

Court No. - 35

Case :- WRIT - A No. - 15177 of 2023

Petitioner :- Pratibha Srivastava

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Gautam Baghel

Counsel for Respondent :- C.S.C., Avneesh Tripathi

Hon'ble Vikas Budhwar, J.

1. Heard Sri Gautam Baghel, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 3 and Sri Abhishek Kumar Mishra holding brief of Sri Avneesh Tripathi, learned counsel who appears for respondents No. 4 and 5.

2. The case of the writ petitioner is that fourth respondent, Harcourt Butler Technical University, Kanpur is a University which is financed by the State Government and it has been established under the provisions of Uttar Pradesh Harcourt Butler University Act, 2016 (U.P. Act No. 11 of 2016). According to the writ petitioner, the respondent-University got published an advertisement No. 4 of 1981 inviting applications for various posts including the post of Steno-Typist, the writ petitioner claims to have applied in pursuance of the said advertisement a copy whereof has been annexed as Annexure 1 at page 36 whereby it was clearly recited that the post was permanent. Learned counsel for the writ petitioner further contends that in pursuance of the said advertisement the writ petitioner applied and he was called for written examination/viva voce by issuing a communication dated 18.03.1982 and thereafter, the writ petitioner was selected and his appointment was approved on 02/03.6.1982 by the respondent-University the writ petitioner claims to have joined the post in question. It is further the case of the writ petitioner that on 18.07.1992 the writ petitioner was declared to be confirmed with effect from 01.01.1986. As per the writ petitioner, the writ petitioner was made entitled to regular increments and ACP by virtue of an order dated 14.12.2012 and his pay scale/salary came to be revised on 03.02.2020 and ultimately the writ petitioner superannuated after attaining the 60 years on 31.03.2020. It is further the case of the writ petitioner that GPF amount was also released by virtue of an order dated 30.05.2020 and she was also made entitled to certain amount, however, deductions were also

made entitled in that regard.

3. Pleadings further reveal that the third respondent, Directorate of Pension, 8th Floor, Indira Bhawan, Lucknow raised objections with respect to the grant of benefits to the writ petitioner by virtue of a communication dated 11.09.2020 which the writ petitioner claims to have been responded by the University on 05.11.2020, however, the objections did not end here they came to be raised and duly replied by the authorities in that regard. Since the writ petitioner was not paid the pensionary benefits so the writ petitioner preferred Writ A No. 12016 of 2021 (Pratibha Srivastava Vs. State of U.P. & Others) which came to be decided on 07.10.2021 requiring the second respondent, Special Secretary, Finance (General), Anubhag-3, Government of U.P. in the said writ petition to consider the claim of the writ petitioner. However, the claim of the writ petitioner stood negated on 27.05.2022 which again was subject matter of challenge in Writ A No. 12544 of 2022 (Pratibha Srivastava Vs. State of U.P.) in which this Court proceeded to pass the following orders.-

"Heard Sri Gautam Baghel, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Shikhar Tandon, holding brief of Sri Avneesh Tripathi, learned counsel for the University.

Challenge has been raised to the order dated 27.5.2022 passed by Special Secretary, Government of Uttar Pradesh, whereby the petitioner's claim for pension has been rejected.

Upon perusal of elaborate impugned order, it transpires that reasoning to reject the claim is wording of the order dated 18.7.1992. It has been relied to conclude, the petitioner was not regularized.

Having heard learned counsel for the parties and having perused the record, it transpires, the petitioner was originally engaged on ad hoc basis on the post of Steno-typist in the year 1982 against the appointment order dated 3.6.1982. With respect to claim of the pension petitioner relied on further order dated 18.7.1992 issued by Director, Harcourt Butler Technical Institute (now university). Therein, it was clearly provided that the petitioner had been made permanent w.e.f. 01.01.1986.

By means of impugned order, it has been reasoned, making permanent did not amount to regularization of the petitioner's services. However, it is true, no response was invited from the University and its records were not examined, before adopting that hair splitting reasoning.

Prima facie, reasoning given is too technical to merit acceptance on the face of it. Whether an employee is described as regularized or made permanent may not make any practical difference. In true sense, making permanent may be a reflection of regularization.

However, when the employer itself declares an employee to be permanent his regularization in service may be implied. It is so because, unless regularized, no employee may claim permanent status.

In view of the above, impugned order cannot be sustained and is set aside. Matter is remitted to respondent no.2 to pass fresh order in light of observation made above.

It is left open to the respondent no.2 to call upon the University to furnish its reply and produce documents giving rise to the communication dated 18th July, 1992 issued by its Director declaring the petitioner's services to be regular.

