

Court No. - 34

Case :- WRIT - A No. - 18013 of 2023

Petitioner :- Chhavi Lal

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Syed Wajid Ali

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties and perused the record.
2. The petitioner was initially engaged as Seasonal Collection Peon on 22nd January, 1986 and later on his services came to be regularised on 24th January, 2009 by giving him permanent appointment as Collection Peon under the Uttar Pradesh Collection Amins Services Rules, 1974.
3. He submits that the petitioner's previous services rendered as Seasonal Collection Peon on daily wage/temporary basis have not been taken into account towards the qualifying service to make old pension available to him.
4. 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.: (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 others** (Writ - A No.- 5817 of 2020) decided on 08.10.2021.
5. *Per contra*, learned Standing Counsel argues that the Seasonal Collection peon is permitted to discharge duties only for a limited period of time and cannot be said to have been in a continuous services. It is submitted that their attendance is taken as of regular employee. They have also relied upon recent judgment passed in review application filed by the Board of Revenue delivered on 31st May, 2023 in **Civil Misc. Review Application No.121 of 2022, State Of U.P. Thru. Prin./Addl.Chief Secy. Revenue Civil Secr. Lko. And Others v Ram Kesh Sharma** and other connected matters in respect of leading order passed in Special Appeal (Def.) No. 84 of 2023.

6. He further submits that the judgment in Kaushal Kishore Chaubey (*supra*) has been referred to larger bench under order dated 26.05.2022 passed in **Writ A No. 2344 of 2018, Ashok Tiwari v. State of U.P. and Others**. However, upon pointed query, he replied that larger bench is yet to be constituted. Thus he would not deny that legal position stands that mere reference to larger bench does not amount to overruling of a judgment by a co-ordinate bench and judgment would continue to be a good law until reversed.

7. Learned Advocate has relied upon another judgment of Supreme Court in case of **Uday Pratap Thakur & another v. State of Bihar in SLP (C) No.10653 of 2018** decided on 28th April, 2023, in which vide paragraph 6 it has been 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." Civil Appeal No. 3155 of 2023 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 Civil Appeal No. 3155 of 2023 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.

Civil Appeal No. 3155 of 2023. 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)

8. Learned Standing Counsel at this stage submits that the matter can be directed to be examined by the competent authority, at the first instance, as it would involve disputed questions of fact.

9. In view of the above, without entering into the merits of claim

of the petitioner, at this stage, this petition stands disposed of with a direction to the petitioner to first make representation before the competent authority within a period of four weeks from today and in the event any such representation is made for payment of post retirement dues, the competent authority shall consider and decide the same strictly in accordance with law in the light of the judgments and authorities of this Court and Supreme Court in the matter of consideration of ad-hoc period or work charge period or temporary period as qualifying service for pension.

10. Appropriate decision shall be taken by the competent authority within a period of three months from the date of presentation of certified copy of this order.

11. Needless to add that the order to be passed by the authority, shall be reasoned and speaking one.

Order Date :- 27.10.2023

Atmesh