

Court No. - 18

Case :- WRIT - A No. - 28790 of 2021

Petitioner :- Krishna Kumar Mishra

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt.
Lko. And Ors.

Counsel for Petitioner :- Alok Kirti Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard.

2. Present petition has been preferred for issuing a direction to the respondents to revise the salary of the petitioner after re-fixing the same w.e.f. 05.06.1986 and to issue the pension counting his services of 35 years for the purpose of pension.

3. Learned counsel for the petitioner has submitted that petitioner was initially appointed on 05.06.1986 on the post of Seasonal Collection Amin. Services of the petitioner has been regularized w.e.f. 07.09.2012 hence on the date when the petitioner retired on 31.10.2021 he had rendered nine years four months thirty days of regular service as such pension has not been paid to the petitioner.

4. It is further submitted that in the identical circumstances, the department has rejected the claim of one Shri Parmanand Mishra, a Seasonal Collection Amin, who had rendered only six years one months and twenty four days services, approached this Court by filing Writ A No. 25042 of 2019, which was allowed by the judgment and order dated 20.07.2022. The said judgment is quoted hereinbelow:-

"1. Heard Sri Rama Kant Dixit, learned counsel for the petitioner as well as Learned Standing counsel for the opposite parties.

2. By means of the present writ petition the petitioner has assailed the order dated 26th May, 2019 passed by District Magistrate, Sultanpur whereby he has rejected the representation of the petitioner for grant of pension holding that the petitioner has been regularized only with effect from 7.9.2012 and, hence, on date the when he retired on 31.10.2018 he had rendered only six years' one month's and 24 days' services which is not sufficient for grant of pension.

3. *Learned counsel for the petitioner while assailing aforesaid judgment has submitted that on the previous occasion had approached this Court with the prayer to be treated as regular Collection Amin with effect from June, 1986 for the purpose of salary and other service benefits. This Court on 13.11.2006 by means of the judgment and order while disposing of the said writ petition extended the benefit of the judgment and order rendered in writ petition No.4031 (S/S) of 2002 to the petitioners.*

4. *It is noticed that this Court in writ petition No.4031 (S/S) of 2001 considered the case of similarly situated Collection Amins had allowed the petitioner considering the fact that the petitioners had worked as regular Collection Amins and were selected under Uttar Pradesh Collection Amins Service Rules 1979. The Court had passed a direction that the petitioner be "treated as regular Collection Amin" in service since 5.6.1986 for the purpose of seniority etc.*

5. *It has been submitted by learned counsel for the petitioner that after being declared to be regular Collection Amin the respondents promoted him to the post of Revenue Inspector by means of order dated 1.7.2017 since the petitioner is working on the post of Revenue Inspector till the date he superannuated on 31.10.2012. It has been submitted that the impugned order dated 26th May, 2019 is absolutely illegal and arbitrary and contrary to the direction issued by this Court where considering the factual matrix of the case and the service record of the petitioner he has been declared to be a regular employee. Not only the judgment of this Court was given effect to by the opposite parties they have included him in seniority list of Collection Amins and he was also considered and duly promoted vide order dated 1.7.2017 to the post of Revenue Inspector. There is no doubt that the services of the petitioner were regularized and he has been treated to be a member of service and only because of the said fact that the opposite parties also proceeded to give him benefit of promotion. It is noticed that once the respondents themselves have considered the petitioner to be a regular employee then his regular services cannot be ignored and are liable to be counted as qualifying period for the purposes of grant of pension. He cannot be denied pension treating that his services were regularized only on 7.9.2012.*

6. *Learned counsel for the petitioner in support of his contentions has further relied upon the judgment and order dated 27.11.2018 passed by this Court in writ petition No.619 (S/S) of 2014 (Mohd. Usman Ansari Vs. State of U.P.) as well as upon the judgment in the case of Rajendra Prasad Tiwari Vs.*

State of U.P. and others passed on 3.8.2017 as well as the order passed in Special Appeal Defective No.196 of 2018 upholding the judgment and order dated 3.8.2017 passed in Rajendra Prasad Tiwari (supra) and claims parity of these judgments.

7. Learned Standing counsel, on the other hand, has opposed the writ petition and supported the impugned order by submitting that there is no infirmity in same as the petitioner was regularized on 7.9.2012 and he has merged only slightly more than six years of services and, hence, he is not entitled to the benefit of payment of post retiral dues.

8. I have heard learned counsel for the parties and perused the record.

9. Undoubtedly, the petitioner had earlier approached this Court where the writ petition was allowed and the petitioner was directed to be treated as regular Collection Amin since 5th June, 1986. The said order attained finality and was not assailed either before Division Bench or before any other higher court. The petitioner was duly considered for promotion on 7.7.2017 to the post of Revenue Inspector and subsequently he retired in 2018. It is noticed that consequent to the judgment of this Court the services of the petitioner has always been treated to be regular and, hence, in the above factual matrix of the case, it cannot be said that the petitioner was not in regular services since 5.6.1986 till his superannuation. In fact, the petitioner has rendered more than thirty years of regular services and not six years as stated in the impugned order.

10. In light of the above, this Court is of the considered view that the petitioner has completed much more than the minimum required number of years as regular employee and, hence, he is entitled to be paid pension.

11. The writ petition is allowed. The impugned order dated 26.5.2019 is quashed. The opposite parties are directed to grant the benefit of pension and other service benefits to the petitioner to which he is entitled, expeditiously say within a period of two months from the date a certified copy of this order is placed before the authority concerned."

5. It is further submitted that the case of the petitioner is at the better footing as he had rendered nine years four months and thirty days regular service and entitled for the benefit of the judgment and order dated 20.07.2022 passed in Parmanand Mishra (supra).

6. On the other hand, learned Standing Counsel is unable to

distinguish the judgment relied by the learned counsel for the petitioner passed in the case of Parmanand Mishra (supra) and submitted that case of the petitioner is covered by the said judgment.

7. In view of the discussions made hereinabove, the present petition is allowed in terms of the judgment and order dated 20.07.2022 passed in Parmanand Mishra (supra) case.

8. The respondents are directed to grant the benefit of pension and other post retiral dues to the petitioner to which he is entitled, expeditiously say within a period of two months from the date of production of certified copy of this order.

Order Date :- 22.2.2024

Ashish