

Court No. - 35

Case :- WRIT - A No. - 18956 of 2023

Petitioner :- Kumari Manju Dubey

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Sanjeev Singh, Arvind Kumar
Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Sanjeev Singh, learned counsel for the writ petitioner and Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for Respondents 1 to 5.

In view of the order, which is being proposed to be passed today, notices are not being issued to the sixth respondent.

The case of the writ petitioner is that he was appointed on ad-hoc basis as assistant teacher in the respondent no. 6, institution, Tewari Jwala Prasad Arya Kanya Inter College, Etawah on 11.11.1998 and thereafter approval was accorded on 28.11.1998 and when approval post 14.09.1999 was denied, he preferred Writ Petition No. 42361 of 1999. In the meantime, according to the writ petitioner, his services stood regularised by virtue of an order dated 23.03.2021 in terms of provisions contained under Section 33 (G) of the U.P. Act No. 05 of 1982 w.e.f. 22.03.2016. Since the writ petitioner was not made admissible for the payment of pension so he preferred Writ A No. 8442 of 2021 which came to be disposed of on 27.07.2023, while passing the following orders:

"Petitioner was offered adhoc appointment in 1998 as Assistant Teacher. The appointment was approved by the District Inspector of Schools vide his order dated 28.11.1998. Ultimately services of petitioner have been regularized w.e.f. 22.2.2016 in accordance with Section 33-G of the U.P.

Secondary Education Services Selection Board Act, 1982. Petitioner is due to superannuate in the year 2023. It is submitted that unless benefit of regularization is granted from 16.11.1998 the petitioner would stand to loose and she would not complete qualifying service for the purposes of grant of pension.

Learned Standing Counsel opposes the prayer made in the writ petition.

Payment of pension to the teachers of recognized privately managed institution is governed by the provisions of the Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund-Insurance-Pension Rules, 1964. Rule 19(b) of the Rules of 1964 reads as under:-

"19.(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service."

This Court in the case of Sunita Sharma Vs. State of U.P. and others, passed in Writ Petition No.25431 of 2018, decided on 20.12.2018, after examining the law has been pleased to observed as under:-
".....

In view of the discussions aforesaid, it is clear that petitioner is entitled to pensionary benefits under the Rules of 1964 and for such purposes the adhoc continuance from 1996-2016 followed with regularization would have to be counted towards qualifying service for sanction and fixation of pension. A mandamus is issued accordingly to the respondents for grant of pensionary benefits to the petitioner. Necessary order in that regard could be passed by the competent authority within a period of three months. All consequential benefits would also be extended to the petitioner within a further period of two months thereafter."

The aforesaid judgment has also been affirmed with dismissal of special appeal. In such circumstances the claim of petitioner for payment of pension etc., as and when it arise, shall be dealt with keeping in view the provisions contained under Rule 19(b) of the Rules of 1964 as well as the judgment of this Court in the case of Sunita Sharma (supra).

The date of regularization, however, cannot be preponed, inasmuch as the

benefit of regularization under Section 33-G would be available only w.e.f. 22.3.2016. Enabling provision contained under Section 33-G of the Act of 1982 is otherwise not under challenge. Prayer made by the petitioner for grant of regularization from a previous date, therefore, cannot be sustained and the relief to that extent is declined.

However, as and when the petitioner attains the age of superannuation her claim for payment of pension etc. would be considered, in light of the above observations.

Writ petition, accordingly, stands disposed of."

Thereafter according to the writ petitioner, he was made entitled to selection and promotional grade w.e.f. 22.03.2016 by virtue of the order dated 06.07.2021. According to the writ petitioner, an order was passed on 29.03.2023 whereby the claim of the writ petitioner for the payment of pensionary benefits was denied so the writ petitioner preferred Writ A No. 10021 of 2021 (Kumari Manju Dubey Vs. State of U.P. and 5 others) which came to be disposed of on 27.7.2023 requiring the Deputy Director of Education (Secondary) District, Kanpur Nagar to pass appropriate orders, while passing the following orders:

"Today this matter has been listed at serial No. 21 of the fresh supplementary list connected with the leading writ petition Writ A No. 5537 of 2023 (Nand Lal Yadav Vs. State of U.P. & Others).

The counsel for the rival parties have made a statement at bar that the controversy in leading writ petition is different from the controversy which is in the present petition. According to them the matter be detached and heard separately.

Considering the request of the parties the matter is detached and heard separately.

Heard Sri Sanjeev Singh, learned counsel for the writ petitioner and Sri Shailendra Singh learned Standing Counsel who appears for respondents

No. 1 to 5.

In view of the order which is being proposed to be passed today, notice is not being issued to the sixth respondent.

