

Court No. - 8

Case :- WRIT - A No. - 3994 of 2023

Petitioner :- Daya Shankar

Respondent :- State Of U.P Thru. Prin. Secy. Revenue Deptt Civil
Sectt Lko And 3 Others

Counsel for Petitioner :- R.S. Pawar,Km. Neelam Singh

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Shri R.S. Dwivedi, learned counsel for the petitioner and Shri Jogendra Nath Verma, learned Standing Counsel appearing for the State-respondents.

2. The 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 for quashing the impugned order dated 26.04.2023 passed by opposite party No.4 contained as Annexure No.1 to this writ petition.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to provide all the benefits which is provided to the identical and similar person namely Praveen Kumar Tiwari to the petitioner after counting previous service rendered by him in Allahabad Mandal Vikas Nigam in the interest of justice.

(iii)...

(iv)..."

3. It is not in dispute that the controversy involved in the present petition is covered by judgment and order dated 26.10.2021 passed by this Court in Writ Petition No.7505 (S/S) of 2015. The order dated 26.10.2021 passed by this Court would read as under:-

"1. The present writ petition has been filed impugning the order dated 7.7.2015 passed by opposite party no.2 in compliance of the order dated 26.2.2015 passed by this Court in Writ Petition No.12083 of 2015, whereby it was directed to take decision on the representation of the petitioners for counting their services rendered in Allahabad Mandal Vikas Nigam Limited.

2. The petitioner is a retrenched employee of Allahabad Mandal Vikas Nigam Limited. The petitioner was later on absorbed as Collection Amin (Class-III post) in the pay scale of Rs.5200-20200/-. He attained the age of superannuation on 30.6.2012.

3. The Allahabad Mandal Vikas Nigam Limited was closed on 7.11.1992 in pursuance of the Government Order dated 7.11.1992. After closure of the Allahabad Mandal Vikas Nigam Limited, the petitioner and other employees filed Writ Petition No.36695 of 1992 before this Court. This Court vide order dated 13.10.1992 directed the State authorities to absorb the petitioner and other employees in the Government departments within a period of three months. It was further directed that till the final decision for absorption was taken, they should be treated in service and paid salary. In pursuance to the aforesaid direction of this Court, the petitioner was absorbed on the post of Collection Amin only on 31.5.2015. The petitioner's claim is that he was getting salary in pursuance of the order dated 13.10.1992 till he was absorbed as Collection Amin and, thereafter, he was getting salary on the post of Collection Amin till he retired from service on attaining the age of superannuation on 30.6.2012.

4. Learned counsel for the petitioner submits that the petitioner's services rendered in Allahabad Mandal Vikas Nigam Limited are to be counted for calculating the pensionable services rendered by the petitioner as Collection Amin. He, therefore, submits that the impugned order dated 7.7.2015 passed on the representation of the petitioner in compliance of the order dated 26.2.2015 passed by this Court in Writ Petition No.12083 of 2015 is against law and is liable to be quashed.

5. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of a coordinate Bench of this Court in Writ-A No.46080 of 2012 in respect of another employee of the erstwhile Allahabad Mandal Vikas Nigam Limited and, the learned Single Judge vide judgment and order dated 7.2.2017 has directed for counting the services rendered by the petitioner of that writ petition while calculating the qualifying service for the purpose of grant of pension.

6. Learned counsel for the petitioner has also placed reliance on the judgement of a Division Bench of this Court in Writ-A No.58438 of 2015 dated 12.12.2017, wherein it has been directed to add the services rendered by the petitioner in that writ petition in the Allahabad Mandal Vikas Nigam Limited for determining the pensionable service. It appears that the State filed Special Leave Petition (Civil) Diary No.29583 of 2018 against the judgement and order dated 12.12.2017 passed by the Division Bench of this Court as aforesaid and, the Special Leave Petition came to be dismissed by the supreme Court vide order dated 3.1.2019.

7. Sri Ran Vijay Singh, learned Additional Chief Standing Counsel fairly admits that the controversy is covered by the aforesaid two judgements passed by this Court in Writ-A Nos.46080 of 2012 and 58438 of 2015 (supra).

8. Considering the aforesaid submissions and facts, the present writ petition is allowed in terms of the judgment and order dated 12.12.2017 passed by a Division Bench of this Court in Writ-A

No.58438 of 2015. The impugned order dated 7.7.2015 passed by opposite party no.2 is hereby quashed and, opposite parties are directed to count the regular services rendered by the petitioner in Allahabad Mandal Vikas Nigam Limited for determining the pensionable service of the petitioner before his retirement as Collection Amin on 30.6.2012. If the petitioner has rendered total service, which is pensionable, he should be granted pension in accordance with law. Such a consideration should be given within a period of two months from the date a certified copy of this order is produced before opposite party no.2."

4. In view thereof, the present petition is **allowed**, the impugned order dated 26.04.2023 is set aside. The respondents are directed to count the regular service rendered by the petitioner in Allahabad Mandal Vikas Nigam Limited for determining the pensionable service of the petitioner before he got retired as Collection Amin on 31.12.2019. If the petitioner has rendered total service, which is pensionable, he should be granted pension in accordance with law within a period of two months from the date a certified copy of this order is submitted before the respondent No.2.

(Dinesh Kumar Singh, J.)

Order Date :- 25.5.2023

Piyush/-