

**Court No. - 35**

**Case :-** WRIT - A No. - 20418 of 2023

**Petitioner :-** Rampal Singh

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

**Counsel for Petitioner :-** Indra Raj Singh, Adarsh Singh

**Counsel for Respondent :-** C.S.C

**Hon'ble Vikas Budhwar, J.**

Heard Sri Adarsh Singh learned counsel for the writ petitioner and learned Standing Counsel, who appears for respondents No. 1 to 3.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 4th respondent.

The case of the writ petitioner is that the fourth respondent institution, Patel Inter College, Astauli, Greater Noida (Gautam Budh Nagar) is recognized under the U.P. Intermediate Education Act, 1921 and it receives grant-in-aid from the State Government under U.P. Act No. 24 of 1971. It is the case of the writ petitioner that he being eligible and qualified in all respects participated in the selections conducted by the respondents and, thus, appointed as an Assistant Teacher L.T. Grade in the respondent No. 4 institution on ad hoc basis and the District Inspector of Schools, Bulandshahar by virtue of an order dated 27.7.1995 granted financial approval to the selection of the writ petitioner. The writ petitioner was accorded joining on 10.07.1995. It is further the case of the writ petitioner that he had been continuously discharging the duties without any break whatsoever which occasioned passing of an order dated 30.06.2016 by the Joint Director of Education (Secondary) 1st Region, Meerut whereby the writ petitioner was regularized as Assistant Teacher with effect from 22.03.2016 i.e. in terms of the provisions contained under Section 33G of the U.P. Secondary Education Services Selection Board, 1982. Learned counsel for the writ petitioner as the writ petitioner's service stood regularized. D.I.O.S., Bulandshahar allotted general provident fund (GPF) account number and tendered its contribution towards GPF which was also being deducted. Learned counsel for the writ petitioner further contends that he has also been accorded selection grade and other benefits in that regard. However, now the second respondent, Deputy Director of Education (Secondary), 1st Region, Meerut, had proceeded , to

denude the writ petitioner for grant of pension under the old pension scheme on the pretext that now with effect from 01.04.2005 the new pension scheme had come into effect, thus, the claim of the writ petitioner would be post 01.04.2005.

The grievance of the writ petitioner is that despite the fact that his services stood regularized in the year 2016 itself with effect from 22.03.2016 thus, the services undergone as on ad hoc basis is liable to be reckoned for the purposes of payment of pension and it cannot be ignored in the manner in which it is being sought to be done. Learned counsel for the writ petitioner also relies upon the judgment in the case of State of U.P. Vs. Surendra Singh Special Appeal (Defective) No. 172 of 2023 decided on 20.04.2023 following the judgment in the case of Sunita Sharma Vs. State of U.P. & 5 Others Writ A No. 25431 of 2018 decided on 20.12.2018 as affirmed by the Special Appellate Court in Special Appeal (D) No. 181 of 2020 decided on 11.06.2020.

The submission of the learned counsel for the writ petitioner is that in view of the statutory provision contained under Section 33G of the Act itself which was brought into force on 22.03.2016 the writ petitioner's services if regularized and the same will partake the character of a situation whereby the ad hoc services are to be counted for the payment of pension as obviously ad hoc services stood regularized and even in fact the writ petitioner also completed one year's probation period and thus, by all practical purposes he cannot be said to be a teacher who would not be entitled for pensionary benefits. Sri Singh further argues that the doctrine of relation back theory would apply as once the writ petitioner's service stood regularized after continuance of ad hoc service then the period rendered on ad hoc basis is to be computed for pension and it is totally immaterial that a new pension scheme came into effect prior to the passing of the regularization order.

Countering the said submission the learned Standing Counsel submits that the writ petitioner is not entitled to be granted the benefit of old pension scheme particularly in view of the fact that the regularization order of the writ petition with effect from 22.03.2016 and the same is dated 30.06.2016 and both the dates are subsequent to the enforcement of the new pension scheme and merely because ad hoc services stood regularized will not be a factor germane to consider the claim of the writ petitioner for being granted pension under the old pension scheme. Learned Standing Counsel further submits that the judgment relied upon by the learned counsel for the writ petitioner is of no avail as the same are clearly distinguishable.

I have heard the learned counsel for the parties and perused the record carefully.

Undisputedly, the writ petitioner was appointed as an Assistant Teacher L.T. Grade and approval was accorded on 27.07.1995 and he was accorded joining on 10.07.1995 and his services stood regularized on 30.06.2016 with effect from 22.03.2016 in terms of Section 33G of the 1982 Act. The question as to whether the writ petitioner is to be put in a detrimental position on the pretext that the regularization orders are subsequent to the enforcement of the new pension scheme depends upon the working of the writ petitioner and the conduct of the respondents. As it is apparent that the writ petitioner superannuated on 31.03.2023 and the regularization order was passed on 30.06.2016 and as per the statutory provisions contained with regard to the completion of the probation period the same stood completed successfully by the writ petitioner, thus, by all practical purposes merely because no confirmation order was passed would not be a ground to denude the writ petitioner of the benefits. The issue can also be seen from another point of angle the respondents cannot take benefit of a fact that they seek to regularize the writ petitioner from a particular date but the services undergone on an ad hoc basis is to be ignored as virtually it is not a case also of the respondents that the ad hoc services were interrupted or they were not in continuance.

Even otherwise the stand that the regularization of the writ petitioner has been done in the year 2016 and before that new pension scheme has come into effect. The said issue has already been dealt in extenso in the aforesaid judgment. Respectfully following the judgment in the case of Surendra Singh (supra) which reiterates the law laid down in the case of Sunita Sharma (supra). A mandamus is issued to the second respondent, Deputy Director of Education (Secondary), 1st Region, Meerut to consider the claim of the writ petitioner for inclusion of the ad hoc services of the petitioner on the post of Assistant Teacher rendered prior to regularization done on 22.03.2016 by virtue of the order dated 30.06.2016 for the purpose of post retiral benefit including pension under the old pension scheme within a period of three months from the date of production of the certified copy of the order. It is further clarified that in case the second respondent seeks further information or papers from the writ petitioner then he may be informed in advance in writing so as to enable him to furnish the said documents so that the order of this Court be complied with within the time stipulated hereinabove. The said exercise be done after putting to notice to the fourth respondent.

With the aforesaid observations, the writ petitioner stands **allowed**.

**Order Date :-** 8.12.2023

Kumar Manish.