

Neutral Citation No. - 2023:AHC:230167

Court No. - 36

Case :- WRIT - A No. - 16827 of 2023

Petitioner :- Chandra Prakash

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

Counsel for Petitioner :- Balwant Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the Respondents No.1 to 4.

2. In view of the proposed order, notice to Respondent No.5 is dispensed with.

3. Facts of the case, in brief, are that father of the petitioner, while working on the post of Assistant Teacher in B.R.P. Rastriya Purva Mahdyamik Vidyalaya Mithawal Bazaar, Siddarth Nagar, died in harness on 30.3.2001. Petitioner applied for compassionate appointment and accordingly, he was issued appointment order on 9.7.2001 whereby he was appointed on the post of Assistant Teacher on consolidated pay. Later on, petitioner was provided in-service B.T.C. training and ultimately, vide order dated 1.9.2014 petitioner has been granted trained pay-scale of Assistant Teacher.

4. Petitioner submitted representation for counting of his service from the date of his initial appointment i.e. with effect from 9.7.2001 as a regular service and also for provided facility of deduction of amount towards G.P.F. from his salary. Since petitioner's representation was not considered, therefore he filed Writ-A No.12761 of 2021 which was finally disposed of vide

order dated 28.9.2021, whereby direction was issued to the Director of Education (Basic), U.P., Lucknow to consider and decide the petitioner's representation.

5. In compliance of the order dated 28.9.2021 passed in Writ-A No.12761 of 2021, the Director of Education (Basic), U.P., Lucknow has passed order on 7.8.2023, whereby petitioner's case for counting of his services from the date of his initial appointment for the purposes of Old Pension Scheme and for deduction of amount towards G.P.F. from his salary, has been rejected.

6. Petitioner has challenged the aforesaid order dated 7.8.2023 passed by the Director of Education (Basic), U.P., Lucknow on the ground that identical issue has already been thrashed out and decided vide judgment and order dated **18.5.2018** passed in bunch of writ petitions, leading writ petition being **Writ-A No. 22142 of 2011, Mahesh Prasad and others Vs. State of U.P. and others**, wherein it has been held that even if compassionate appointment was made on fixed pay and later on the said appointment was converted into an appointment in regular pay-scale, the services rendered by the employee shall be treated to be regular from the date of his initial appointment and for the purposes of Old Pension Scheme, entire length of service shall be taken into account.

7. Learned counsel appearing for the petitioner has vehemently argued that once the controversy has already been settled by this court vide judgment and order dated **18.5.2018** passed in **Writ-A No. 22142 of 2011, Mahesh Prasad and others Vs. State of U.P. and others**, then there was no occasion for the Director of Education (Basic), U.P., Lucknow to take stand contrary to the

law laid down in the aforesaid judgment. Accordingly, order dated 7.8.2023 passed by the Director of Education (Basic), U.P., Lucknow cannot sustain in the eyes of law.

8. Per contra, learned Standing Counsel though has made an attempt to oppose the writ petition but could not dispute the fact that identical issue to that of the issue involved in this writ petition has already been thrashed out and decided by this court vide judgment and order dated **18.5.2018** passed in **Writ-A No. 22142 of 2011, Mahesh Prasad and others Vs. State of U.P. and others.**

9. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that identical issue in respect of counting of services rendered by an employee who has been appointed on compassionate basis on fixed pay, from the date of his initial appointment for the purposes of Old Pension Scheme, has already been considered and decided by this court vide judgment and order dated **18.5.2018** passed in **Writ-A No. 22142 of 2011, Mahesh Prasad and others Vs. State of U.P. and others.** The relevant paragraphs of the aforesaid judgment are extracted as under:-

“11. Undisputedly, the petitioners being dependants of deceased employees of U.P. Basic Education Board (hereinafter referred to as 'the Board'), who died in harness, applied for appointment under the Dying-in-Harness Rules read with the G.O. dated 04.09.2000. They were appointed as untrained Assistant Teachers in Basic Schools on different dates prior to 01.04.2005 on fixed pay of Rs.2750/- per month. Immediately thereafter, they were sent for training in terms of the G.O. dated 04.09.2000. They completed their training after 01.04.2005 and thereafter they were duly appointed as Assistant Teachers in Basic Schools in regular pay scale.