The case of the writ petitioner is that the sixth respondent, Tewari Jwala Prasad Arya Kanya Inter College, Itawah was established in the wayback in the year 1919 and recognized upto intermediate level in the year 1953 and was brought in grant-in-aid by the State Government in the year 1974 and it is governed under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971.

As per the writ petitioner consequent to arising of a short-term vacancy due to promotion of one Ad hoc teacher namely, Smt. Manorama Chaturvedi, the writ petitioner was appointed as an Assistant Teacher as per paragraph 2 of the Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) (Second) order 1981 and he was issued an appointment order on 11.11.1998 and thereafter he assumed the charge. The fifth respondent, District Inspector of School, District Itawah accorded approval to the appointment of the writ petitioner and other four teachers, however, for the next ensuing session when approval was denied on 14.09.1999 then the writ petitioner preferred Writ Petition No. 42361 of 1999 in which an interim order was granted and subsequently in view of the provisions contained under Section 33(G) (1) of the U.P. Secondary Education Services Selection Board Act, 1982 the services of the writ petitioner were regularized by virtue of the order dated 22.03.2021 with effect from 22.03.2016. Since the ad hoc services were not counted for the payment of benefits so the writ petitioner preferred Writ A No. 8442 of 2021 (Kumari Manju Dubey Vs. State of U.P.) in which on 27.07.2021 the following order was passed.-

"Petitioner was offered ad hoc appointment in 1998 as Assistant Teacher. The appointment was approved by the District Inspector of Schools vide his order dated 28.11.1998. Ultimately services of petitioner have been regularized w.e.f. 22.2.2016 in accordance with Section 33-G of the U.P. Secondary Education Services Selection Board Act, 1982. Petitioner is due to superannuate in the year 2023. It is submitted that unless benefit of regularization is granted from 16.11.1998 the petitioner would stand to loose and she would not complete qualifying service for the purposes of

grant of pension.

Learned Standing Counsel opposes the prayer made in the writ petition.

Payment of pension to the teachers of recognized privately managed institution is governed by the provisions of the Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund-Insurance-Pension Rules, 1964. Rule 19(b) of the Rules of 1964 reads as under:-

"19.(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service."

This Court in the case of Sunita Sharma Vs. State of U.P. and others, passed in Writ Petition No.25431 of 2018, decided on 20.12.2018, after examining the law has been pleased to observed as under:-

".....

In view of the discussions aforesaid, it is clear that petitioner is entitled to pensionary benefits under the Rules of 1964 and for such purposes the ad hoc continuance from 1996-2016 followed with regularization would have to be counted towards qualifying service for sanction and fixation of pension. A mandamus is issued accordingly to the respondents for grant of pensionary benefits to the petitioner. Necessary order in that regard could be passed by the competent authority within a period of three months. All consequential benefits would also be extended to the petitioner within a further period of two months thereafter."

The aforesaid judgment has also been affirmed with dismissal of special appeal. In such circumstances the claim of petitioner for payment of pension etc., as and when it arise, shall be dealt with keeping in view the provisions contained under Rule 19(b) of the Rules of 1964 as well as the judgment of this Court in the case of Sunita Sharma (supra).

The date of regularization, however, cannot be preponed, inasmuch as the benefit of regularization under Section 33-G would be available only w.e.f. 22.3.2016. Enabling provision contained under Section 33-G of the Act of 1982 is otherwise not under challenge. Prayer made by the petitioner for

grant of regularization from a previous date, therefore, cannot be sustained and the relief to that extent is declined.

However, as and when the petitioner attains the age of superannuation her claim for payment of pension etc. would be considered, in light of the above observations.

Writ petition, accordingly, stands disposed of."

In para 15 of the writ petition it has been further averred that the fifth respondent, District Inspector of Schools, District Itawah accorded selection/promotional grade to the writ petitioner, however, by virtue of the order dated 29.03.2023 the claim of the writ petitioner for payment of pension has been rejected by the fourth respondent, Deputy Director of Education (Secondary), District Kanpur Nagar. Thereafter the writ petitioner superannuated on 31.03.2023.

Questioning the order dated 29.03.2023 passed by the fourth respondent the writ petitioner is filed the present writ petition and relief has also been sought for payment of pension in that regard.

