

Court No. - 34

Case :- WRIT - A No. - 17667 of 2023

Petitioner :- Babbu And Another

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

Counsel for Petitioner :- Avadhesh Singh, Vijay Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Petitioner, who was appointed on temporary basis/ ad-hoc basis as Beldar by the respondents namely the competent authority of the Irrigation Department, later on his services came to be regularized as such on 18.03.2011 and he further continued to serve in the regular cadre and attained age of superannuation on 27.01.2023, however, he has not been conferred upon the benefit of pension under the old pension scheme.

2. Learned counsel for the petitioner has placed reliance upon the judgment of Supreme Court in the case of ***Prem Singh v. State of U.P. and others, (2019) 10 SCC 516***. He submits that in various other judgments of this Court also the casual/ work charge/ daily wage employees have been held entitled to Old Pension Scheme counting their period of service rendered on *ad-hoc* basis/ casual basis/ daily wager employee towards qualifying service. He has also placed reliance upon a recent judgment of this Court in the case of ***Awadhesh Kumar v. State of U.P. & Ors delivered on 03.07.2023 in Writ - A No. 746 of 2023*** in which interpreting the relevant provisions of Act No. 1 of 1921 the Court interpret that the said amending Act cannot be permitted to override the ratio of judgment of Prem Singh (*supra*) and an employee cannot be denied the benefit of said judgment. Paragraph no. 46 of the judgment he has relied upon.

3. Learned counsel for the petitioner has also relied upon the judgment of Supreme Court in the case of ***Uday Pratap Thakur & Anr. v. State of Bihar decided on 28th April 2023***, wherein vide para 6 the Supreme Court has also dealt that the judgment of Prem Singh (*supra*) and has observed that minimum period that may be required to make a

regularized employee entitled for pension can be taken into account towards qualifying service. Para 6 of the judgment runs as under:

"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 Civil Appeal No. 3155 of 2023 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."

(emphasis added)

4. Learned Standing Counsel submits that since petitioner has already represented the matter to the competent authority, the same may be directed to be decided in accordance with law.

5. In view of the above, this petition stands **disposed of** with direction to respondent no. 3, namely, Work Superintendent Department Construction Unit Public Works Department, Allahabad to look into and consider the grievance of the

petitioner regarding eligibility as to the Old Pension Scheme as his services prior to the year 2005, if taken into account towards qualifying service, as a result of regularization he would be entitled to such benefit. The authority shall also look into and consider the various judgments referred to herein above and shall take a well informed decision within a maximum period of three months from the date of production of certified copy of this order.

Order Date :- 18.10.2023

Deepika