12. According to the petitioners, since the date of their appointment as untrained Assistant Teachers was prior to 01.04.2005, therefore, they shall be governed by the Old Pension Scheme and

unamended General Provident Fund (Uttar Pradesh) Rules, 1985 and not by the new Pension Scheme and the amended General Provident Fund (Uttar Pradesh) Rules. The controversy is concluded by a judgment of Lucknow Bench of this Court in **Ravindra Nath Taigor** (*supra*) (paras 13 to 17), as under:

"13. The entire dispute runs around the interpretation of GO of 2000. **Since the GO of 2000 is issued by the state government, exercising its power under section 13 of the Basic Education Act, the Board is bound by it.** It is the said GO of 2000 by which petitioners were appointed. **Clause 3(1) of the said GO provides that appointments under the Dying in Harness Rules shall be made as per the provisions of U.P. Dying in Harness Rules (5th Amendment) Rules, 1999** (The originally are U.P. Dying in Harness Rules 1974). The GO of 2000 itself provides the modification in the appointment process, as for appointment of assistant teachers in basic schools, along with education qualifications, B.T.C. training is also must. Thus, these appointments are made as per the Dying in Harness Rules 1974, as they stood amended/modified in the year 1999, subject to further amendment/modification provided by the GO of 2000. **Clause-3(3) of the said GO of 2000 provides that the qualified applicants shall be entitled as per the post vacant at the district level and in case the posts are not available, supernumerary posts are to be created, as far as possible, within a period of three months from the date application is made for appointment under the said GO of 2000.** **Clause-3(4) provides that such dependents of the deceased employee, who on the date of application are having educational qualification on the post of assistant teachers but are not having training qualification, shall be given the benefit of appointment as untrained teachers, so far as possible, within a period of three months of their application.** **Such dependents of the deceased, after their appointment as untrained teacher, shall be given admission in the next batch, in the training institute of the concerned district, for B.T.C training.** For getting a appointment in a primary school as Assistant Teacher, as a beneficiary of Dying in Harness Rules, they have to complete the B.T.C. training. **During the said B.T.C. course, they would be paid fixed salary, as fixed by the Government from time to time. After passing their training course, they shall be given regular appointment as assistant teachers in a primary school on regular pay scale.** The appointing authority and the district training institute were made responsible to ensure that the untrained teachers, on their being appointed under 'Dying in Harness Rules', are given training in the very next batch starting after their appointment.

Any person failing to clear the said training examination would be given appointment as a Class-IV employee and his appointment as untrained teachers shall be automatically treated to have ended. The said Government Order was made effective from 08.01.1999.

14. Thus, a bare perusal of the said Government Order shows that the petitioners were given an appointment as untrained teachers. They were to be given a further appointment as assistant teachers in basic school after completing their training. Thus, their first appointment was as untrained teachers under the Dying in Harness Rules, 1974 as amended with regard to them. The law with regard to the nature of appointments under the said Dying in Harness Rules is well settled by this court by number of its judgments, to be of permanent nature. Reference is made in case of Yogendra Ram Chaurasiya Vs. State of U.P. and Others; 2002 (5) AWC 3708. Relevant paragraphs of the said judgment are quoted below:-

"4. The learned Counsel for the Appellant submits that the appointment of the Appellant was made on compassionate grounds under the provisions of Dying in Harness Rules, which appointment cannot be treated as temporary appointment and rather it was permanent appointment and, therefore, the services could not have been terminated under the provisions U.P. Temporary Government Servants (Termination of Service) Rules, 1975. He relied upon the decision in the case of Ravi Karan Singh v. State of U.P. and Ors. 1991 (1) ALR 754.....

7. The Division Bench of this Court in the case of Ravi Karan Singh has held that:

"an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment, then it will follow that soon after the appointment, the service can be terminated and this will nullify the very purpose of the Dying-in-Harness Rules because such appointment is intended to provide immediate relief to the family on the sudden death of the bread earner. We, therefore, hold that the appointment under Dying-in-Harness Rules is a permanent appointment and not a temporary appointment, and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975, will not apply to such appointments."

