

Court No. - 20

Case :- WRIT - A No. - 5872 of 2023

Petitioner :- Mohd. Naseem Uddin

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Vocational Education And Skill Development, And 3 Others

Counsel for Petitioner :- Shivam Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging challenging order dated 11th April, 2023 whereby petitioner's representation for calculation and payment of post retiral dues with effect from 14th February, 2002 has been rejected.
3. It has been submitted that initially petitioner was engaged on ad hoc basis on the post of Principal, Government I.T.I., Ballia. Subsequently vide order dated 3rd May, 2006 petitioner as well as one Mr. Rajiv Kumar Srivastava were regularized in service with immediate effect in pay scale of Rs. 8000-13500/- Later on vide order dated 30th December, 2014, another order was issued by the State Government whereby petitioner's services were deemed regularized with effect from 14th February, 2002 on the ground that several persons engaged in service on similar basis subsequent to petitioner were regularized on the aforesaid date.
4. It is submitted that while in service, petitioner had filed writ petition No. 33755 of 2019 challenging disciplinary inquiry initiated against him vide charge sheet dated 18th October 2019. The said petition was allowed vide judgment and order dated 15th September, 2021 quashing the charge sheet. It is submitted that aforesaid judgment and order attained finality and in the meantime petitioner superannuated but since his post retiral benefits were not granted to him taking his services from 2002, he filed writ petition No. 10657 of 2021 which was also allowed vide judgment and order dated 15th September, 2021 directing opposite parties to release post retiral dues of petitioner as per law and also salary for suspension period with effect from 31st May, 2019 till 6th February, 2020. The said order has also attained finality.
5. It is submitted that by means of impugned order dated 11th April, 2023, the opposite parties have impliedly taken

petitioner's date of regularization as 3rd May, 2006 instead of 14th February, 2002 due to which his retiral benefits have not been released to him taking into account services rendered by him from 14th February, 2002 as qualifying service.

6. It has been submitted that opposite parties while passing the impugned order have not indicated as to why petitioner's regularization can not be considered with effect from 14th January, 2002 and in that respect, impugned order is non speaking in nature. It is further submitted that other person regularized along with petitioner i.e. Mr. Rajiv Kumar Srivastava has also superannuated from service and his retiral benefits have been paid to him taking into account services rendered by him from 14th February, 2002 for the purposes of qualifying service.

7. Learned State Counsel on the basis of counter affidavit has submitted that vide office order dated 20th February, 2012, services of other persons junior to petitioner were regularized with effect from 14th February, 2002 and same benefits were accorded to him. Attention has been drawn to the letter dated 10th September, 2023 issued by the Director, Vocational Education and Skill Development, Department to the Director, Pension, Directorate indicating aforesaid facts and seeking orders with regard thereto but no final decision has been taken.

8. Learned State Counsel has also adverted to chart in paragraphs 8 and 12 of the counter affidavit to indicate payment of various benefits which have already been given to petitioner.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident and admitted by opposite parties even in the paragraph 6 of the counter affidavit that although petitioner was regularized in service vide order dated 3rd May, 2006 with immediate effect, the said date was thereafter amended by issuance of order dated 30th December, 2014 issued by the State Government whereby petitioner's date of regularization was taken as 14th February 2002 on a notional basis. The said fact has also been admitted by opposite parties in paragraph 6 of the counter affidavit.

10. In such circumstances, there was no occasion for the opposite parties not to have considered petitioner's date of regularization as 14th February, 2002 and there was no occasion for the authority concerned to have insisted on the petitioner's date of regularization as 3rd May, 2006.

11. In paragraph 15 of the writ petition, petitioner has also

averred that service and post retiral benefits have already been accorded to Mr. Rajiv Kumar Srivastava (the person who was regularized along with petitioner) and such fact has not been specifically denied in the counter affidavit.

12. Considering aforesaid facts, it is quite evident that petitioner's date of regularization is 14th February, 2002 and therefore services rendered by petitioner with effect from 14th February, 2002 is required to be taken into account as qualifying service for pensionary benefits on a notional basis.

13. Consequently the impugned order dated 11th April, 2023 is hereby quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of mandamus is issued commanding the opposite party to ensure payment of post retiral benefits of petitioner taking into account the date of his regularization as 14th February, 2002 and considering services rendered from the said date for the purposes of qualifying service for such pensionary benefits. Calculation in regard thereto and payment shall be ensured to petitioner within a period of four months from the date a certified copy of this order is produced before the concerned authority. Opposite parties shall also ensure payment of interest at the rate of 6% per annum to petitioner with effect from the date of superannuation till the date of actual payment on the outstanding benefits.

14. The writ petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 17.11.2023

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