

Court No. - 46

Case :- SPECIAL APPEAL DEFECTIVE No. - 773 of 2023

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

Respondent :- Gajendra Singh Chauhan And Another

Counsel for Appellant :- C.S.C.,C.S.C.

Counsel for Respondent :- Arvind Srivastava III

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

Order on Delay Condonation Application:

The delay in filing of the special appeal has been explained to the satisfaction of the Court and is otherwise not seriously opposed.

The delay condonation application is consequently **allowed**.

Delay is condoned.

Order on Appeal:

1. This special appeal is directed against judgement and order dated 26.05.2023 passed in Civil Misc. Writ-A No.815 of 2023 (Gajendra Singh Chauhan Versus State of U.P. and three others), whereby the writ petition has been allowed by learned Single Judge with a direction to release family pension to him within a period of three months, along with interest at the rate of 9 per cent per annum with effect from 25.04.2002 till the date of actual payment. A further direction has been issued to the appellant-State to permit respondent to deposit contribution of management, if not already deposited, within a period of three months, and after depositing the contribution of management the petitioner would be entitled for the said benefits in terms of directions, noticed above.

2. Learned State counsel submits that the claim of respondent had not been adjudicated on merits in view of the observation that such claim itself was not admissible in view of Government Order dated 28.01.2004. It is alleged that even if the Government Order was found inapplicable in the facts of the case, yet the only direction that could have been issued was to consider the claim of the respondent-petitioner

on merits, afresh, and the learned Single Judge erred in granting relief beyond it.

3. Learned counsel for the respondent/petitioner, per contra, submits that only objection to the claim for family pension by State was the G.O. dated 28.01.2004, and since the cut off of date fixed therein has already been declared arbitrary in a series of judgements of this Court, as such the direction to release family pension merits no interference.

4. We have heard learned counsel for the appellant-State and Sri Arvind Srivastava for respondent-petitioner and perused the materials on record.

5. It transpires that respondent, Gajendra Singh Chauhan filed Writ Petition No.815 of 2023 challenging the order dated 11.07.2022 passed by Deputy Director of Education (Secondary), Kanpur Region, Kanpur. A further prayer was made in the writ petition to command State-respondent to grant family pension forthwith to the petitioner, along with arrears, together with interest admissible under the law.

6. The order passed by the Deputy Director of Education (Secondary) would go to show that respondent, Gajendra Singh Chauhan had earlier filed Writ-A No.6276 of 2022, wherein a direction was issued to the concerned authority i.e. Deputy Director of Education, Kanpur Region, Kanpur to pass appropriate orders on the representation of the petitioner within six weeks. The representation contained a claim for payment of family pension. It is pursuant to such direction of Writ Court that facts have been examined by the Deputy Director of Education. The Deputy Director of Education has noticed that wife of the respondent-petitioner was a teacher in a primary institution attached to Adarsh Higher Secondary School, Vidhuna, District Auraiya and provisions of Payment of Salaries Act, 1971 were applicable upon her. The officer further noticed the fact that wife of respondent-petitioner was a regular employee and had to be treated at par with teachers employed in secondary institution and no separate order of regularization was required to be passed in her respect. However, the claim for payment of pension was not considered by the Deputy Director of Education relying upon the Government Order dated 28.01.2004, which extended the benefit of

family pension only from the date of sanction of pension or upon issuance of Government Order dated 28.01.2004. It is precisely for this reason that the claim of the respondent of family pension was rejected. The Deputy Director also noticed that previous Government Order dated 6.11.1978 was not applicable. The Government Order dated 28.01.2004 reads as under:

“मा० विद्यालयों के सम्बद्ध प्राइमरी-शिक्षकों को पेंशन

संख्या - 148/79-6-04-28(18)/2000

प्रेषक,

श्री हरिराज किशोर

सचिव

उत्तर प्रदेश शासन।

सेवा में,

शिक्षा निदेशक (माध्यमिक)

उत्तर प्रदेश, लखनऊ।

शिक्षा अनुभाग-6

लखनऊ: दिनांक: 28 जनवरी, 2004

विषय:- अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों से सम्बद्ध प्राइमरी प्रभाग के शिक्षक/शिक्षिकाओं को पेंशन की सुविधा अनुमन्य कराए जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषय के सन्दर्भ में मुझे आपसे यह कहने का निदेश हुआ है कि अशासकीय सहायता प्राप्त उ०मा० विद्यालयों से सम्बद्ध प्राइमरी प्रभाग (बालक/बालिका) के शिक्षक/शिक्षिकाओं को, सहायता प्राप्त माध्यमिक विद्यालयों के शिक्षकों की भांति सेवा निवृत्तिक लाभ तथा पेंशन, पारिवारिक, पेंशन, ग्रेच्युटी व जी०पी०एफ० की सुविधा का लाभ दिये जाने की श्री राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं।

2. यह सेवा निवृत्तिक लाभ आदेश निर्गमन की तिथि से अथवा उसके उपरान्त सेवा निवृत्त होने वाले शिक्षकों को ही अनुमन्य होगी तथा पेंशन हेतु अर्हकारी सेवा वही मानी जायेगी जिस अवधि के लिए सम्बन्धित शिक्षक का सी०पी०एफ०/जी०पी०एफ० अंशदान कटा हो।

