

Court No. - 6

Case :- WRIT - A No. - 370 of 2022

Petitioner :- Dr. Savita Singh

Respondent :- State Of U.P. Thru. Upper Chief Secretary
Deptt. Of Secondry Edu. Lko And 9 Others

Counsel for Petitioner :- Vinod Kumar Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner as well as Shri V.K. Vajpayee, learned Standing counsel for the respondents.
2. Under challenge is the order dated 01.12.2021, a copy of which is annexure 1 to the writ petition as well as the order dated 09.12.2020, a copy of which is annexure 2 to the writ petition.
3. The contention of learned counsel for the petitioner is that the petitioner had initially been appointed on the post of Supervisor on 30.04.1987 in Non-formal Education Department. Subsequent thereto, she was appointed as Project Officer on 18.08.1989 in the same department. Copy of the appointment letter dated 18.08.1989 has been filed as annexure 5 to the writ petition.
4. In the year 2000, a writ petition was filed before this Court namely Writ Petition No. 42806 of 2000 by the Pariyojna Adhikari Sangh praying for a direction to treat the post of Project Officer, Non-formal Education as cadre post in the subordinate education (Gazetted) and this Court vide judgment and order dated 09.10.2000, a copy of which is annexure 9 to the writ petition required the respondents to take a final decision on representation of the petitioner after taking into consideration the recommendation made by the Director, Non-formal Education, U.P, Lucknow.

5. In pursuance thereof, the claim of the petitioner was rejected by the respondents vide order dated 23.03.2001, a copy of which is annexure 10 to the writ petition.

6. Being aggrieved, second writ petition namely **Writ Petition No. 14340 of 2001 Inre; Smt. Geeta Dikshit and Ors Vs. State of U.P and Ors.** was filed before this Court in which the name of the petitioner finds placed at Serial No. 41. The said writ petition was allowed vide judgment and order dated 05.04.2002, a copy of which is annexure 11 to the writ petition and the respondents were required to consider the claim of the petitioner. Against the order dated 05.04.2002, the State Government had filed a Special Leave to Appeal No. 12422 of 2002 before the Apex Court and the Apex Court vide order dated 22.07.2002 stayed the order passed by this Court dated 05.04.2002. Later, the said Special Leave to Appeal which was converted into Civil Appeal bearing Civil Appeal No. 8658 of 2002 was dismissed vide order dated 01.12.2011, a copy of which is annexure 13 to the writ petition.

7. Subsequent thereto, the respondents-State issued an order dated 27.09.2012 by which they refused to give pay protection for the post of Project Officer.

8. Being aggrieved, a writ petition was filed before this Court by a person similarly circumstanced namely **Writ-A No. 61522 of 2012 in Re: Meena Manral and Ors Vs. State of U.P and Ors.** The writ Court vide judgment and order dated 13.05.2014, a copy of which is annexure 15 to the writ petition required the respondents to reconsider the matter pertaining to the issue of grant of equivalent status to the petitioners as ordered by this Court in its judgment and order dated 05.04.2002 by considering all the relevant aspects of the matter including the recommendation dated 23.06.2010. Subsequently, the petitioner

also filed a writ petition before this Court namely Writ-A No. 35496 of 2014 and writ Court vide judgment and order dated 14.07.2014 extended the benefit of the judgment in the case of **Meena Manral (supra)** to the petitioner.

9. In pursuance to the order of this Court dated 13.05.2014, respondents issued a Government order dated 30.04.2015, a copy of which is annexure 23 to the writ petition by amending the Government order dated 27.09.2012 for the purpose of adjustment of the persons who are eligible for the said post i.e Project Officer.

10. The contention of learned counsel for the petitioner is that in pursuance to the judgment of this Court in the case **Meena Manral (supra)** and after issuance of the Government Order dated 30.04.2015, another Government Order dated 15.06.2015, a copy of which is annexure No.24 to the petition, was issued by the respondents whereby options were required to be given, as specified in Clause 5 of the said government order, by indicating that those persons who had joined on the post of L.T. Grade Teacher had to opt as to whether they want to continue as L.T. Grade Teacher or would work against the ex-cadre post of Project Officer.