The entire exercise shall be completed as expeditiously as possible preferably within a period of three months from the date of communication of this order.

With the above observation, the writ petition is disposed of."

4. Post remand, now an order has been passed on 24.12.2022 whereby the claim of the writ petitioner for being extended the pensionary benefits have been turned down by the second respondent, Special Secretary, Finance (General), Anubhag-3, Government of U.P., Lucknow.

5. Questioning the order dated 24.12.2022 passed by the second respondent, the writ petitioner has filed the present writ petition.

6. Sri Baghel, learned counsel for the writ petitioner while assailing the order dated 24.12.2022 passed by the second respondent has sought to submit that the said order is patently illegal contrary to law and it cannot be sustained for a single moment particularly in view of the fact that it proceeds on a wrong direction. According to him, the said order wrongly recites the fact that the writ petitioner was appointed against a temporary vacancy and that too on temporary or ad hoc basis, according to him from the perusal of the advertisement No. 4 of 1981 it would reveal that the said post, Steno-Typist was a substantive and a permanent post though appointment was sought to be made on temporary or ad hoc basis, he, thus, submits that what is to be seen is the post against which the writ petitioner has been appointed and further according to the writ petitioner approval so accorded on 02/03.06.1982 by the third respondent and thereafter the writ petitioner's services came to be confirmed by virtue of an order dated 18.07.2022. He submits that the writ petitioner was made entitled to revision of the salary and also grant of ACP treating him to be on a regular basis and further he continued to function till his retirement. He, thus, submits that when the writ petitioner staked his claim for pension now all sorts of frivolous actions are being

sought to be raised.

7. Sri Baghel, learned counsel for the writ petitioner has relied upon a Division Bench Judgment of this Court in the case of ***State of U.P. & 2 Others Vs. Surendra Singh & Others in Special Appeal (D) No. 172 of 2023*** decided on 20.04.2023 so as to contend that even in fact while interpreting the Rule 19 of the Uttar Pradesh Retiral Benefits Rules, 1964 even Ad hoc/temporary services was sought to be counted for the payment of pension. According to him, mere change of nomenclature being "confirmation in place of regularization" would not make a material change particularly when the writ petitioner has continued to work in the post in question and was made entitled to benefits. He in this regard seeks to rely upon the judgment of the Hon'ble Apex Court in the case of ***Ram Naresh Rawat Vs. Ashwani Re reported in 2016 (12) JT 225.***

8. Countering the said submission, learned Standing Counsel who appears for the official State-respondents submits that might be the post against which the writ petitioner was appointed through selection was a permanent post but his nature of appointment was temporary and what was relevant was the regularization of the services of the writ petitioner and confirmation does not play a role as the same was illegal. He further submits that the writ petitioner is not entitled to any relief.

9. Sri Abhishek Kumar Mishra holding brief of Sri Tripathi, learned counsel adopts the submission of the learned counsel for the writ petitioner.

10. I have heard the learned counsel for the parties and perused the record.

11. Undisputedly, an advertisement came to be published bearing No. 4 of 1981 for making recruitment on various post including Steno-Typist which was shown to be regular. The writ petitioner claims to have applied and he was called to participate in the selection proceedings by virtue of a communication dated 18.03.1982 his appointment came to be regularized on 02/03.06.1982 and thereafter, his services stood confirmed by the order of the respondents themselves being the third respondent, Director of Education in question.

12. Records further reveal that the writ petitioner was made entitled to ACP and revision of the salary and he continued to be in the post in question till his retirement. Though, according to the

learned Standing Counsel the services of the writ petitioner ought to have been regularized and mere confirmation that too without authority will not play a role but in this regard it is to be bear in mind that the nature of the appointment might be on temporary basis but the post in question was permanent and the writ petitioner was finally made confirmed. Prima facie, it is too late of the day that too in the year 2023 to raise an objection questioning the nature of the appointment of the writ petitioner which was accorded and approved in the year 1982 and confirmation was made in the year 1993 particularly when the writ petitioner stands retired.

13. Since the said core and fundamental issues have not been gone into, thus, this Court is of the opinion that the order passed by the second respondent, Special Secretary, Finance (General) Anubhag-3, Government of U.P., Lucknow needs to be set aside, the matter stands remitted back to the second respondent to pass a fresh order strictly in accordance with law and the observations made hereinabove within a period of six weeks as it is the case of the writ petitioner that she stood superannuated on 31.03.2020.

Order Date :- 17.10.2023

Rajesh