3. उक्त मद पर होने वाला व्यय अनुदान संख्या-71 के संगत लेखा शीर्षक में प्राविधानित बजट से वहन किया जायेगा।

4. यह आदेश वित्त विभाग के अशासकीय संख्या-ई-11/178/दस-04 दिनांक 28 जनवरी, 2004 में प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय,

ह०/- हरिराज किशोर

सचिव।”

So far as payment of family pension to the employees of primary section attached to secondary institution is concerned, the Government Order dated 6.11.1978 is referred, as per which, pensionary benefits were admissible to the attached primary school teachers at par with pensionary benefits admissible to the Secondary Institutions covered by the Payment of Salaries Act, 1971. Pensionary benefits were, therefore, extended to the teachers of primary section attached to secondary institutions also. The Government Order of 28.01.2004 had neither modified nor rescinded the previous Government Order of 06.11.1978. Nevertheless, the Government Order dated 28.01.2004 restricted the benefit of pension either from the date of issuance of payment pension order or to the teachers who retired after 28.01.2004. Wife of the respondent-petitioner had died on 25.04.2002. Apparently no reasons have been specified in the Government Order dated 28.01.2004 for restricting the benefits, already granted earlier to the teachers of primary section in terms of such Government Order. No justification has been furnished for curtailing the benefits already granted earlier only to the teachers who were to retire after 28.01.2004. The fixing of cut off date in the Government Order dated 28.01.2004 came to be challenged before this Court in **Writ-A No.17819 of 2007 (Mangli Prasad Verma Versus State of U.P. and others)**. Learned Single Judge of this Court, in Writ-A No.17819 of 2007, quashed the cut off date fixed in Government Order dated 28.01.2004. The decision in **Mangli Prasad Verma (supra)** has been followed in a series of judgements.

7. It is worth noticing that Government has framed U.P. State Aided Education Institution Employees Contributory Provident Fund-Insurance-Pension Rules, 1964, and its benefits were extended to the institutions run

either by the Local Body or by private management and recognized by the competent authority for the purposes of payment of grant-in-aid. Learned Single Judge has noticed the provisions of Rules of 1964 to observe as under:

“The said Rules have been made applicable to the following institutions:

- (1) Primary Schools;*
- (2) Junior High Schools;*
- (3) Higher Secondary Schools;*
- (4) Degree Colleges;*
- (5) Training Colleges*

Rule 4 of the Rules, 1964 provides three types of service benefits, viz., contributory provident fund, insurance and pension (Triple Benefit Scheme). Rule 5(g) defines the word "employee" in the following terms:

"(g) 'Employee' means a permanently employed person borne on the whole-time teaching or non-teaching establishment of an aided institution, excluding (a) the inferior staff, and (b) the ministerial staff of the institutions maintained by a Local Body."

The expression 'Institution' has been defined in Section 5(l) of the Rules, 1964, as under:

"(l) 'Institution' means an aided school or college referred to in Rule 3 above."

Rule-5(p) of the Rules, 1964 gives the meaning of 'pension', thus:

"(p) 'Pension' means the pension payable to an employee under the rules Chapter V of these Rules."

Chapter V of the Rules, 1964 deals with the pension. Rule 17 prescribes the eligibility for pension which, insofar as is material for this case, reads as under:

"17. An employee shall be eligible for pension on-

- (i) retirement on attaining the age of superannuation or on the expiry of extension granted beyond the superannuation age;*
- (ii) voluntary retirement after completing 25 years of qualifying services;*
- (iii) retirement before the age of superannuation under a medical certificate of permanent incapacity for further service; and*
- (iv) discharge due to abolition of post or closure of an institution due to withdrawal of recognition or other valid causes."*

8. Learned State counsel has not been able to dispute the applicability of aforesaid Rules of 1964 upon the institutions concerned nor applicability of Government Order dated 06.11.1978 is seriously questioned which extended the applicability of 1964 Rules upon retiring teachers of the primary section of secondary institutions.

9. From the facts noticed above, it is, therefore, apparent that learned Single Judge rightly came to the conclusion that the claim of respondent for payment of family pension could not have been non-suited only on the strength of Government Order dated 28.01.2004. We, therefore, are in respectful agreement with judgement of learned Single Judge to the extent

His Lordship has interfered with the impugned order of Deputy Director of Education, dated 11.07.2022.

10. However, we find substance in the argument of learned counsel for State-appellant that even if the order of Deputy Director of Education was set aside, the matter ought to have been remitted to the concerned Deputy Director to consider the claim of respondent, afresh, particularly as claim of respondent had not been examined on the other aspects. The claim was apparently raised after nearly two decades.

11. We, therefore, partly allow the Special Appeal of the State and modify the judgement of learned Single Judge, dated 26.05.2023, with the direction to the Deputy Director to reconsider the claim of respondent for release of family pension in accordance with applicable laws, afresh, within two months, from the date of presentation of a copy of this order is made before him. Consequently the direction to release family pension with effect from 25.04.2002 as well as direction to release arrears with 9 per cent interest stands modified and substituted with the direction aforesaid. Respective case of the parties, on other aspects of entitlement to family pension, is left open.

12. The special appeal stands disposed, accordingly.

Order Date :- 22.11.2023

MN/-