Court No. - 34

Case :- WRIT - A No. - 17621 of 2023

Petitioner :- Chhotelal
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Awadh Behari Singh
Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel.

2. The petitioner who was appointed as Seasonal Collection Amin on temporary basis on 17.12.1991 was initially not regularized in the year even though a person junior to him, namely, Shiv Kumar Lal came to be regularized on 17th January, 1992 even though petitioner has come to be regularized on 25th July, 2016 but he has not been able to get benefit of old pension scheme as pension in State of U.P. came to be abolished since 2005.

3. Learned counsel for the petitioner submits that since petitioner was wholly illegally discriminated against he would liable to have been regularized w.e.f. the date of his junior has been regularized at least for the purpose of pension, gratuity and another post retirement benefits.

4. Learned counsel for the petitioner has relied upon the judgment of Supreme Court in the case of **Prem Singh v. State of U.P.: (2019) 10 SCC 516** and also 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 and **Kaushal Kishore Chaubey and 4 Others v. State of U.P. and 2 Others** (Writ A No. 5817 of 2020) decided on 08.10.2021 and recent judgment of this Court followed by this judgments in the case of **Uday Pratap Thakur & Another v. State of Bihar: AIR 2023 SC 2971**.

5. Learned Standing Counsel on the contrary has argued that the petitioner having not made any prayer of regularization and having not proceeded at the time of being regularized in year 2016, he cannot be conferred with benefit of regularization from the date of his junior was regularized.

6. Having heard learned counsel for the respective parties and their

arguments raised across the bar, I find that petitioner in the light of the judgment of the **Uday Pratap Thakur & Another** *(supra)* would be entitled to get his ad hock period counted towards qualifying service to make pension admissible to him in order to old pension scheme since petitioner's regularization has taken place on account of his continuous service rendered with the department from 1985.

7. In the case of **Prem Singh** *(supra)* vide paragraph 33,34, and 35, the Court has held thus:

"33. 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 regularisation. 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.

34. 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 regularisation 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.

35. 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."

8. Explaining away in the State of Gujarat and others (supra)

petitioner having rendered continuous service on the date when the pension scheme scrapped in the State and when respondent no. 4 being regularized w.e.f. 17th January, 1992 was regularized, petitioner would be also entitled to pension. Explaining away the case of **Prem Singh** *(supra)*, the Supreme Court in the case of **Uday Pratap Thakur** *(supra)* vide paragraph 6 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.

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 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. 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 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."

9. In view of above legal proposition laid down by the Supreme Court with regard to admissibility of pension and counting of period towards service, in my considered view petition deserves to be allowed.

10. This writ petition is accordingly succeeds and is **allowed**. Direction is issued to respondent no. 2 to take into account his service rendered since 1991 till the year 2004 for the purpose of qualifying service for pension. The petitioner would not be entitled to any arrears of salary or encashment etc. but would be entitled to post retirement pension under the old pension scheme to be determined by respondent as directed hereinabove. Proper pension payment order shall be passed by the authority and consequential payment shall be made to the petitioner within a period of two months .

Order Date :- 17.10.2023
IrfanUddin

Digitally signed by :-
IRFAN UDDIN SIDDIKI
High Court of Judicature at Allahabad