

Court No. - 36

Case :- WRIT - A No. - 17156 of 2023

Petitioner :- Rajendra Pal

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

Counsel for Petitioner :- Syed Mushfiq Ali

Counsel for Respondent :- C.S.C., Rama Nand Pandey

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 & 3 and Sri Rama Nand Pandey, learned counsel appearing for the Respondents No. 2 & 4.

2. Petitioner through this writ petition has challenged the letters dated 13.06.2016, 28.06.2016 and 03.08.2016 whereby claim regarding pensionary benefits to petitioner's father has been rejected.

3. Facts of the case, in brief, are that father of the petitioner was appointed on the post of Assistant Teacher on 06.08.1968 in District, Jhansi. Father of the petitioner continued in service till year 1973 and vide order dated 16.11.1974, he was dismissed from service.

4. Petitioner's father challenged the aforesaid termination order by filing a Civil Suit before the competent court of law which later on was transferred to U.P. Public Services Tribunal, Lucknow and there, the said case was registered as Claim Petition No. 697T(1)/1978, Panna Lal Vs. U.P. Board of Basic Education and another.

5. Claim Petition filed by the petitioner's father was decided vide order dated 11.03.1980 whereby Claim Petition was allowed and order of dismissal from service was set-aside with a direction to conduct fresh inquiry against the employee after giving him proper opportunity to reply.

6. In compliance of the aforesaid judgement and order dated 11.03.1980 passed in Claim Petition No. 697T(1)/1978, father of the petitioner was reinstated in service. Father of the petitioner after his reinstatement, tendered resignation from service which was accepted vide order dated 20.04.1980.

7. Since father of the petitioner resigned from his post, as such,

he was not paid pension. Father of the petitioner continued to represent the authorities on the misconceived ground that he has taken voluntary retirement from service and therefore, is entitled for pensionary benefits. The claim of the father of the petitioner was decided by the Divisional Assistant Education Director (Basic), Jhansi vide order dated 1.06.2009 wherein it is mentioned that petitioner has tendered resignation from his post and his resignation was accepted by the competent authority vide order dated 20.04.1980 and thus direction was given to treat father of the petitioner to be continuously in service from 26.11.1974 till 20.04.1980 and it was also directed that father of the petitioner is entitled for the salary of the aforesaid period. Thereafter father of the petitioner again represented the authorities for grant of pension but the said claim has also been rejected in the year 2016.

8. Petitioner's father unfortunately has died on 13.03.2022 and during his life-time, he did not challenge the orders passed in the year 2016 which are impugned in this writ petition.

9. Now petitioner, after about nine years from the date of passing of the impugned orders, has filed this writ petition and has claimed that since father of the petitioner took voluntary retirement therefore, he is entitled for pensionary benefits admissible to his deceased father.

10. Sri Rama Nand Pandey, learned counsel appearing for the Respondents No. 2 and 4 has vehemently argued that father of the petitioner did not opt for voluntary retirement rather he tendered resignation which was duly accepted by the Competent Authority on 20.04.1980, therefore, pension is not admissible as under the rules, employee who tenders resignation, is not entitled for pension. He has further raised his argument that claim of pension was rejected in the year 2016 while petitioner's father was alive but during his life-time, he did not challenge the said orders and now petitioner after elapse of about nine years, has filed this writ petition without explaining therein the latches.

11. I have considered the rival submissions advanced by the learned counsels appearing for the parties and I find from the record that Divisional Assistant Education Director (Basic), Jhansi Region, Jhansi has passed an order on 1.06.2009 which is contained in Annexure No. 2 to this writ petition wherein a categorical finding has been recorded that father of the petitioner tendered resignation and the said resignation was accepted vide order dated 20.04.1980. Once father of the petitioner resigned from his post, he was not entitled for pension under the rules as under the rules, it is provided that

once an employee tenders resignation, he is not entitled for pension. Besides the aforesaid fact, it is also to be noted that claim of pension of petitioner's father was rejected by passing the orders in the year 2016 which are impugned in this writ petition but during his life-time, he did not challenge the said orders, therefore, the said orders attained finality. Now petitioner after elapse of about nine years has challenged the orders passed in the year 2016 by filing this writ petition without giving proper explanation for delay, therefore, this writ petition is liable to be dismissed on the ground of delay and laches.

12. In view the aforesaid reasons, this court finds that this writ petition is absolutely misconceived and highly time barred and accordingly, this writ petition is ***dismissed***.

Order Date :- 1.12.2023

A. Mandhani