

Court No. - 34

Case :- WRIT - A No. - 12890 of 2022

Petitioner :- Ram Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rajesh Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties and perused the record.
2. Petitioner was initially appointed on 01.03.1986 on a daily wage basis in the office of respondent. Later on, he was appointed as Work Charge employee in the same department on 27.03.2006. He came to be regularized on the post of Beldar on 30.04.2011. He worked as such until he got superannuated on 30.11.2012. Petitioner though has been paid the gratuity and other service benefits like G.P.F., group insurance etc. but no post retirement pension has been made admissible to him, possibly on the ground that he came to be regularized only in the year 2011.
3. Learned counsel for the petitioner claims that even though following U.P. Regularization of Daily Wages Appointments on Group D Posts, Rules 2001 petitioner having been there in engagement of respondent prior to cut of date 29th June, 1991 under the State rules he deserved immediate absorption in the regular cadre.
4. Learned counsel for the petitioner further submits that in the case of **Prem Singh v. State of U.P.: (2019) 10 SCC 516** Supreme Court has directed for consideration of daily wagers/ ad-hoc workers/ work charge temporary period rendered prior to regularization to be counted towards qualifying service for pension. He has relied upon paragraphs 31 to 36 of the said judgment which runs as under:

"31. In view of the note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work charged, contingencies or non pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.

32. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularization had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular

appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in Note to Rule 3(8) of 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularization. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

33. As it would be unjust, illegal and impermissible to make aforesaid classification to make the Rule 3(8) valid and non discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularization in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

34. In view of the note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.

35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in *Secretary, State of Karnataka and others v. Uma Devi* 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the

admissible benefits be paid accordingly within three months. Awadhesh Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

5. Learned counsel for the petitioner has relied upon another judgment of Supreme Court in the case of **State of Gujarat and others v. Talsibhai Dhanjibhai Patel** passed in Special Leave to Appeal (C) No.- 1109 of 2022 decided on 18th February, 2022 in which the Court has observed thus:

"It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/ pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continuous service shall be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service.

Hence, the Special Leave Petition stands dismissed.

Pending application(s), if any, shall stand disposed of."

6. Learned counsel for the petitioner has further relied upon judgment of Supreme Court in the case of **Uday Pratap Thakur and another v. State of Bihar: AIR 2023 SC 2971** in which vide paragraph 6 the Court has held thus:

"6. It is required to be noted that the respective appellants were working as work charged under the work charged establishment in the State. Their services have been regularized under the Rules, 2013 and the follow up notification of the Finance Department vide Circular No. 10710 dated 17.10.2013. Rule 5(v) of the Circular reads as under:-

"5(v). Old pension rules shall be applied on these employees. The benefit pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Even then if the minimum requirement of 10 years of service for pension is not met under the old rules, then minimum service shall be added to give advantage thereof." Civil Appeal No. 3155 of 2023 6.1 Rule 5(v) of the Rules, 2013 as such can be said to be beneficial to such work charged employees, whose services have been regularized subsequently. As per Rule 5(v), even if the minimum requirement of 10 years of service (qualifying service) for pension is not met, in that case also, the service rendered as a work charged to be added for qualifying service for pension. Therefore, the efforts have been made by the State Government to see that after rendering services for number of years as work charged, and thereafter, their services have been regularized, they may not be denied the pension on the ground that they have not completed the qualifying service for pension. It also further provides that the benefits like pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Therefore, Rule 5(v) as observed hereinabove, is beneficial also in

favour of such work charged employees, whose services have been regularized subsequently, and they may not be deprived of the pension on the ground that they have not completed the qualifying service for pension. The denying of pension after rendering service as work charged for number of years on the ground that they have not completed the qualifying service can be said to be Civil Appeal No. 3155 of 2023 unfair and illegal and can be said to be exploitation.

Therefore, to make such work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services have been regularized under the Rules, 2013, is short of qualifying service, to the extent of such shortage of qualifying service, the services rendered as work charged to be counted for the purpose of qualifying service for pension. Under the circumstances, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee, who has been regularized to qualify him for pension.

6.2. Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension / quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment.

Civil Appeal No. 3155 of 2023. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension / quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

6.3. Now, insofar as the reliance placed upon the decision of this Court in the case of Prem Singh (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work Civil Appeal No. 3155 of 2023 charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered / counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered / counted for the quantum of pension / pension. The decision of this Court in the case of Prem Singh (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension."

(emphasis added)

7. Learned counsel for the petitioner has further submitted that even after coming into force of Uttar Pradesh Qualifying Service For Pension Validation Act, 2021 and have come to be amended retrospectively the Court in the case of Awadhesh Kumar Srivastava v. State of U.P. and others (Writ - A No.- 746 of 2023) delivered on 3rd July, 2023 has clearly observed that even legislature cannot take away the benefit conferred by the judicial pronouncement of Constitutional law Courts have meeting the ratio thereof. Vide paragraph 46 it has been observed thus:

"46. In such view of the fact, this Court finds that U.P. Act No.1 of 2021 does not qualify the three tests laid down by the Apex Court in the judgements referred above to negate the benefit of the judgement of the Apex Court in Prem Singh's case (supra)."

8. Learned Standing Counsel submits that matter requires consideration in the first instance by the competent authority.

9. In view of the above, this petition stands disposed of with a direction that in the event petitioner approaches the authority by making application/ representation along with certified copy of this order within a period of 30 days from today, the competent authority shall look into and consider the claim of the petitioner strictly in accordance with law and also considering the law laid down by the Court in the judgments referred to hereinabove and shall dispose of the same as expeditiously as possible preferably within a further period of two months.

10. Needless to add that the order to be passed by the authority, shall be reasoned and speaking one.

Order Date :- 23.11.2023

Shiraz