1999 and the results whereof was declared in the year 1999 itself. However, in the wake of a wrong decision taken by the respondents was subject matter of litigation before this Court, they were offered appointment on different dates post-enforcement of the New Pension Scheme w.e.f. 01.04.2005 by virtue of the Notification dated 28.03.2005.

According to the writ petitioners, they are entitled to be treated under the Old Pension Scheme and not New Pension Scheme.

Principally the relief sought in the writ petition is for a mandamus commanding the respondents to treat the petitioners to be covered under Old Pension Scheme existing prior to the Notification dated 28.03.2005 and 07.04.2005 and to take consequential actions in that regard. The learned counsel for the writ petitioners in the different writ petitions have invited the attention of the Court towards a decision of this Court in Writ-A No.5208 of 2017, Arun Kumar Shahi and 4 others Vs. State of U.P. and others so as to contend that the controversy engaging attention in the present case stands covered by the decision in the said case. For the sake of convenience, the order dated 04.07.2023 passed in Writ-A No.5208 of 2017, is being quoted hereinunder:-
“Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the writ petitioners, who are five in numbers as well as Sri Daya Prasad Singh, learned Standing Counsel, who appears for the respondent nos.1 to 3.

Since pleadings have been exchanged between the parties, thus on the consent of the counsels of the parties, the writ petition is being disposed of at admission stage itself.

The facts of the case as worded in the writ petition are that the U.P. Public Service Commission, U.P. got published an advertisement no. A-2/E-1/1998-99 on 06.09.1998, notifying certain vacancies for filling up certain posts through Combined Lower Sub-ordinate Service Examination.

As per the advertisement itself, the posts which were put to for recruitment were included the post of Inspectors - Weights & Measures within the aegis of

Controller-Legal Metrology (Weights & Measures).

The petitioners, who are five in number claimed to have appeared in the examination, while applying in pursuance of the aforesaid advertisement and after qualifying the mains written examination, they were interviewed on different dates between 01.11.1999 and 04.12.1999. The results of the interview was declared on 19.12.1999 in which the name of the writ petitioners did not find mention.

It has been further pleaded that the original list dated 19.12.1999 stood revised by virtue of a corrigendum dated 24.06.2000, published in widely circulated newspaper "Rashtriya Sahara" on 25.06.2000. As per the procedure so envisaged therein, the Public Service Commission proceeded to forward the select list to the State Government for issuance of the consequential appointment orders in this regard.

It is the case of the writ petitioners that out of total selected candidates, 173 candidates did not submit their joining. The petitioners further assert that they were entitled to be considered for granting appointment against the unfilled vacancies. Since the writ petitioners were not being accorded appointment, so the writ petitioners along with the other incumbents preferred Writ Petition No. 4864 of 2001 (Triloki Nath Mishra & Others vs State of U.P. & Another) connected with Civil Misc. Writ Petition No.36512 of 2001 (Sumitranandan Dwivedi & Others vs. State of U.P. & Others), which eventually after exchange of the pleadings came to be allowed on 17.07.2002. The operative portion whereof is being quoted herein-under :-

"For the reasons aforesaid, the writ petitions are allowed and the decision taken by the State Government in the Office Memorandum dated 15th November, 1999 to give up the preparation of waiting list and reshuffling by U.P. Public Service Commission in respect of selections to the posts in the State Government to be made by the U.P. Public Service Commission is quashed; with a directions to the U.P. Public Service commission and the State Government to prepare a waiting list in accordance with the office memorandum dated 31.04.1994. A further direction is issued to the respondent to calculate the number of vacancies which could not be filled up out of the original requisitioned vacancies and remained vacant within one year i.e. upto 24.06.2001 and to forward the names of the candidates next to the last recommended candidate for appointment in combined Lower Subordinate Service Examination 1998. The waiting list shall be prepared within a period of two months and the appointment orders shall be issued within next one month."