9. In view of the decision of this Court in the case of Ravi Karan Singh with which we respectfully agree, any appointment made under the provisions of Dying-in-Harness Rules is to be treated as a permanent appointment and not a

temporary appointment. This is also clear from the Government order dated 23.1.1976 filed as Annexure-2 to the writ petition wherein it has been mentioned that the dependent of deceased employee appointed on compassionate ground under the provisions of Dying-in-Harness Rules should not be retrenched even where the strength of the employee is being reduced. Thus, we hold that the appointment of the Appellant-writ Petitioner is to be treated as permanent appointment and not a temporary appointment....."

15. Submission of respondents, that, the petitioners were never appointed prior to the year 2005 and were appointed only after completing their training, after the year 2005, is nothing but a misreading of GO of 2000. **The petitioners, as per the aforesaid GO of 2000, were appointed on permanent basis as untrained teachers and were given appointment as trained assistant teachers in basic school after completion of their training. Thus, merely because they were appointed on fixed salary would not make them any less a government employee than the other government employee. The continuity of the employment is reflected in the Government Order itself.** Even on failing in the training course, the fact that they would be given appointment as a Class-IV employee, shows the intent of the government to give them a permanent job, one way or other. The respondents could not show anything from any rules, including pension/provident fund rules, which would require petitioners, for any reason, to be treated differently than other permanent employees. The old provisions of the pension and provident fund scheme were applicable to all other employees appointed prior to 01.04.2005. Here petitioners are also appointed on permanent basis, prior to 01.04.2005, as untrained teachers, who cleared their training and thereafter, given appointment as assistant teachers in basic schools. **Thus, so far as the petitioners are concerned, there is no dispute that their appointment as trained assistant teachers in basic school are in continuation of their earlier appointment as untrained teachers.**

16. Thus, there is no reason to treat them as being appointed for the first time, on completion of their training, after the year 2005. Since the petitioners were appointed prior to the year 2005, they are not impacted by the notifications dated 07.04.2005. They are persons who were appointed permanently before 01.04.2005 and are entitled to be treated at par with all other similarly appointed permanent assistant teachers in basic school, for the purpose of their pension and provident fund benefits. Since, the Government Order dated

15.11.2011 is contrary to the aforementioned rules/directions of the State Government issued under Section 13 of the Basic Education Act, hence, the same is not sustainable.

17. Hence, all these writ petitions are allowed and Government Order dated 15.11.2011 is quashed. Petitioners shall be given all the provident fund, pension and other benefits, as are available to other permanent employees of the Board, appointed prior to 01.04.2005. " (Emphasis supplied by me)

*13. Respectfully following the judgment in the case of **Ravindra Nath Taigor** (supra), **the first set of writ petitions** (compassionate appointees) **are allowed** and it is held that the petitioners (compassionate appointees) appointed as untrained Assistant Teachers prior to 01.04.2005 shall be entitled to be treated at par with all similarly situate permanent Assistant Teachers in Basic Schools for the purposes of their pension and provident fund benefits. The old Pension Scheme and the unamended GPF Rules shall be applicable to them.*

10. This court as well as the Hon'ble Supreme Court have considered the issue in detail in catena of judgments regarding status of an employee who has been appointed on compassionate basis on fixed pay and time and again it has been held that even if compassionate appointment was made on fixed pay, the appointee shall be treated to be regular in employment. Once there are catena of judgments dealing with the issue identical to that of issue in the present writ petition, order dated 7.8.2023 passed by the Director of Education (Basic), U.P., Lucknow cannot sustain in the eyes of law.

11. Accordingly, this writ petition is **allowed**. Order dated 7.8.2023 passed by the Director of Education (Basic), U.P., Lucknow, is quashed. Matter is remanded to Director of Education (Basic), U.P., Lucknow to consider and decide petitioner's case by passing speaking and reasoned order strictly in terms of judgment and order dated **18.5.2018** passed in **Writ-A No. 22142 of 2011, Mahesh Prasad and others Vs. State of**

U.P. and others, within a period of six weeks from the date of presentation of certified copy of this order.

Order Date :- 5.12.2023

Salim