

Court No. - 8

Case :- WRIT - A No. - 2583 of 2023

Petitioner :- Jagdish Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Agriculture Deptt., Lko. And 3 Others

Counsel for Petitioner :- Harendra Prakash Srivastava, Vishal Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Harendra Prakash Srivastava, learned counsel appearing for the petitioner and Sri Sandeep Sharma, learned Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

"(i) issue a writ order or direction in the nature of certiorari quashing the letter/order dated 06.06.2022 passed by the Director, Agriculture, U.P., as contained in Annexure No.32 to the writ petition and letter/report dated 02.12.2021 after summoning the original of the same.

(ii) Issue a writ direction or order in the nature of mandamus commanding the opposite parties to make payment of post retiral dues of the petitioner including the pension, arrears of pension with effect from the date of retirement i.e. from 01.05.2019, Employee Group Insurance Scheme, Gratuity, Leave Encashment, commutation of pension alongwith interest at the rate of 12% from due date till it is actually paid after regularizing the services of the petitioner with effect from the date, the services of the persons junior to the petitioner have been regularized.

(iii)...

(iv)..."

3. The petitioner having Diploma in Agriculture Engineering from Jawahar Lal Nehru Polytechnic, Mahmoodabad, District Sitapur was appointed as Daily Wager, Junior Engineer in the year 1981 against a vacant post of Junior Engineer in the Directorate of Agriculture, U.P. The petitioner

continued to work as Daily Wager since his initial appointment on 06.02.1989 up to 30.03.1993.

4. The petitioner had earlier approached this Court by filing Writ Petition No.3769(SS) of 1993 praying for regularization of his services on the post of Junior Engineer and payment of regular salary of the said post. This Court vide order dated 13.05.1993 directed the respondents to allow the petitioner to continue to work on the post of Junior Engineer and pay him regular salary.

5. In compliance of the said interim order dated 13.05.1993, the petitioner was paid regular salary. The said writ petition was allowed by the learned Single Judge vide order dated 03.08.1999 with a direction to regularize the services of the petitioner under U.P. Regularization of Daily Wages Appointment on Group C Post (Outside the Purview of Public Service Commission) Rules, 1998 (hereinafter referred to as "Rules, 1998"). It was also directed that the petitioner shall be paid regular salary if he has worked in terms of the interim order dated 13.05.1993.

6. Against the said judgment and order dated 03.08.1999, the State filed an intra Court appeal being Special Appeal No.377 of 2000. Said appeal was partly allowed to the extent that findings of the learned Single Judge that the case of the petitioner for regularization had been fully covered under Rule 4 of the Rules, 1998, was set aside but the State authorities were directed to consider the case of the petitioner for regularization in accordance with the Rules as applicable and pass appropriate order expeditiously, say within a period of 10 weeks.

7. Despite the said direction of the Division Bench, the case of the petitioner was not considered for regularization, however, he was paid regular salary and even revised salary of the post was paid to him. In 2013, the petitioner was granted the benefit of A.C.P. considering him to be in regular service and having rendered 10 years satisfactory service as is a requirement for granting 1st A.C.P. The petitioner demitted office on 30.04.2019. Though he was granted A.C.P. on rendering 10 years satisfactory service with effect from 2003, the petitioner has not been paid pension. The petitioner has however, been paid G.P.F. etc.

8. Sri H.P. Srivastava, learned counsel appearing for the petitioner submits that when the petitioner has rendered eligible service for pension as a

regular employee and he was given all the benefits treating him to be a regular employee, denying him pension is wholly unjustified, unreasonable and against the equity and law, He, therefore, submits that a direction be issued to the respondents to sanction pension to the petitioner with effect from the date of his retirement from service on attaining the age of superannuation.

9. Sri Sandeep Sharma, learned Standing Counsel appearing for the respondents opposes the prayer for pension but he is not in a position to deny the fact that the petitioner was treated in regular employment since 2003 and he was given all the service benefits treating him to be in regular employment.

10. Considering the said stand and the fact as stated above, I am of the view that the petitioner is to be treated in regular employment since 2003 as has been done by the respondents themselves and, therefore, he is entitled for all service benefits of a regular employee for the post of Junior Engineer, Agriculture Department including the pension. Thus, present petition is **allowed** and a writ of mandamus is issued to the respondents to calculate pension of the petitioner since the date of his retirement i.e. 01.05.2019 and pay him arrears of pension and regular pension monthly basis as admissible to him treating him to be in regular employment since 2003.

(Dinesh Kumar Singh, J.)

Order Date :- 11.7.2023
prateek