

Court No. - 34

Case :- WRIT - A No. - 18468 of 2023

Petitioner :- Devi Ram

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rajesh Tewari

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties and perused the record.

2. Petitioner who has retired while working as driver with the Public Works Department on 30.12.2021, is aggrieved for non consideration of his entire service initially rendered on *ad hoc* basis w.e.f. 01.04.1987 until regularisation on 01.06.2006. It is further submitted by learned Advocate appearing for the petitioner that in terms of the labour court award dated 25.03.1996, in compliance of Reference Case No.51 of 1992, petitioner was directed to be reinstated with continue of service holding the order of retrenchment/termination of petitioner from service dated 31.10.1989 to be unjustified and illegal. The operative portion of the labour court award dated 25.03.1996 is reproduced as under:

"अतः मेरा निर्णय है कि सम्बन्धित श्रमिक की सेवाएँ दिनांक 31.10.1989 से समाप्त किया जाना उचित एवं वैधानिक नहीं है और सम्बन्धित श्रमिक इसी दिनांक से सेवा में बहाल किया जाए और उपरोक्त हितलाभ उसे दिए जाए। वाद बावत उभय पक्ष स्वयं वहन करे। इस बाद में यही मेरा अभिनिर्णय है।"

3. Petitioner challenged the award of labour court before this Court to the extent it denied backwages and the said writ petition being Writ-C No.41819 of 1996 came to be partly allowed directing for 50% backwages. Thus, the grievance of the petitioner having been reinstated with continuity of service under the labour court award dated 25.03.1996 and the respondents having continued him in service and 50% of the backwages having been allowed, the words and expressions 'continuity of service' would entail behind it, the period to be counted for all practical purposes for service benefits including pension, if there arises question of consideration of qualifying service.

4. It is argued that on the principle laid down by the Supreme Court in the case of ***Prem Singh v. State of U.P.: (2019) 10 SCC***

516 followed in the recent judgment of Co-ordinate Bench of this Court in ***Awadhesh Kumar vs. State of U.P. and others in Writ A No.746 of 2023 delivered on 03.07.2023*** petitioner's ad hoc period or temporary period of service, whatever may be called, prior to his regularisation in the department, deserves to be considered towards qualifying service for pension and, therefore, the respondents are required to confer upon him the benefit under the old pension scheme.

5. *Per contra*, it is argued by the learned Standing Counsel that petitioner since had not been provided with the backwages by the labour court in its award dated 25.03.1996 and the High Court only ordered for 50% of the backwages, may have an adverse effect and in so far as in his continuity of service is concerned, the petitioner could have raised his plea in the writ petition while he challenged the labour court award may be to the extent that he was not awarded with backwages.

6. Having heard learned counsel for the respective parties and their arguments raised across the bar and having perused the labour court award and the pleadings raised in the writ petition, I find force in the arguments of learned counsel for the petitioner. Very recently this Court in case of ***Pramod Kumar Chauhan vs. State of UP & ors (Writ-A No.44388 of 2016) decided on 21.04.2023***, held that illegal termination that resulted in reinstatement would also result in restoring position from the date of termination. This Court observed thus that "*once an employee's service is terminated and termination is held to be bad in law, the law is that such an order becomes null and void/non est and, therefore, a person has to be treated to be in service right from the date he had been disengaged or removed wholly illegally.*"

7. A co-ordinate Bench of this Court in ***Awadhesh Kumar Srivastava*** (*supra*) has held that Amending Act No.1 of 2021 will not override law laid down in ***Prem Singh's*** case (*supra*). Para 46 of the ***Awadhesh Kumar Srivastava*** (*supra*) reads as under:

"46. In such view of the fact, this Court finds that U.P. Act No.1 of 2021 does not qualify the three tests laid down by the Apex Court in the judgements referred above to negate the benefit of the judgement of the Apex Court in Prem Singh's case (supra)."

8. Since the petitioner has already been allowed 50% of the backwages, I do not consider that ***Udai Pratap Thakur and others vs. State of Bihar in SLP (C) No.10653 of 2018 decided on 28.04.2023*** will also be coming in the way of the relief being

granted to the petitioner for the purposes of qualifying service for pension. Petitioner's case, in my considered view, is on much better footing.

9. In view of the above, this petition stands disposed of with the direction to the petitioner to make comprehensive representation once again before the competent authority in the matter namely respondent No.2 within four weeks from today who shall be passing appropriate order in light of the observations made hereinabove and judgments cited before the this Court within a period of two months from the date of presentation of certified copy of this order.

Order Date :- 3.11.2023

P Kesari