Sri Sanjeev Singh learned counsel for the writ petitioner has submitted that the premise on which the impugned order has been passed is not only fallacious but it is on misconceived and misplaced grounds particularly in view of the fact that once the services of the writ petitioner stood regularized with effect from 22.03.2016 pursuant to Section 33(G) of the 1982 Act and there had been no obstruction or interruption in the services then the entire period is to be reckoned for the purposes of payment of pension. He further submits that even in fact post regularization the writ petitioner was put to probation period and he completed the probation period, thus, the writ petitioner cannot be denuded of the said benefits, he seeks to rely upon the provisions contained in Rule 19(b) of Uttar Pradesh State Aided Education Institutions Employees Contributory Provident Fund-Insurance-Pension Rules 1964 as well as the judgment in the case of Sunita Sharma Vs. State of U.P. & Others passed in Writ Petition No. 25431 of 2016 decided on 20.12.2018 affirmed by the Special Appellate Bench in Special Appeal (D) No. 181 of 2020 (State of U.P. Vs. Sunita Sharma) on 11.06.2020 and the decision of the learned Single Judge dated 30.09.2022 in Nand Lal Vs. State of U.P. & Others in Writ A No. 12070 of

2022. He also seeks to rely upon the recent judgment dated 20.04.2023 passed in the bunch of the appeals, leading appeal Special Appeal (D) No. 172 of 2023 (State of U.P. Vs. Surendra Singh & Others). According to Sri Singh, the judgment in the case of State of U.P. Vs. Mohd. Sharif Khan & Others in Special Appeal (Defective) No. 31 of 2023 dated 28.01.2023 would not apply which has been relied upon in order to reject the claim of the writ petitioner as in the said judgment the provisions of 1964 Rules were not considered and the said judgment was decided in the light of the Uttar Pradesh Qualifying Service for Pension and Validation Act 2021 as in the facts of the present case as there was already a decision of this Court in the writ petition preferred by the writ petitioner for deciding the claim of the writ petitioner in the case of Sunita Sharma (supra).

Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 5, on the other hand, submits that though now there are series of judgment on the said subject while interpreting the 1964 Rules in relation to the regularization of the services of the teachers in question of the Intermediate Colleges, thus, according to him the matter be remitted back to the fourth respondent, Deputy Director of Education (Secondary) District Kanpur Nagar to decide the matter afresh in the light of the judgments in the case of Sunita Sharma (supra), Nand Lal (supra) and Surendra Singh (supra). According to learned Standing Counsel since the matter stands covered by the judgments in the case of Sunita Sharma (supra), Nand Lal (supra) and Surnedra Singh (supra), thus, according to him he does not propose to file any response.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition stands allowed the, order dated 29.03.2023 passed by the fourth respondent, Deputy Direction of Education (Secondary), District Kanpur Nagar is set aside, matter stands remitted back to the fourth respondent to decide the issue afresh in the light of the judgments as discussed hereinabove and observations made hereinabove within a period of two months from the date of production of certified copy of the order. Since the sixth respondent is not before this Court and notice is not being issued so before passing the order, sixth respondent be also put to notice."

Now by virtue of the order dated 28.10.2023, the third

respondent has negated the claim of the writ petitioner on the premise that under the new pension scheme, he is not the authority to address the said issues and further the writ petitioner is not entitled to the said benefits.

Questioning the said order, the writ petitioner has filed the writ petition, thus, this Court entertained on 09.11.2023 while passing the following orders:

"The contention of the learned counsel for the writ petitioner is that the writ petitioner is continuously working since 11.11.1998 in the institution in question till his superannuation on 31.03.2023 as prior to which his services stood regularised w.e.f. 22.03.2016 by virtue of the order dated 22.03.2021. Consequent to the matter being remanded to the fourth respondent vide order dated 27.07.2023 in Writ A No. 10023 of 2023, the fourth respondent on one hand in page 41 comes to the conclusion that he has not vested with the power to decide the matter, however, he proceeds to deal with the matter on merits while coming up with the stand that the case of the writ petitioner does not fall within the purview of the Government order dated 31.03.1978, pertaining to grant of pension in that regard.

Shri Saurabh, learned Standing Counsel seeks time to obtain instructions.

Put up this case as fresh on 17.11.2023 at 10.00 am."

Today when the matter has been taken up, Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel on instructions submits that he has been enable to obtain instructions according to which, the order dated 20.10.2023 passed by the fourth respondent, Deputy Director of Education (Secondary), Kanpur Region, Kanpur be set aside and granting liberty to the fourth respondent to pass fresh orders in the light of the judgment passed in the case of Sunita Sharma Vs. State of U.P. in Writ Petition No. 25431 of 2016 decided on 20.12.2018 affirmed by Special Appellate Bench in Special

Appeal (D) No. 181 of 2020 and State of U.P. v. Surrendra Singh and others, Special Appeal No. 172 of 2023 decided on 20.04.2023.

Considering the submissions of the rival parties as well as stand taken by learned Additional Chief Standing Counsel that too on instructions, the order dated 20.10.2023 passed by the fourth respondent, Deputy Director of Education (Secondary), Kanpur Region, Kanpur is set aside, the matter stands remitted back to the fourth respondent to decide the matter afresh after putting to notice to sixth respondent strictly in view of the judgment as referred above and the law as existing on land within a period of two months from the date of presentation of the certified copy of the order.

With the aforesaid observation, the writ petition is **disposed off**.

Order Date :- 20.11.2023

A. Prajapati