As per the order dated 17.07.2002, passed in the aforesaid writ petitions, the decision taken by the State Government in its Office Memorandum dated 15.11.1999 to give up with the preparation of waiting list and reshuffling by the U.P. Public Service Commission in respect of the selections to the posts in question was quashed with a direction to the Commission and the State Government to prepare a waiting list in accordance with the office memorandum dated 31.04.1994 and the said waiting list was to be prepared and acted upon within a period of two months from the date of the production and appointment orders was to be issued within one month thereafter.

In paragraph no.16 of the writ petition, it has been further averred that the orders of the Writ Court was not being complied with, so contempt petition was preferred being Contempt Petition No.3340 of 2002, in which notices were issued on 17.07.2002. Therefrom on 09.12.2004, the U.P. Public Service Commission proceeded to make recommendations to the State Government with regard to filling up of the unfilled vacancies. Eventually, by virtue of the orders dated 12.05.2005, 09.04,2005, 19.05.2005 and 13.05.2005, the writ petitioners have been issued appointments orders as Inspector - Weights & Measures. The relevant averments in this regard have been made in paragraph no.15 of the writ petition and the appointment orders have been annexed as Annexure No.7 to the writ petition. It is further the case of the writ petitioners that consequent to the issuance of the appointment orders, they assumed the charge on the said post.

According to the writ petitioners, the State Government in its wisdom, in the year 2005 came up with a New Pension Scheme (in short N.P.S.), whereby the old pension scheme was given a go by, according to which the writ petitioners, who have been appointed post enforcement of the new pension scheme are covered by the new pension scheme and not by the old pension scheme in that regard.

The writ petitioners further assert that they have presented the matter before the respondents for the grant of the benefits referable to the old pension scheme as according to the writ petitioners, the selections were made pursuant to the advertisement issued in the year, 1998 being advertisement no. A-2/E-1/1998-99, dated 06.09.1998 and thus merely because they have been accorded appointment orders subsequently would not be a ground to deny them the benefits of the old pension scheme.

The submission of the learned Senior Counsel appearing for the writ petitioners is that it is the lethargic and the callous attitude of the respondent themselves, which had created such a situation as by virtue of wrong implementation of the scheme, the waiting list was not prepared despite the fact that there were numerous vacancies lying vacant against which the writ petitioners ought to have been accorded appointment and in case the State Government acted as per the policy as prevailing therein, which was in accordance with law, the writ petitioners ought to have been granted appointment much prior to the enforcement of the new pension scheme.

Sri Khare, in order to further buttress his submission has relied upon the judgment of the learned Single Judge in Writ A No. 28543 of 2013 (Bageshwari Prasad Srivastava and 8 others vs. State of U.P. and 3 others), on 11.10.2022, affirmed in Special Appeal No. 176 of 2023 (State of U.P. and 4 others vs. Late Bageshwari Prasad Srivastava and 8 others), decided on 29.03.2023 as well as another judgment of the learned Single Judge in Writ A No. 67536 of 2014, (Usman Kausar and 11 Others vs. State of U.P. and 3 Others) along with the connected writ petitions decided on 12.05.2023, so as to contend that in the similar fashion, such type of objection was raised while denuding the writ petitioners in the said writ petition for the grant of pensionary benefits, as in the said case also, the appointment orders were post enforcement of the new pension scheme but this Court held that the petitioners in the said writ petition were entitled to pension as per old pension scheme.

Prayer in the present petition is for a direction to the respondents to treat the petitioners as under the category covered by old pension scheme existing prior to the notification dated 28.03.2005 and 07.04.2005 and to make regular deduction from monthly salary of the writ petitioners towards general provident fund and to restrain the respondents for making deduction under contributory pension scheme notified on 28.03.2005.

Learned Standing Counsel on the other hand has countered the submissions of the learned counsel for the writ petitioners, while arguing that the crucial date, which is relevant for the purposes of determining the fact as to whether the writ petitioners are to be dealt with under new pension scheme or the old pension scheme is the date of the appointment as according to learned Standing Counsel, the issuance of the advertisement and the selection is totally irrelevant as the selection stands crystallized only at that moment when one appointment order is issued.

Learned Standing Counsel has invited the attention of the Court towards the counter affidavit filed on behalf of the second respondent, Assistant Account Officer in the office of the Additional Director, Treasury and Pension, Allahabad Division, Allahabad dated 02.08.2017, so as to contend that the writ petitioners have not challenged the provisions of the new pension scheme, thus it would not be proper for this Court to tilt any relief in favour of the writ petitioners.

