

Court No. - 7

Case :- WRIT - A No. - 29203 of 2018

Petitioner :- Smt. Urmila Singh

Respondent :- State Of U.P. Thru Prin.Secy.Secondary Edu. Lko. And Others

Counsel for Petitioner :- Sanjay Misra

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

Heard.

In pursuance to the order of this Court dated 12.07.2023, the personal affidavit of Chief Secretary dated 04/09.08.2023 has been filed which is on record.

Perusal of the said affidavit would indicate that an inquiry committee had been constituted and an inquiry report has been submitted against the guilty officials. The Court is satisfied with the said personal affidavit.

Further, paragraph 11 of the personal affidavit would indicate that the Divisional Level Committee in its meeting held on 17.07.2023 accepted the regularization of the petitioner Smt. Urmila Singh effective as it is i.e she having been regularized vide order dated 26.02.2010. It is also contended that an amount of Rs. 23,38,863/- towards pension has been sanctioned and transferred to the petitioner's bank account in the Bank of Baroda, Maya, Ayodhya.

So far as the controversy involved in the petition is concerned, the petition has been filed praying for a mandamus commanding the respondents to pay pension to the petitioner w.e.f 01.04.2017 and to calculate the pension from her date of initial joining and to pay pension considering the date of service as 01.02.1987.

The facts of the case have already been recorded in the order dated 06.07.2023 which for the sake of convenience is reproduced below:-

"Heard.

The instant writ petition has been filed praying for a writ of mandamus commanding the respondents to pay pension to the petitioner with effect from 01.04.2017 i.e. the date of her retirement alongwith interest.

The case set forth by the petitioner is that she was initially appointed as Assistant Teacher on ad-hoc basis vide the order dated 30.01.1987, a copy of which is annexure 1 to the petition. Her service was extended from time to time. Through an order dated 26.02.2010, a copy of which is annexure 9 to the petition, her services were regularised by the Joint Director of Education. The petitioner claims to have retired subsequently on attaining the age of superannuation on 31.03.2017 yet her pension and other retiral dues have not been paid and hence the instant writ petition.

In this regard reliance has been placed by learned counsel for the petitioner on the judgement of this Court in the case of Subhash Chand vs Deputy Director of Education (Secondary) and others passed in Writ A No. 18101 of 2021 decided on 16.05.2022 to contend that a similar issue has already been considered by this Court and the writ petition has been allowed.

This Court vide the order dated 08.10.2018 had required the Deputy Director of Education, Faizabad Region, Faizabad to either ensure payment of pension to the petitioner within a period of three weeks or to show cause by filing his personal affidavit as to why the payment of pension to the petitioner has not been made.

In pursuance thereof a personal affidavit dated 01.11.2018 has been filed by the Deputy Director of Secondary Education wherein various grounds have been taken apart from indicating that the salary of the petitioner had been stopped earlier against which she approached this Court by filing Writ Petition No. 6260 of 1990 and an interim order was passed on 31.08.1990 requiring the respondents to pay salary to the petitioner which was subsequently dismissed.

However, the crux has been indicated in the last portion of paragraph 3 of the personal affidavit for non-payment of pension that under the provisions of Section 33 Ga of the UP Madhyamik Shiksha Seva Chayan Board Act, 1972 the Joint Director Education Faizabad Division, Faizabad got the regularisation order though the services of the petitioner could not be legally regularised.

After perusal of the personal affidavit it is not understood that when the regularisation order was passed in favour of the petitioner on 26.02.2010 and the petitioner continued to work subsequent thereto and retired on attaining the age of superannuation on 31.03.2017 as such whether the regularisation order was ever withdrawn, cancelled or set aside? The personal affidavit only describes the said regularisation order to be not legal without anything further.

Upon a pointed query being put to learned Standing Counsel regarding the same, learned Standing counsel prays for sometime to study the matter.

As such on his request list this case on 12.07.2023 at 02:15PM for further hearing."

From a perusal of the aforesaid order it emerges that the petitioner who was appointed on ad-hoc basis on 30.01.1987 as an Assistant Teacher was regularized on 26.02.2010 and subsequently retired on 31.03.2017.

The claim in the instant petition is to calculate the pension of the petitioner from the date of her initial joining i.e 30.01.1987.

The issue pertaining to counting of previous service is no longer *res integra* having been settled by this Court in **Writ-A No. 23244 of 2016 Inre; Ashok Tiwari Vs. State of U.P and Ors** wherein upon a reference being made on certain questions, the reference has been answered by the Division Bench of this Court in following terms:-

"(i) Those persons whose services have been regularized on or after 01.04.2005, and in respect of whom the pensionary rules as applicable to State Government Servants, apply, the New Pension Scheme which has come into force w.e.f. 01.04.2005 shall apply irrespective of the initial appointment of such persons prior to 01.04.2005 on daily wages or on purely temporary nature (not a regular appointment in accordance with the Rules) and the old Pension Scheme would not apply to them .

(ii) In view of Rule 2(3) of the 1961 Rules and the reasons already given by us hereinbefore as there is no concept of 'qualifying service' under the New Pension Scheme and the 1961 Rules as also the Civil Service Regulations are not applicable to those who have entered the service whether by way of direct recruitment or by way of regularization of their services on or after 01.04.2005, therefore, the services rendered by such employees prior to their regularization

i.e. prior to 01.04.2005 on daily wages, etc. (not regular service) would have no relevance in the context of the New Pension Scheme which will apply to such employees.

(iii) The judgment rendered in Kaushal Kishore Chaubey (supra) does not lay down the law correctly. The correct position of law is as discussed hereinabove. The Court concurs with the judgment in the case of Brahamanand Singh (supra) which has understood and laid down the law correctly."

From a perusal of the aforesaid it emerges that when the services of the petitioner have only been regularized vide order dated 26.02.2010 consequently, she would be entitled for benefit of the New Pension Scheme and there would not be any occasion for counting of her previous service w.e.f 01.02.1987 may be rendered on ad-hoc basis, as the New Pension Scheme does not contain any stipulation or provision for counting of the previous service.

Keeping in view the aforesaid discussion, the writ petition is disposed of with the direction to the respondents to ensure payments of the pension and other retiral dues to the petitioner in terms of the New Pension Scheme after adjusting the amount of pension already paid to the petitioner in terms of specific averment made in paragraph 11 of the personal affidavit filed by the Chief Secretary. In case, any formalities are required to be completed by the petitioner for payment of retiral dues in terms of the New Pension Scheme the same would also be indicated to the petitioner within a period of four weeks from today. The petitioner shall complete all the formalities and dues as admissible to her would be paid within a further period of six weeks from the date the petitioner completes the formalities in this regard.

In case, it is found that any delayed payment has been made, the petitioner would also be entitled for the interest on the delayed payment of retiral dues.

Order Date :- 18.12.2023

Pachhere/-