11. The petitioner claims to have given her option for joining on the ex-cadre post of Project Officer as specifically indicated in the order impugned. Subsequent thereto, another Government Order dated 30.08.2015, a copy of which is annexure 26 to the petition, was issued by the respondents whereby various portions of the earlier government orders were deleted including the portion pertaining to giving an option.

12. The respondents continued to sit over the matter and ultimately, the petitioner retired on attaining the age of

superannuation on 31.03.2017. Subsequent thereto, the respondents have passed the order impugned dated 01.12.2021 rejecting the claim of the petitioner for being given the benefits of the Government Orders dated 30.04.2015, 15.06.2015 & 30.08.2015.

13. The reasons as emerge from perusal of the order impugned dated 01.12.2021 are (a) that so far as the parity claimed by the petitioner with respect to Smt. Renu Kashyap is concerned, as the petitioner has retired on 31.03.2017 while Smt. Renu Kashyap is still continuing in service as such, there cannot be occasion for grant of parity to the petitioner and (b) in terms of the Government Order dated 19.04.2018, more particularly, Clause 8 of the said government order, the service rendered in the project in the Non-formal Education Scheme of the Government of India cannot be treated to be a regular qualifying service.

14. The argument of learned counsel for the petitioner is that apart from the two grounds which have been taken by the respondents while rejecting the claim of the petitioner, another aspect is that another person namely Shri Vineet Kumar Bajpayee, who retired in the year 2018, his entire service of 35 years rendered in the scheme of the Government of India has been counted and thus, the mere fact that the petitioner has retired on attaining the age of superannuation on 31.03.2017 cannot be considered to be a valid ground for non extension of the benefit of the aforesaid Government Orders dated 30.04.2015, 15.06.2015 & 30.08.2015.

15. So far as ground (b) whereby reliance placed on the Government Order dated 19.04.2018 is concerned, it is submitted that the said government order has come into force subsequent to the retirement of the petitioner and thus, the same

cannot validly be considered by the respondents in order to deprive and deny the petitioner the benefit of the service rendered in the scheme of the Government of India, more particularly, when the said benefit has already been extended to a person similarly circumstanced namely Shri Vineet Kumar Bajpayee. It is also contended that the specific averment to the said effect of the services of Shri Vineet Kumar Bajpayee having been counted by the respondents, has been made in paragraph 53 of the writ petition which has not been denied by the respondents in their counter affidavit, more particularly, in paragraph 47 of the counter affidavit and thus, it is apparent that there is no denial to the aforesaid benefit having been extended to Shri Bajpayee.

16. Responding to the aforesaid arguments of learned counsel for the petitioner, the argument of Shri V.K. Vajpayee, learned Standing counsel, on the basis averments contained in the counter affidavit, is that the petitioner stood retired on 31.03.2017 while the parity of Smt. Renu Kashyap could not be extended to the petitioner as Smt. Kashyap is continuing in service. It is further stated that in terms of the Government Order dated 19.04.2018, the services rendered in the scheme of the Government of India are not to be counted, consequently, no error has been occasioned on the part of the respondents in not counting the previous service of the petitioner and in passing the order impugned.

17. Heard learned counsels for the parties and perused the record.

18. From the argument as raised by learned counsels for the parties and perusal of record, it emerges that the petitioner had initially been appointed on the post of Supervisor in the year 1987 in the Non-formal Education Department. Subsequent

thereto, she was appointed as Project Officer on 18.08.1989 in the same department. In the year 2000, the writ petition was filed before this Court by the Pariyojna Adhikari Sangh praying for a direction to treat the post of Project Officer, Non-formal Education as cadre post in the subordinate education (Gazetted). The writ Court, vide judgment & order dated 09.10.2000, directed the respondents to take a final decision on the representation of the said petitioners taking into consideration of recommendation that has been made by the Director, Non-formal Education, U.P., Lucknow in favour of the said petitioners. In pursuance thereof, the claim of the petitioner has been rejected by the respondents vide order dated 23.03.2001. The petitioner along with several others had filed another writ petition in the year 2001 challenging the said order. The said writ petition was allowed vide judgment & order dated 05.04.2002 and the respondents were required to consider the claim of the petitioner. The SLP against the said judgment was dismissed vide judgment & order dated 01.12.2011 meaning thereby that the said judgment attained finality inter se the parties. Again the respondents passed an order dated 27.09.2012 by which they refused to give pay protection for the post of Project Officer.