It has been further contended by the learned Standing Counsel on the strength of the averments made in the counter affidavit filed on behalf of the third respondent, Assistant Controller, Legal Metrology, Allahabad Division, Allahabad, dated 21.04.2017, while relying upon paragraph nos. 14, 17 and 19, so as to contend that for the purposes of entitlement under the old pension scheme, an employee has to fit within the brackets as specified therein and merely on asking, the same cannot be granted particularly on the face of the record, wherein the appointment of the writ petitioner is post enforcement of the new pension scheme.

Primarily the submission of the learned Standing Counsel is that the writ petitioners are not entitled to be treated under old pension scheme, as they are to be treated under new pension scheme. The reliance placed upon the judgments as referred herein above according to learned Standing Counsel, the said judgments are distinguishable and they would not come in rescue of the writ petitioners.

I have heard the arguments of the learned counsel for the parties and have perused the record carefully.

Undisputedly, an advertisement was issued on 06.09.1998 Advertisement No. A-2/E-1/1998-99 notifying vacancies for Combined Lower Sub-ordinate Services Examination 1998 for various post including the post of Inspector - Weights & Measures under the control of the Controller - Legal Metrology (Weights & Measures). It is not in dispute that the writ petitioners applied in pursuance of the said advertisement and after being successfully clearing the written examination, they were put to interview on 01.11.1999 and 04.12.1999 and thereafter on 19.12.1999, the result was declared in which the writ petitioners were not shown to be selected. However, subsequently on

24.06.2000, the list was reshuffled ,which was published in widely circulated newspaper "Rashtriya Sahara" on 25.06.2000. It is also not in dispute that about 173 vacancies were left vacant which according to the writ petitioners was liable to be filled up.

Learned counsel for the parties are also in agreement and they have not disputed the fact that since the State Government did not resort to preparation of the waiting list, so the writ petitioners along with the other counterparts preferred Civil Misc. Writ petition No. 4864 of 2021 (Triloki Nath Mishra & Others vs State of U.P. & Another), which came to be allowed on 17.07.2002, while castigating the stand taken by the respondents with a direction to prepare a waiting list within a period of two months and the appointment order be issued within one month thereafter.

Learned Standing Counsel on being specifically asked as to whether the said order has been subject matter of challenge by the State Government or any third party or not, the learned Standing Counsel has made a categorical statement that the said order attained finality. The operative portion of the order which has been extracted herein above clinches the entire issue particularly in view of the fact that this Court by virtue of the said order in question has restricted and put a time limit for preparation of the waiting list and to make appointments. It is also not being disputed that contempt proceedings were also drawn, pursuant thereto the appointment orders were issued in the Year, 2005 itself, which itself shows that it is the lethargy and the apathy of the State Government in not resorting to comply with the orders, which on the face of the fact appears that the said order was not put to challenge.

Once the said admitted position being in normal parlance, the writ petitioners ought to have been granted appointment in the year 2002 itself, but it is the State which was instrumental in creating such a situation deferring and postponing the appointment of the writ petitioner while throwing them beyond the date, 01.04.2005 denuding the writ petitioners for grant of pensionary benefits.

Normally, this Court would not interfere with the policy decision but in view of the peculiar facts and the circumstances as emanating and not being disputed by the learned Standing Counsel, it is explicitly clear that there was no fault of the writ petitioners as rather they were never in deep slumber and they had been agitating their rights initially by filing writ petition and thereafter by filing contempt petition. Thus no fault whatsoever can be attributed in this regard.

Thus, now it is not open for the respondents to take the benefit of the implementation of the new pension scheme, while denuding the writ petitioner of the benefits which even otherwise in normal circumstances stood attracted to the writ petitioners.

