

Court No. - 34

Case :- WRIT - A No. - 19243 of 2023

Petitioner :- Haqeequllah

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

Counsel for Petitioner :- Bijendra Kumar Mishra

Counsel for Respondent :- CSC

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the petitioner as well as learned Standing Counsel.
2. By means of this petition filed under Article 226 of the Constitution, the petitioner has approached this Court for a direction to the respondents to accord consideration to his ad-hoc service for the purpose of qualifying service to make Old Pension Scheme to him.
3. From the pleadings it transpires that petitioner was initially appointed on daily wage basis in the year 1991 in the Forest Department, however, later on his services were regularized on 08.06.2021 on the post of Gardener and finally he attained the age of superannuation on 30.04.2022. However, the old pension benefit has not been made admissible to him by counting the previous service rendered by him as daily wage employee in the Forest Department.
4. Learned counsel for the petitioner submits that in the light of judgment of Supreme Court in the case of **Prem Singh v. State of U.P. & Ors (2019) 10 SCC 516** followed by this Court in **Awadhesh Kumar Srivastava versus State of U.P. & 4 others (Writ A No.746 of 2023)** delivered on 03.07.2023 his previous service rendered as daily wager liable to be considered. He has also placed reliance upon a Division Bench judgment of this Court in the case of **Adarsh Kumar v. State of U.P. and Others, Writ - A No. 17720 of 2023** (decided on 18.10.2023) in wherein the amending Act No. 1 of 2021 has also been taken into consideration and still in that case the employee was held entitled for pensionary benefits under the Old Pension Scheme following the law laid down in the case of Prem Singh (supra).
5. Per contra learned Standing Counsel has sought to justify the stand of the respondents in not considering the claim on the plea

that amending Act No. 1 of 2021 has amended the U.P. Government Servants Retirement Benefit Rules, 1961 with retrospective effect. He further submits that even if the petitioner's claim is considered for the purposes of Old Pension Scheme following the judgment of Supreme Court by this Court, petitioner's previous service can only be counted towards qualifying service in view of the law laid down by Supreme Court in the case of **Uday Pratap Thakur & Anr. v. State of Bihar, AIR 2023 SC 2971** and petitioner will not be entitled for any salary for the period he has rendered in the department as a daily wager.

6. This writ petition is accordingly succeeds and is **allowed**. Direction is issued to respondent no. 2 to consider taking into account his service rendered since 1991 till the year 2021 for the purpose of qualifying service for pension and pass order within three months of production of certified copy of this order. 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, provided of course, his case on facts stands concluded by the judgments of Supreme Court referred to above in this order and if petitioner is held entitled, a proper pension payment order shall be passed by the authority and consequential payment shall be made to the petitioner within a period of one month of taking decision as directed above.

Order Date :- 21.11.2023

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