19. Being aggrieved by the said order, Smt. Meena Manral filed a writ petition in the year 2012. The writ Court, vide judgment & order dated 13.05.2014, required the respondents to reconsider the matter pertaining to the issue of grant of equivalent status to the petitioner as ordered by this Court earlier in his judgment & order dated 05.04.2002 by considering all relevant aspects of the matter. The petitioner also filed a writ petition and the writ Court, vide judgment & order dated 14.07.2014, extended the benefit of the judgment in the case of **Meena Manral (supra)** to the petitioner. The State

Government issued three Government Orders dated 30.04.2015, 15.06.2015 & 30.08.2015 for complying with the judgment of the writ Court. The petitioner claimed parity of counting her previous service with one Smt. Renu Kashyap. Subsequent thereto, the claim of the petitioner for being given the benefit of counting of her previous service along with addendum benefits has been rejected vide the order impugned dated 01.12.2021 primarily on the grounds (a) Smt. Renu Kashyap is continuing in service while the petitioner has retired from service on 31.03.2017 and (b) in terms of the Government Order dated 19.04.2018, the services rendered by the petitioner in the scheme of the Government of India cannot be counted.

20. Being aggrieved with the said order, the instant petition has been filed.

21. A perusal of the order impugned would indicate that both the reasons, as have prevailed upon the respondents while rejecting the claim of the petitioner for counting of her previous as rendered in the scheme of Government of India, are clearly not countenanced in the eyes of law and cannot be said to be legal, more particularly, when the respondents have placed reliance on the Government Order dated 19.04.2018 for denying the petitioner the benefit of her previous service inasmuch as, once the petitioner already stood retired on 31.03.2017, consequently, there was no occasion for the respondents to have considered the subsequent government order for not counting her previous service and other benefits. So far as the ground of Smt. Renu Kashyap continuing in service while the petitioner having retired is concerned, for this act the respondents have to thank themselves inasmuch as, once the Government Orders dated 30.04.2015, 15.06.2015 & 30.08.2015 had already been issued and the petitioner only

retired on 31.03.2017, i.e. after a substantial lapse of time from issuance of the said government orders, and in case the respondents continued to sit over the claim of the petitioner as such, it does not stand to reason that the said ground should have been taken by them for denying the benefit of the previous service, pay protection and the status of the post to the petitioner as has been taken by them in the impugned order.

22. Another relevant aspect of the matter is that the petitioner has taken a specific stand in the petition of the previous service been counted with respect to one Shri Vineet Kumar Bajpayee. This would also be apparent from a perusal of the Pension Payment Order as has been issued with respect to Shri Vineet Kumar Bajpayee wherein his total service has been indicated to be 35 years, 1 month and 12 days, a copy of which has been filed as annexure 37 to the petition. Despite the specific averment made in paragraph 53 of the writ petition, no denial to the same has been made in paragraph 47 of the counter affidavit. Thus, it is apparent that in the absence of any denial to the said specific averment, the respondents have tacitly accepted that benefit of the previous service has been extended to Shri Vineet Kumar Bajpayee, a person similarly circumstanced, and consequently, there does not appear to any reason as to why the said benefit be not also extended to the petitioner.

23. Keeping in view of the aforesaid discussion as well as considering the order dated 20.11.2020 passed by the Finance Controller (Basic), Education Directorate, U.P., Prayagraj, a copy of which is annexure 33 to the petition, the writ petition is **allowed**. The orders impugned dated 01.12.2021 and 09.12.2020, copies of which are annexures 1 & 2 to the petition, are **quashed**. A writ of mandamus is issued to the respondents

to consider the claim of the petitioner for counting her previous service for the purpose of pay fixation of the post of Project Officer and status of the post and for other consequential benefits keeping in view of the Government Orders dated 30.04.2015, 15.06.2015 & 30.08.2015 and the discussion made above. Let the order in this regard be passed within a period of three months from the date of receipt of the certified copy of this order.

Order Date :- 23.5.2024
S. Shivhare