Insofar as the judgment in the case of Bageshwari Prasad Srivastava (Supra) (Single Judge) is concerned, the same has been affirmed by a Division Bench in Special Appeal itself, which also more or less propounds the said principle, while holding that the writ petitioners (officers/employees) are entitled to be granted the benefits of the old pension scheme, once it is found that they were

denied their appointment post selection on the lethargy and apathy of the respondents and they were at fault. In the present case also, there is nothing on record to suggest that the petitioners were in fault, as rather to the contrary due to wrong implementation of the scheme and lethargy and apathy on the part of the respondents, the writ petitioners were not conferred with the benefits of appointment on a date when they were legally entitled to it. Respectfully, following the said judgments, I did not find any reasons to defer from the analogy and the ratio laid therein.

Apart from the same, there is a revealing feature in the present case also, as the judgment in the proceedings launched by the writ petitioners in Civil Misc. Writ Petition No. 4864 of 2021 (Triloki Nath Mishra and others vs. State of U.P. and others), along with the connected writ petition in the operative portion a time frame had been provided by the Court itself requiring the respondents herein to conclude the selection and to issue appointment order. Once the said order has attained finality and it is not being challenged, then the respondents have to adhere to it and in view of the said additional fact, the writ petitioners in absence of any fault of their, they are entitled to be conferred with the benefits as claimed in the writ petition.

For the aforesaid reasons, this Court is of the firm opinion that the action of the respondents in depriving the writ petitioner from the benefits of the old pension scheme is thoroughly unjustified and cannot be said to be within the four corners of law but rather the same is illegal and arbitrary.

For the reasons above, the writ petition is allowed.

A mandamus is directed to the Respondent no.3, Controller - Legal Metrology (Weights & Measures) U.P., Lucknow to consider the case of the writ petitioners for the grant of pension under the old pension scheme strictly in accordance and in the light of observations made herein-above within a period of three months from the date of the production of the certified copy of the order.

In case, any document or information is required from the writ petitioners, then they should be informed in writing, so as to enable them to complete the necessary formalities in this regard. Consequent to the completion of the formalities, the same be paid on month to month basis alongwith the arrears thereon."

Sri Shailendra Singh, learned Standing Counsel who appears for the official respondents on instructions submits that though the writ petitioners in the captioned writ petitions seek to rely upon the judgment in the case of Arun Kumar Shahi (supra), according to him, the writ petitioners may represent their cause before the Principal Secretary, Department of Finance, Government of U.P., Lucknow/ Addl. Chief Secretary (Finance), Government of U.P., Lucknow, who shall address to the claim of the writ petition.

To such a submission, learned counsels for the writ petitioners in

the captioned writ petitions, has no objection and they gracefully accept the same.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off granting liberty to the writ petitioner to approach the Principal Secretary, Department of Finance, Government of U.P., Lucknow/ Addl. Chief Secretary (Finance), Government of U.P., Lucknow, while filing a comprehensive representation accompanied with self-attested copy of the writ petition and certified copy of the order raising all legal and factual issues and on the receipt of the same, shall decide the claim of the writ petitioners strictly in accordance with law within a period of three months from the date of production of certified copy of the order bearing in mind the entitlement of the writ petitioners for being treated under the Old Pension Scheme and also the applicability of the judgment in the case of ***Arun Kumar Shahi (supra)***.

Needless to point out that passing of this order may not be construed to an expression that this Court has adjudicated the matter on merits, however, leaving it open to the Principal Secretary, Department of Finance, Government of U.P., Lucknow/ Addl. Chief Secretary (Finance), Government of U.P., Lucknow to decide the claim of the writ petitioners.

In the connected C-3 petition (Writ-A No.3645 of 2021), the Addl. Chief Secretary, (Finance), Government of U.P., Lucknow has not been impleaded as a party, thus, the writ petitioners, who are two in number, Mukesh Kumar son of Vishambhar Dayal and Sri Vijay Kumar Shukla son of Sri Rasik Bihari, shall approach the Director, Local Bodies, 8th Floor, Indira Bhawan, Lucknow, who shall forward the same to the competent authority for disposal of the claim of the writ petitioners. In case, respondents are of the opinion that the matter needs to be decided by any other authority, then papers be transmitted to it.

With the aforesaid observations, the writ petitions stand **disposed of**.

Order Date :- 12.10.2023

N.S.Rathour